
ACCESS DISPUTE RESOLUTION COMMITTEE

Determination No.1 **(Hearing at Euston on 4th December 1995)**

The Access Dispute Resolution Committee was asked to consider applications from North West Regional Railways Ltd and South Wales & West Railway Ltd Train Operators which sought to prove that Railtrack North West Zone, in carrying out works to permit the introduction of EPS services to Manchester, had failed to carry out due processes.

The Committee was concerned to decide its own locus in relation to the issues raised. It accordingly debated the following points of principle, on the basis of the written submissions from the Train Operators and the Zone.

1. Were the matters in dispute between the parties intended, by the Access Conditions, to be covered by the provisions of Part G of the Access Conditions?
2. If the matters were properly to be covered by Part G of the Access Conditions, then in relation to due process, would it in any way jeopardise the rights of the parties for the Committee to hear submissions, or should these submissions be put to the Network and Vehicle Change Committee, from which committee there is right of appeal to the Regulator?
3. If the matters were deemed to be covered by Part G of the Access Conditions, what guidance would the Committee be minded to give in relation to:
 - 3.1 the significance of pre-1.4.94 authorisation of the works, and
 - 3.2 the inclusion within Railtrack's objectives set by the Secretary of State of a commitment to complete the works by 1.1.96?

The Committee in relation to point 1 considered that Part G of the Access Conditions provides for either party, Train Operator or Railtrack, to bring the matter into the jurisdiction of Part G of the Access Conditions. Railtrack had obligations in relation to the discharge of Condition G1. The Committee was of the view that the force of Condition G2, and G2.1a(ii) and (iii) in particular, is that, if a Train Operator considered that it was faced with a change, it could cause that implementation of that change be made subject to the provisions of Part G of the Access Conditions.

In other words the Committee was of the view that it was the operation of Part G of the Access Conditions, including where necessary a reference under Condition G6 to the Network & Vehicle Change Committee, that would determine the materiality of the change. It was not open to any party to keep a proposal for change outside the formal processes of Part G unless all parties agreed. If there were no agreement then the Train Operator would serve notice in terms of Condition G2.1 (in relation to a change proposed by Railtrack) or Railtrack would serve notice in terms of Condition G4.1 (in the circumstances of a change proposed by a Train Operator).

The Committee therefore determined that all works associated with the case in contention should be deemed to be subject to the provisions of Part G and that the parties should be directed:

i) to seek resolution of their differences as provided for in the formal processes of Part G of the Access Conditions

and

ii) failing agreement, to appeal, as appropriate, to the Network and Vehicle Change Committee.

Furthermore, recognising that time is of the essence in the matters in question, the Committee determined for the guidance of the parties that:

a) immediate steps should be taken to convene a meeting of the Network and Vehicle Change Committee.

b) for the purposes of defining the nature of the changes in consideration, proposals that were defined and understood by the affected parties as at 1.4.94 should be considered as having fulfilled the provisions of Part G of the Access Condition, both as regards consultation and any question of entitlement to compensation: for changes proposed subsequent to 1.4.94, Part G of the Access Conditions should apply in all its details.

c) the circumstances and nature of the changes proposed, including the standing of the objective set by the Secretary of State, were not such that Railtrack could claim the benefit of Condition G5.1, as the Secretary of State was not, in this matter, exercising powers as a statutory authority in accordance with the definition of "Competent Authority" shown in Part A of the Access Conditions. The Committee in any case noted that Condition G5 still required Railtrack to undertake the full consultative process defined in Condition G1.1, and in Condition 1.2 excluding the final sentence.

T P WORRALL
Chairman of the Committee
4th December 1995