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## ***ACCESS DISPUTE RESOLUTION COMMITTEE***

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### **Determination No. AD14**

(Hearing at Kings Cross on 21<sup>st</sup> January 1998)

1. The Committee was asked by a grouping of Train Operators, **Great Eastern Railway Limited, West Anglia Great Northern Railway Limited, Anglia Railways Train Services Limited** and **LTS Rail Limited**, all users of Liverpool Street Station, to direct Railtrack
  - 1.1. to apply the terms of the Railtrack Independent Station Access Conditions (ISAC) 98.1, with regard to the apportionment and calculation of Staff Costs within Qualifying Expenditure for the year 1995/6;
  - 1.2. to refund to the claimants a sum of £132,887, plus interest, and costs of inspection, in accordance with ISAC 39;
  - 1.3. to apply the terms of the ISAC 40, and paragraph 2 of Annex 2, with regard to the allowing and calculation of Credits in relation to use of Common Station Amenities and Services by other beneficiaries, and by tenants/occupiers, and the declaration of such Credits within the Qualifying Expenditure Accounts and Certificate; and
  - 1.4. to complete and submit documentation compliant, as to both form and due date of submission, with ISAC 34 to 40.
2. The Committee noted the length of the two submissions, and in particular that
  - 2.1. the matters in issue had been some 18 months in play before being brought to the Committee, but that there did not appear to have been any face to face dialogue aimed at resolving them,
  - 2.2. despite encouragement from the Secretariat, the parties had been unable to produce any sort of common statement of their points of agreement, or of disagreement, and
  - 2.3. a number of documents submitted did not self-evidently relate to points of contention between the parties.
3. The Committee noted that
  - 3.1. the content of the Railtrack Independent Station Conditions had been changed with effect from 2nd February 1996, and the Committee had taken account of the applicable version (ISAC(95) or ISAC(96)) in its deliberations; and
  - 3.2. its locus to hear the proceedings was as defined in ISAC(96) 53.1, insofar as the matters in question were matters of principle; to the extent that they related to the figures expressed in a Certificate, the Committee was of the opinion that ISAC(96) 53.2 obliged the parties to seek Expert Determination, at their mutual cost, in accordance with the Access Dispute Resolution Rules (ADRR) Part D.

4. The Committee therefore considered whether the staff costs for 1995/6 fell to be apportioned between Qualifying Expenditure and non Qualifying Expenditure. The Committee's view was that there was a requirement in ISAC(96) 98.1 for such an apportionment of costs to be undertaken.
5. Furthermore the Committee opined that the fact that this Condition 98.1 related to costs and not charges, and that ISAC(96) 35 made provision for adjustments for excess or short payments, both implied that the critical apportionment was that which had to be undertaken at the conclusion of the financial year and which underpinned the content of the Certificates supplied in accordance with ISAC(96) 34.1.
6. The Committee decided that such an apportionment should quite reasonably take advantage of lessons learnt, including studies made, or diaries kept, as to the most appropriate apportionment of Costs, and that there was no impediment to the application of such knowledge provided that it was applied within the timescales and processes laid down for settling the Certificate.
7. In relation to 1.2 and 1.3 above, the Committee therefore directed the parties to engage in further dialogue on the precise figures to be included in the final settlement of the staff costs apportionment, bearing in mind the foregoing advice on principle, and the common ground between the parties, evident at the meeting, that there had been some degree of overcharging (allegedly in the range of £1 to £132,887) of Qualifying Expenditure, of the Train Operators, by Railtrack. In the event of continuing failure to agree, the parties were instructed to proceed in accordance with ISAC(96) 53.2.
8. The Committee further directed that whatever overpayment was identified at the conclusion of the above processes, should attract interest, pursuant to ISAC(96) 39. Responsibility for inspection costs should only then be determined in accordance with ISAC(96) 39.3 A or B as appropriate, once all other outstanding matters relating to the Certificate had been finalised.
9. With regard to the other aspects of 1.3 and 1.4 above the Committee directed that Railtrack must comply in full with the provisions of ISAC(96) 34 to 40, and that the parties should, without delay, engage in the preparation of a memorandum of understanding to record what they agree is an adequate discharge of these responsibilities. Such a memorandum would clearly need to acknowledge that there are Credits that should be reflected within the Certificate.
10. The Committee declined to make any award of costs.

Bryan Driver,  
Chairman,  
Access Dispute Resolution Committee