
ACCESS DISPUTE RESOLUTION COMMITTEE

Determination No. 4

(Hearing at Bernard Street 21st February 1996
and at Euston House on 24th February 1996)

The Access Dispute Resolution Committee was asked to adjudicate on a difference of view as between ScotRail TOC and Railtrack, Scotland Zone as to the applicability of Schedule 8 and Schedule 4, in relation to the closure of the Argyle Line between 11th December 1994, and 24th September 1995.

The reference related to the method of assessing the compensation payable from Railtrack, to ScotRail, for the period from 1st April 1995 to 24th September 1995, during which period the terms of Schedule 4 and Schedule 8 (contained in the Supplemental Agreement dated 7th December, and as implemented currently from 10th December 1995) are deemed to have applied retrospectively.

The Committee considered the representations of the parties, and decided that the Committee was empowered to hear and determine the reference. It also determined that the reference was not a matter that came to the disputes procedure in accordance with Access Conditions D5, F5, G5, or H11, and therefore was not an issue on which a subsequent appeal would be to the Regulator.

The Committee noted that, although the reference related to a retrospective claim, the parties were also seeking guidance on the application of Schedule 4 and/or Schedule 8 in future. The Committee chose to address this as a matter of principle, leaving the relevant sums of compensation etc., to be applied consequent to the judgement.

The Committee noted that the case related to two complementary, but distinct claims:

- 1) whether a continuous closure of a line, as a sequel to an unforeseen “disruptive event”, should be treated solely under the provisions of Schedule 8, or could be treated in part as a Network Possession under Schedule 4 and subject to Notification discounts

and

- 2) whether there is an obligation on one party, in circumstances where a line closure requires the implementation of an Amended timetable over an alternative route, to accept a proposal from a counter-party for the introduction of substitute Monitoring Points; and whether adoption of that substitute Monitoring Point should result in a consequential change in the level of compensation payable in accordance with Schedule 8.

In relation to the first subject, the Committee considered that the Argyle Line flood should be counted as a single event which lasted from the first breach until the restoration of access rights and therefore, as an unplanned event, could not fall to be compensated under Schedule 4, but must be compensated under Schedule 8 for the

full duration of the line closure; i.e. there should be no recourse to Notification discounts.

In relation to substitute Monitoring Points, the Committee considered the question, "Is Glasgow Central High Level an acceptable substitute Monitoring Point for Glasgow Central Low Level for the purposes of assessment of compensation payable under the Amended Timetable provision?"

The Committee considered that it was probable that an amended timetable that needed to operate over a lengthy period would require agreement between the parties on the use of a substitute Monitoring Point.

The Committee also judged that either party was entitled to propose a substitute Monitoring Point, with a view to varying the basis on which compensation for a line blockage under Schedule 8 might be payable, but that a substitute Monitoring Point could only be introduced if both parties agreed that this was appropriate for actual train operating purposes during the period of the line blockage.

The Committee considered that, in this specific instance, because of the relative placing of the Glasgow Central High and Low level stations, it was appropriate to introduce High Level station as a substitute Monitoring Point, and that calculation of Schedule 8 compensation for the Amended Timetable should take account of the fact that some trains from the South-east were able to stop at the substitute Monitoring Point. The Committee acknowledged that this implied that ScotRail, by accepting this substitute Monitoring Point, were waiving a right to Missed Intermediate Station Compensation. However the Committee noted that, in this particular case, Missed Monitoring Point Compensation is still payable for:

- a) all those westbound trains which either do not reach Dalmuir, or which travel via Queen Street, and do not stop at the Central Station Monitoring Point
- and
- b) all eastbound trains which are normally scheduled to Stop at Glasgow Central Low Level Monitoring Point.

In these circumstances ScotRail should reasonably be expected to accept this specific substitution of a Monitoring Point.

The Committee reminded the parties in the context of the arguments advanced within the reference that in any conflict between Track Access Conditions and the provisions of Schedules to individual Track Access Agreements, the Track Access Conditions always prevail.

The Committee found in favour of ScotRail in respect of the first count.

The Committee found in favour of Railtrack Scotland Zone in respect of the second count.

Terry Worrall
March 1996