
ACCESS DISPUTE RESOLUTION COMMITTEE

Determination No. 6

(following hearings at Euston House on 4th and 17th October 1996)

The Access Dispute Resolution Committee was asked to determine whether Railtrack had been entitled, under the terms of the Track Access Agreement with South West Trains, to accept bids for 4 trains to operate between Waterloo and Salisbury via Southampton and calling at Winchester.

The appeal was made by South Wales & West Railway, whose interest stemmed from their acknowledged right to operate trains between Salisbury and Southampton; South Wales & West further contended that Railtrack's freedom to grant rights to other operators in future to operate services over this route was curbed by the terms of Schedule 10 of the South Wales & West Railway Track Access Agreement, together with the force of Stage 1 of the Moderation of Competition policy as approved by the Office of the Rail Regulator.

The Committee, at its meeting on 18 September (Minute 15/8), had resolved that this matter required to be addressed in stages. The first stage was considered to be a judgement on the content of the South West Trains Track Access Agreement, and whether that demonstrated the existence of a firm contractual right for South West Trains to run the disputed services. This question of interpretation of an existing contract, it had been resolved, should be determined by Access Dispute Resolution Committee, and therefore is the subject of this determination.

The Committee, having heard representations from South Wales & West Railway, and from Railtrack (South West Trains having expressly declared they did not wish to be present) concluded that, under the terms of its Track Access Agreement (effective from 1st April 1995), the rights of South West Trains to divert some trains from within the Service Group 3 to operate via Southampton to Salisbury, calling at Winchester, was not clearly and unambiguously expressed on the face of the Agreement.

The Committee concluded that the existing Contract was not sufficiently clear for Railtrack to have been entitled on its own initiative, to reject as non compliant bids from South West Trains for the trains in question. For this reason the Committee determined that those trains that had been bid for and accepted as part of completed Timetable Development Periods should be permitted to continue in operation until the end of the Winter 1996 Timetable.

In respect of the Timetable Development Period for the Summer 1997 Timetable and given that the existence of the rights had now been called into question, the Committee directed Railtrack that it should treat any bids from South West Trains for services between Waterloo and Salisbury via Southampton as non-compliant bids, for the purposes of operating Part D of the Track Access Conditions, and that such bids should only be

accepted by Railtrack, were the South West Trains Track Access Agreement to be suitably amended to establish a clear right on the face of the agreement and that amendment to have the approval of the Regulator.

The Committee in making this determination recognised that it might require Railtrack to rescind an offer that had previously been made. Railtrack was directed to act in this way and the Committee acknowledged that in giving this direction it was explicitly not placing any restriction on the rights of South West Trains in relation to the operation of Part D of the Track Access Conditions and the opportunity to be heard before the Timetabling Committee in accordance with Track Access Condition D5.1.

Bryan Driver
Chairman of the Committee
17th October 1996