
ACCESS DISPUTES RESOLUTION COMMITTEE

MINUTES OF MEETING No. 4 HELD ON 10th APRIL 1995

Present:

Terry Worrall (Chairman)
Bob Urie (North East TOC)
Lloyd Rodgers (Gatwick Express)
Philip O'Donnell (Railtrack)
Robert Watson (Railtrack)

In attendance:

Chris Blackman

Apologies

Richard George (Great Western) and Ian Braybrook (Loadhaul)

4/1 Chairmanship

The Secretary advised the Committee members that the Regulator had confirmed his approval for the substitution of the date 1 October 1995 for the 1 April 1995 in accordance with the facility contained in clause 3.5 of the Annex to the Access Conditions 1995. The Committee noted this and affirmed their wish that Terry Worrall, Director Safety, BRB, should continue as Chairman until 1 October 1995 or until a new Chairman is appointed, whichever is earlier.

4/2 Quorum

Although the meeting was quorate under the 1994 Access Conditions, the new 1995 Track Access Conditions applicable from the 1 April 1995 required a quorum of 5 persons. It was noted that the meeting was therefore technically not quorate, but it was possible for the meeting to continue with discussions and make decisions, but such decisions are subject to formal ratification at the next quorate meeting of the Committee.

4/3 Minutes of Meeting No.3

The minutes of the third meeting held on 4th January 1995 were tabled and approved by the Committee as a true and correct record of the meeting. A copy was duly signed by the Chairman to be retained on file as the record.

The meeting noted that all action items had been discharged.

4/4 Review of the Committee's procedures

The Committee considered the memorandum from the Secretary concerning the Draft 4 of the Committee's processes and procedures for the Timetabling Sub-Committee which had been annotated and cross-referenced to the latest 1995 edition of the Track Access Conditions. The Secretary explained that, whereas Draft 4 had been prepared in the latter part of 1994 to try and bring together and reconcile the requirements of Access Condition Part D and the annex to the Access Conditions Part A at a time when the industry was preparing itself to respond to the new requirements for handling disputes both at Committee and Sub-Committee level, there was now much more understanding of the Conditions, particularly as there had been three references to the Timetabling Sub-Committee.

The early experiences of the Sub-Committee work and practical enactment of the Draft 4 procedures had been reflected in the Regulator's review of the Access Conditions and the annex thereto. Chris Blackman advised the Committee that there was now a high degree of correlation between the content of the Draft 4 document and the 1995 version of the Annex.

The Secretariat was willing to update the Draft 4 document into a formal 'Draft 5' version, reflecting the 1995 version of the Track Access Conditions if the Committee so wished. However, the recommendation of the Secretariat was that the Committee should acknowledge that the 1995 edition was fit for purpose in expressing the processes and procedures for the working of the Committee and its Sub-Committees, and that the Secretariat should be asked to draw up a supplementary list of procedures for the working of the Sub-Committees which amplified as appropriate the provisions contained in the Access Conditions. This document, which would incorporate, and be in the style of, the paper entitled "Procedure on the Day", is expected to be approximately 2-3 pages long and to be made available to parties involved in referring a dispute for determination, also to others on request. The Committee endorsed the latter proposal and instructed the Secretary to prepare a document for circulation before the next meeting. The Committee asked for a draft version of the document to be advised to the Regulator for his comments.

The Committee agreed that paragraphs 3.8 and 3.9 of Draft 4 could be deleted, but they wished to receive a paper on the mechanism for recovering costs to be tabled at the next meeting.

The Committee also agreed with the Secretary's suggestion that paragraphs 9 and 10 of Part B of Draft 4 are no longer required now that Committee and Sub-Committee members and alternates in particular, and the industry in general, are well advanced on the learning curve.

4/5 Election of Members of the Committee.

The Secretary reported that elections for membership of ADRC are carried out in the same way as for membership of the Class Representative Committee. Accordingly he proposed to write to the Managing Directors of the members in each band to seek nominations. He asked if ATOC might wish to facilitate the process so far as the passenger franchised bands are concerned. The Committee members concerned indicated that they would establish whether this is the case. The Secretary would check to see whether, despite the changes in the constitution and numbers of TOU representatives, it was appropriate and in order for any of the existing members to continue to serve for the next 12 months, or whether all members should be subject to re-election.

4/6 Appointment of New Chairman

The Committee noted that a new Chairman had to be appointed within 6 months. The Secretary would write to members of the Committee seeking nominations; it would be necessary to vet nominations to ensure that there was compliance with the Track Access Conditions. Although the job could be advertised externally in the press, members expressed the view that there was probably a relatively small field of possible candidates of sufficiently senior status and with the necessary knowledge of the technical issues involved. After further discussion the Secretary was instructed to prepare draft job and associated person specifications. Consideration would need to be given to defining the expected salary and the level of commitment in terms of time that would be required. The Secretary was instructed to consult the Regulator as appropriate and to submit a draft outline to members prior to the next meeting.

4/7 Appointment of Disputes Secretary

The Committee discussed the role of the Disputes Secretary as described in the Access Conditions, and envisaged that the demands of this post are likely to increase considerably in the next 2-3 years. The Committee recalled the advice it had been given by the Legal Advisor to the Rail Regulator and agreed that consideration must be given to the proposition that the Disputes Secretary should have a legal qualification, or at least an understanding of legal principles involved.

It was noted that references are also made in the Track Access Conditions to the need for a Clerk to the Committee, who may or may not be legally qualified. The Committee asked the Secretary to draw up outline job and person specifications for this post and to seek nominations. The question of degree of security of tenure would also need to be defined.

Lloyd Rodgers asked whether it was still the view of the Regulator that the Disputes Secretary should be legally qualified; if so, one option would be to second a candidate from a law firm for a specified period. The Secretary was instructed to discuss this point with the Office of the Rail Regulator.

4/8 Funding Arrangements

Bob Urie commented that there needs to be more definition of the structure under which persons such as the Disputes Secretary and others are employed. Robert Watson sought clarification on the relationship of the 'Clerk to the Committee' to the 'Disputes Secretary'. It was agreed that the Chairman and Secretary should discuss this with the Office of the Rail Regulator as soon as possible.

The Secretary would establish whether there are parallels with ATOC in the methods of employing staff and whether there is a similar constitution for funding arrangements.

The Committee, following further discussion, was anxious that proper banking arrangements should be set up to cover the Committee's activities, and a mechanism for raising and receiving charges should be put in place quickly and by no later than May 1995. The development of these procedures need to be properly project managed, and the Secretary was instructed to prepare a plan accordingly and to prepare an outline budget for the Committee for 1995/96 identifying the sources of income from a levy on the industry in accordance with the Access Conditions, and the likely income to be raised from parties making references to the Committee. Costs would need to include the fees for the Chairman, any secretarial assistance, together with reimbursement of parties who provide a full secretariat cover, and appropriate financial support and audit of accounts.

Bob Urie raised the question of who owns ADRC. The Committee's view is that it is owned by the industry but this point would have to be checked with lawyers.

4/9 Class Representative Committee's Working Party

Chris Blackman advised the Committee about the recent work of the Class Representative Committee's special Working Party in reviewing the Access Conditions Part D from the practitioners' viewpoint. It was noted that the report of the Review Group had made 18 recommendations all of which, except for one, had been endorsed by the Class Representative Committee at their meeting on 16th March 1995. The proposed alterations to Part D of the Access Conditions were now being scrutinised by the lawyers and a formal proposal for amendment was expected to be circulated before Easter to the industry parties in accordance with Part C of the Access Conditions.

Robert Watson stated that the Timetabling sub-Committee members and alternates would need to know about the content of the report and its recommendations and to note in particular that there are, for each timetable development, four specific periods of time set aside for the hearing of appeals. It was noted that the intention is to commence using the recommended procedures for preparation of the May 1996 timetable; this process would start effectively from 21st April 1995 with circulation of the initial proposals for Rules of the Route and Rules of the Plan. The process would be without prejudice to consultation on the changes through the Part C procedures.

A copy of the Working Party's Appendix A to the Report, which is a chart showing the proposed timescales, is attached to these minutes and is also circulated to Timetabling Committee Members and Alternates.

4/10 Next Meeting

The next meeting of the Committee will be held as a full day meeting commencing at 0930 hours on 11th May in Room 401 at Euston House.

The Agenda will include an election for the position of Deputy Chairman of the Committee.