
ACCESS DISPUTE RESOLUTION COMMITTEE

MINUTES OF MEETING No. 5 HELD ON 13th JUNE 1995

Present:

Terry Worrall (Chairman)
Ian Braybrook (Loadhaul) {present for items 1 - 3}
Glen Kennedy (Regional Railways Central)
Philip O'Donnell (Railtrack)
Mike Romans (European Passenger Services)
Bob Urie (North East)
Jos Veraart (Railfreight Distribution)
Robert Watson (Railtrack)

In attendance:

Chris Blackman
Martin Shrubsole

Apologies

Lloyd Rodgers (Gatwick Express)

5/1 Introduction

The Chairman introduced the meeting and welcomed the new members of the Committee following the elections on 6th June. The Committee now consists of 8 members and the quorum for a meeting is 5 as specified in the Railtrack Track Access Conditions. The Chairman nevertheless stressed that he wished to see meetings of the Committee conducted with the full complement of 8 members present and asked new members, if they had not already done so, to appoint an alternate without delay. He explained that the Chairman and Secretary are not members of the Committee, and further that Martin Shrubsole was present in his capacity as alternate to the Secretary, Chris Blackman.

5/2 Minutes of Meeting No.4

Members noted that this meeting held on 10th April 1995 had not been quorate under the current conditions which came into force on the 1st April.

4/1 The Committee ratified the proposal that Terry Worrall, Director Safety, BRB should continue as Chairman of the Committee until 1st October 1995 or until a new Chairman is appointed, whichever is earlier.

4/3 The approval of the minutes of meeting no.3 was ratified.

4/5 It was noted that elections had been held on 6th June 1995 for membership of the Access Dispute Resolution Committee and its three Sub-Committees. The Secretary circulated a list of the members elected to all Committees. It was agreed that a list of members elected together with their appointed alternates would be attached to the minutes of the meeting.

4/8 The question of who owns ADRC had not yet been resolved; it is the subject of further discussion and progress will be communicated to members in due course.

Members ratified the minutes of meeting no.4, and the decisions made; the Chairman signed a copy as being a true record for retention on file.

5/3 Election of Deputy Chairman

Bob Urie was proposed for the post of Deputy Chairman by Ian Braybrook and seconded by Glen Kennedy. There were no other nominations and the Committee duly elected Bob Urie as Deputy Chairman of the Committee.

5/4 Review of Committee Procedures

The Secretary tabled a paper which had been commissioned following discussion at the previous meeting. Members reviewed this paragraph by paragraph, noting the comments that had been received on the document from the office of the Rail Regulator.

The Committee agreed Sections 1 and 2, incorporating the comments of the Regulator. It was agreed to make amendments to section 3 which would clarify that the Chairman would have the power to exclude a party rather than a specific representative of a party to a dispute.

The Committee discussed the timescales specified in sections 4 and 5 which are not mutually consistent. The Committee considered that Clause A5.4(d) of the Access Dispute Rules is anomalous, and that clause A5.5 is the base point of reference. The Committee's view is that responses from other parties to the dispute should be made at least 7 days before the Committee meeting and that it is therefore imperative that the party making the reference should serve this several days in advance of the 7 day period of notice. The Committee interpret this as meaning that they will want 14 days notice of the making of a reference (in clause A5.4(d)) but that this could be varied to ten days in the case of a reference to the Timetabling Sub-Committee. The Committee concluded that the text in the dispute rules is flawed; there are difficult balances to strike and it will be necessary for a proposal to be put to the Regulator in due course.

Glen Kennedy raised the issue of how, and by what route, additional information should be requested, obtained and channelled to members before a meeting. It was agreed that the proper channel of communication was by way of the Secretary,

and an additional paragraph in the guide is needed to specify the procedure.

Action: Chris Blackman.

The remaining content of section 4 and 5 was agreed incorporating the Regulator's comments; it was noted that an Appendix B would be developed in respect of Network and Vehicle Change Sub-Committee similar to the Appendix A for Timetabling Sub-Committee.

Section 6 was agreed subject to an additional clause highlighting the fact that the appointment of experts and advisors does add to the running costs of the Committee which are borne ultimately by the industry parties.

The Committee agreed Section 7 and, with some minor amendments, Section 8, although there was unease about the second paragraph referring to a Committee member representing his/her own organisation at a hearing. The Committee had, during the review of the Access Dispute Rules at the beginning of the year, expressed concern that a Committee member might also act as representative of a party to a dispute at a hearing; indeed there had been a partial change made to the Rules as a result of representations from the Committee. It was agreed that this would be raised again at the next review of the procedures and dispute rules, or in any case with the Regulator later in the year.

In section 9 it was agreed that the length of time prescribed for final comments from the parties should be extendible at the Chairman's discretion.

The Committee agreed to insert a preamble explaining the scope of matters covered by the ADRC, an additional clause covering the process for appeals and an encouragement of parties to resolve issues before reaching a hearing.

The alternate Secretary drew the Committee's attention to a question which had been raised about whether the Access Conditions and the Dispute Procedures related as much to unregulated Access Contracts as to regulated Access agreements. Philip O'Donnell asked whether a paper on issues had been prepared, and it was agreed to circulate members when such a paper was available.

The Committee asked the Secretary to prepare a final version of the procedures for circulation to the Regulator and the Committee Members for approval at the next meeting.

Action: Chris Blackman

5/5 Discussion with the Rail Regulator on 25.04.95

The meeting had been held at the Regulator's office to discuss matters that had arisen at the previous meeting of the Committee on 10th April.

It was noted that the Disputes Secretary is associated with issues which are not appealable to the Regulator. Philip O'Donnell was concerned that, to keep costs down, the Committee should explore what industry resources and lawyers were available, or alternatively whether it was possible to buy in from a company to look after this on behalf of the industry.

Action: Chris Blackman will put together a specification and seek further legal advice from Solicitors within the Industry.

It was agreed that the Disputes Secretary should maintain not only a register of arbitrators, mediators and experts but also a panel of people who could be called upon as assessors.

The Committee agreed that it should have an independent person available, on a retainer basis, as a clerk to the Committee. There is a need to make appointments fairly quickly. Action: Chris Blackman to prepare job specification.

5/6 Process for appointment of new Chairman

The draft job and person specification prepared by the Secretary were approved subject to minor changes. Any further comments were requested from members of the Committee within 7 days.

The Committee considered the steps in the processes toward appointing the Chairman and other personnel and identified a number of key concerns and questions to be clarified and answered. These included identification of ownership of the Committee and the appointing body, the employment status of people appointed, the legal responsibilities and liabilities of the Committee and the Chairman, and the need for indemnity of personnel against possible legal action.

It was agreed that the Secretariat should draft a letter spelling out the concerns of the committee; initially it would be addressed to BR and Railtrack lawyers, but it would thereafter serve as the basis of a paper sponsored by BRB, EPS and Railtrack to Access Implementation Group(AIG).

The Secretariat advised the Committee that several names of possible candidates for Chairman had been drawn up, although it was considered that some may not be wholly acceptable to some Industry parties. The Committee endorsed Philip O'Donnell's suggestion that it was preferable if a single candidate emerged with consensus support; nevertheless it was agreed that it is proper for the job to be advertised nationally although the Secretary would ensure that such an advertisement was brought to the attention of those people whom the Committee judged had many of the attributes sought in a potential Chairman. Members noted the preliminary list of names and suggested a further name.

5/7 Draft Budget for the Committee

The Secretary tabled proposals for the process of raising funding for the Committee, together with an itemisation of the costs and underlying assumptions. These proposals were supplemented by a presentation highlighting the individual elements and concluding with a nominal annual budget of approximately £0.25M including set-up costs.

The Committee endorsed the approach as sensible and the assumptions as valid, adding that there appeared to be no missing elements. The Committee was of the view that the allocation of time shown for the Secretary's commitment and secretarial assistance was mean; the Committee stressed that it was vital that there should be efficient administration of all the processes and they wished to have this appropriately underpinned with resources.

It was considered that any reduction in costs by siting the offices of the Committee outside London would be offset by the fact that the capital city is more readily accessible for members.

Robert Watson expressed concern that charges could not generally be raised against "guilty parties" but Glen Kennedy welcomed the fact that companies are not deprived of the opportunity to seek justice because of their inability to risk payment. In noting the first draft budget estimates of approximately £250k members felt that, when apportioned to individual companies, the cost would be seen as relatively low.

It was agreed that the financing of the Committee needed to be up and running by the 1st October when it was anticipated that a new Chairman would be appointed; accordingly it was proposed that the budget needed to have the form of an out-turn for the 6 months commencing the 1st October, and should be ready to run from that date.

It was agreed that a paper should be prepared to go to AIG summarising the costs with a brief résumé of the Secretary's paper and advising everybody that it was intended to commence operations by imposing a levy from 1st October.

The Committee instructed the Secretary to seek financial advice on the issues of VAT liability, registering as a company and the opening of a bank account, although the last item might need to wait until after the AIG meeting. Noted that if AIG reverses any decision or procedure there is a need to alert the Committee. Separate advice is required on the means to enforce collection of the levy on Industry Parties.

5/8 Spot Bids

The committee considered the paper that had been tabled by the Secretary, who explained that the issue arose as a result of concern expressed by the Regulator that there was not an appropriate appeals process to deal expeditiously with referrals in respect of Spot Bids. The Committee noted that Spot Bids should necessarily be bid into white space, and furthermore many Spot Bids are made well in advance of the date of operation. A number arise immediately following the end of the iterative process and are concerned with consequential empty stock and light loco movement alterations, but the timescales are such that references could be heard, and determinations from the Timetabling Sub-Committee implemented, before the commencement of the timetable. The Secretary further explained that short notice Bids, which are primarily freight, are normally made in one week for operation the following week. He understood that the freight view is

that, in the event of a reference being made in respect of Railtrack treatment of a Spot Bid, the freight companies were not necessarily seeking for a hearing before the date of operation for which the Spot Bid was made, but the result of such an appeal would act as a form of case law for future reference when a similar Spot Bid was made at a later period in time.

Following discussion it was agreed the appropriate response should be that, firstly, there is a general incentive on all interested players to bid at the earliest opportunity; secondly, there needed to be yardsticks laid down for the timescales in which Railtrack should respond to Spot Bids, and subsequently for the Train Operator to reject or accept the offer. It was noted that the CRC working party had recently addressed these issues and would be reconvening during the next two weeks to consider the position. The Committee instructed the Secretary to ensure that the working party is made aware of the Committee's views.

5/9 Non-Access Disputes

In response to a request from the Committee, the alternate Secretary summarised the position so far reached with the Railway disputes working party in which the following questions had arisen:-

1. Should BRIS become voting parties to the Access Conditions. There was a degree of consensus that issues which come to Railway Industry Dispute Resolution (RIDR) but are primarily concerned with Access matters should be referred to the ADRC.
2. There was movement towards consensus that issues concerned with both RIDR and ADRC would probably need to lie with the former because it has a wider spectrum and also involves people who are not concerned with Access Issues.

5/10 Date of next meeting

It was agreed that the Committee would next meet on Wednesday 12th July at 14.00 in Room 401 Euston House.