
ACCESS DISPUTE RESOLUTION COMMITTEE

**MINUTES OF MEETING No.7
HELD ON 24.08.95**

Present:

Terry Worrall (Chairman)
Bob Urie (Regional Railways North East)
Ian Braybrook (Loadhaul)
David Franks (LT&S)
Keith Hasted (Railtrack)
Geraint James (Railfreight Distribution)
Robert Watson (Railtrack)
Michael Woods (European Passenger Services)

In attendance:

Chris Blackman (Secretary)
Martin Shrubsole (Alternate Secretary)

Apologies

Glen Kennedy (Regional Railways Central)

7/1 Introduction

The Chairman welcomed Geraint James, David Franks and Keith Hasted to their first meeting of the Access Dispute Resolution Committee.

7/2 Minutes of Meeting No. 6

Members affirmed that the minutes, as amended to incorporate Bob Urie's comments on 6/4.4, were an accurate record of the meeting held on 12th July 1995; the Chairman signed a copy as being a true record for retention on file.

7/3 Committee's Procedures

The Committee approved the final draft which had been tabled. The Secretary was instructed to circulate to all Industry Parties, Regulator, OPRAF and ATOC for information.

Industry Parties in this context includes all Train Operators and parties who have Access Rights, or are Access Option Holders. The Committee agreed that it should also be available to any party who in good faith was intending to become an Industry Party.

7/4 Status of Dispute Resolution Committees

7/4.1 Insurance of Chairman and Secretary

The Committee noted the paper that had been circulated by the Secretariat and agreed that it was not appropriate for the Independent Chairman, or an Independent Secretary, to be insured on a policy of Railtrack, BRB or any other Industry Party. The problems in assessing the degree of risk for a separate specific policy were also noted.

It was agreed that the appropriate way forward was to adopt a position similar to the RIDR and incorporate into the Access Dispute Resolution Rules a provision that none of the Chairman, Deputy Chairman, Independent Vice Chairman, Committee Secretary or Dispute Secretary should be liable to any party, for act or omission (including negligence) in connection with Committee proceedings or any dispute determined by the Committee or Chairman, unless the act or omission is established to have been in bad faith. The Committee also noted that an act or omission "in bad faith" would not have been protected by an insurance policy anyway.

The Secretary was instructed to prepare the necessary documentation to progress the necessary changes to the Dispute Rules.

Michael Woods expressed some concern that the change agreed might infringe the Unfair Contract Terms Act; it was agreed that advice on this point should be sought from lawyers.

Action: Secretary

7/4.2 Relationship with Railway Industry Dispute Resolution Procedures

Martin Shrubsole tabled a memorandum produced by Linklaters and Paines providing a brief summary of the role and processes for Railway Industry Dispute Resolution (RIDR). The Committee noted that RIDR has a wider range of interest and potential interested parties than the ADRC, and consequently, to avoid having a much bigger Committee, the constituency boundaries have been redrawn. The Committee will consist of 5 members plus a chairman.

There are two issues to be addressed. Firstly, concerning the relationship between ADRC and RIDR Committee, there could be matters referred for dispute resolution which involve both access and non-access aspects. Such hybrid matters would be referred in the first place to RIDRC, but RIDRC could elect that ADRC first hear the Access elements and report back on their resolution to RIDRC. Secondly there is a process issue concerning the actual appointment (and removal) of the Chairman. RIDRC will not be empowered to appoint or dismiss its own Chairman or to amend its own rules of procedure. These functions will be performed by a body called the Railway Industry Dispute Council which will consist of eleven members drawn from representatives of the Class Representative Committee plus three members representing other interests including BRIS.

The Committee noted the points raised and that these are being progressed by the RIDR Working Party.

7/4.3 Administration and Financing Procedures

Noted that the further information promised on this topic, which would be available for application to both RIDR and ADRC, was expected imminently from Messrs Linklaters. The Committee authorised the Secretariat to proceed to open a Bank account and to set up the associated administration and financing procedures in accordance with the advice received. The Committee will expect to be advised before its next meeting on the actions taken.

Action: Secretary

7/5 Appointment of New Chairman

It was noted that the Industry was now moving towards seeking a Chairman for both ADRC and RIDR and that there was advantage in timing interviews for both posts simultaneously to provide opportunity for making a common appointment if the two Committees so wished. The Committee agreed that advertising the two posts externally is the correct course, with all procedures for appointment clearly seen as open and unbiased.

However the timescales for this process will make the appointment of a new Chairman by the 1st October almost impossible. The Committee therefore resolved to propose an amendment to Dispute Rule A3.5 that would provide for the extension of the existing Chairman for a period up to 6 months. The Secretary was remitted to process this as a Proposal for Change, via the quickest route available.

7/6 Budget for the Access Dispute Resolution Committee

Members reviewed the revised budget figures that had been prepared and approved a budget for the 6 month period from the 1st October for £100k which includes start up costs. The Committee also approved the preliminary budget for 1996/97 at £200k, which would be reviewed at the December meeting of the Committee.

The Secretary was instructed to proceed to raise from each Industry Party the levy for the period October 1995-March 1996 in accordance with the provisions of the Access Conditions and secondly to advise the Industry Players of the expected figure for 1996/97 so that they could make the necessary budget provision.

The Committee also agreed that it was proper for Railtrack and BRB to raise charges for the work undertaken by their personnel as Chairman and members of the Secretariat of the Committee with effect from 1st October 1995.

7/7 Communication to Industry Parties about the work of the Committee

The Committee agreed that it was now an appropriate time for a communication to be transmitted to all Industry Parties concerned, covering the following principal issues:-

1. To explain and advertise that the Access Dispute Resolution Committee is now fully operational.
2. To attach a copy of the agreed procedures, which explain the purpose and workings of the Committee and the processes that it will adopt for the hearing of matters that are referred to it or its sub-Committees.
3. To explain that the funding of the Committee is underwritten by the provisions of the Access Dispute Rules which are the Appendix to the Railtrack Track Access Conditions; furthermore that notice of the levy that is payable will be advised shortly to individual parties concerned by separate letter.
4. More information can be obtained by contacting the Secretary or their representative on the parent Access Dispute Resolution Committee (a list of members and alternates of all Committees will be attached).

7/8 Dates for Future Meetings

It was agreed that the Committee would in future meet on a regular basis at two-monthly intervals; references for hearings may require additional meetings to be called as necessary in accordance with the Conditions. The Secretary will consult members and determine future dates.

7/9 Date of Next Meeting

18th October 1995 at 10.00 in Room 727 at Euston House.