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## ***ACCESS DISPUTE RESOLUTION COMMITTEE***

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### **MINUTES of MEETING No. 13 Held on 24th April 1996**

#### **Present:**

Bryan Driver (Chairman)  
Nigel Fulford (Great Western Trains)  
Keith Hasted (Railtrack)  
Philip O'Donnell (Railtrack)  
Lloyd Rodgers (Gatwick Express)  
Ian Osborne (Freightliner (1995))  
Bob Urie (Regional Railways North East) (for items 13/1 to 13/4)  
Michael Woods (European Passenger Services)

#### **In attendance:**

Chris Blackman (Secretary)  
Martin Shrubsole (Alternate Secretary)

#### **Apologies:**

Ian Braybrook (Loadhaul)

#### **13/1 Introduction**

Bryan Driver took the Chair and was welcomed to the meeting by members present. He noted that the changes in representation on the Committee and Sub-Committees with effect from 1st April had been disseminated through the Industry; in particular he welcomed Nigel Fulford to the meeting as a new member of the Committee, and Ian Osborne as alternate to Iain Dewar.

The Chairman paid tribute to the work of his predecessor Terry Worrall during the first 18 months of the Committee's existence. Members endorsed this with their appreciation of his contribution.

#### **13/2 Appointment of Committee Secretary**

The Chairman advised the Committee that, pursuant to Access Dispute Rule A3.7, he had appointed Chris Blackman as Secretary and Martin Shrubsole as alternate Secretary.

### **13/3 Declaration of Interest**

The Secretary reported that he had received, pursuant to Access Dispute Rule A3.2, a formal declaration from the Chairman of his connections with the Railway industry. This will be held on file and is available for inspection.

The Committee formally inspected the declaration and agreed that the current connection was not relevant insofar as there is no conflict of interest.

### **13/4 Minutes of Meeting No. 12**

Members approved, subject to one minor modification in each case, the minutes of the meeting held on 21st/24th February 1996 and the Record of the hearing of reference AD4. The Chairman signed a copy of each document incorporating the respective modifications as being a true record for retention on file.

### **13/5 Matters arising**

#### **12/4 Committee Budget: Bank Account**

The Committee noted that many Industry Parties had paid the levy due from them, but a number were outstanding. The Secretary advised that some parties had asked whether they would receive a formal invoice. The Committee agreed that, whilst it might not be strictly necessary, a formal invoice would facilitate the processes and would explicitly state that no VAT was payable on the levy charged.

Action: Secretary

### **13/6 Committee/Sub-Committee Jurisdiction**

The Committee recalled discussion at previous meetings [Mins 11/8.2 and 12.2] and accepted the Regulator's advice that the Access Conditions do not permit the Committee to hear a dispute which is referred under Conditions D5, F5, G6, or H11.9(a) to a sub-Committee, nor does the Committee have the right to give leave of appeal to the Regulator.

The Committee agreed that, in the case of a hybrid reference, it had the power in accordance with Rule A4.7. to determine which Committee or sub-Committee should hear it and, if relevant and appropriate, whether discrete elements should be heard by different (sub)-Committees. It would take care to ensure that any rights of appeal in accordance with Conditions D5, F5, G6, or H11.9(a) are not denied.

Lloyd Rodgers pointed out that, to ensure ease of apportionment into discrete elements, parties should identify clearly the clause or clauses under which they are making a reference. However, if there is a real hybrid case, he questioned whether and how any decision by the Committee on jurisdiction of the case might be challenged. Rule A4.7 implies that the Committee's decision is absolute.

Michael Woods remarked that the Committee should not hesitate to exercise its right to decide on the place of jurisdiction, particularly if parties attempt to input a reference at too high a level.

The Committee agreed that it would document these processes as part of its [internal] procedures [, and thereafter make a decision on whether to publish more widely].

Action: Secretary

### **13/7 Committee Decision-making Process**

The alternate Secretary explained the background to the paper which had been prepared in response to an instruction from the Committee at the previous meeting.

The first key issue is the route by which the Committee arrives at a Determination. The conclusion is that there is no difference in stature between a unanimous decision of the Committee and one in which, in the absence of unanimity, the Chairman makes a ruling. However the recent ruling in the case of Determination AD4 has highlighted issues relating to the onward routes to the process of arbitration.

Rule C1 appears to differentiate the time limits (in which to make an appeal) on the basis of the route to a Committee Determination. Secondly, there is lack of clarity in the inter-action between a Determination by the Committee and subsequent routes open to parties dissatisfied with the decision, particularly if there are several distinct issues on which the Committee has to decide.

Committee members in discussion noted that the Rules stipulate that whether the Determination is made unanimously by the Committee or whether it is a Chairman's ruling it is regarded as a Committee decision; nevertheless Clause C1 implies that there is a distinction and the parties concerned need to be advised on the precise nature of the Committee's Determination.

Furthermore it is not clear from C1 whether, in the event of a unanimous decision of Committee members, there is any route to arbitration at all, and, if so, whether there are time limits for referring to arbitration; indeed the prospect of an absence of time limits was viewed with great concern.

The Committee however did not wish to close off subsequent steps from a Determination, and recognised that it did not have that right, but it wished to be sure that the Rules were practical, fair, and unambiguous.

It noted that the bilateral Access Agreement should specify the options for resolving disputes, but as the Access Conditions take precedence it is necessary to be sure that the latter do not pre-empt without good reason, options in the former.

The Committee considered that there were a number of aspects relating to the circumstances, timescales and availability of routes to arbitration which needed

clarification on the interpretation and original intention of the Dispute Rules, in particular Clause C1. It agreed to raise these points in the first place with the Rail Regulator before considering whether it wished to recommend any amendments to the Rules.

The Committee however declared its view that arbitration does not normally require joint referral by the parties. Provided that the Access Conditions and/or the relevant Track Access Agreement prescribe the use of arbitration, it is sufficient for one party to initiate the process.

### **13/8 Accommodation**

Members noted that there was an option to acquire two offices at King's Cross East Side at a very competitive rate. At the conclusion of discussion the members agreed that the location was suitably sited for the Committee's headquarters, and it authorised the Secretariat to progress the procurement of the accommodation, through a lease or tenancy arrangement.

### **13/9 Costs of head-hunting**

The Committee noted the Department's view that it had agreed to pay the costs associated with recruitment of a Chairman but was merely pump-priming in providing funds to enable the search to go ahead pending the Committee having sufficient financial resources to reimburse the Department.

The Committee recalled that it had previously expressed a view that the cost should be regarded as a fundamental cost of privatisation and should, therefore, be fully funded by the Department. After consideration the Committee reaffirmed that it believes that the costs of setting up the processes including that of the appointment of the first Chairman are inaugural costs of privatisation and not within the scope of costs properly met by the levy.

### **13/10 Date of future meetings**

Wednesday 19th June 1996 commencing at 10.00 in Room 401, Euston House.