
ACCESS DISPUTE RESOLUTION COMMITTEE

**MINUTES of MEETING No. 14
Held on 19th June 1996**

Present:

Bryan Driver (Chairman)
Richard Fearn (The South Eastern Train Company)
Nigel Fulford (Great Western Trains)
Keith Hasted (Railtrack)
Ian Osborne (Freightliner (1995))
Mike Romans (European Passenger Services)
Robert Watson (Railtrack)
Julian Worth (Transrail Freight)

In attendance:

Chris Blackman (Secretary)
Martin Shrubsole (Alternate Secretary)

Apologies:

Lloyd Rodgers (Gatwick Express)

14/1 Introduction

Bryan Driver welcomed Richard Fearn who was attending his first meeting of the Committee.

14/2 Minutes of Meeting No. 13

Members approved the minutes of the meeting held on 24th April 1996. The Chairman signed a copy of the minutes for retention on file as a true record of the proceedings.

14/3 Matters arising

Min.13/9 Costs of head-hunting

The Secretary reported that he had appraised the Department as to the Committee's views expressed on this matter; there had been no further correspondence.

14/4 Committee/Sub-Committee Jurisdiction

The Committee examined a paper from the Secretariat containing draft amendments to its procedures dated September 1995. Members accepted that these amendments adequately reflected the points made during discussion at the previous meeting, recorded in Minute 13/6, and approved them for publication in the next issue of the procedures.

14/5 Committee Decision-making Process

The Committee were happy with the letter and the questions which had been posed to the Office of the Rail Regulator, and noted the response. Members agreed that they would not wish to ignore the advice that they should if necessary take an independent legal view.

Moreover the Committee agreed a point of principle that it would not simply seek advice as to what the Committee should do, but would formulate a view on what it was minded to do and then seek advice from lawyers as to whether this were ultra vires.

Members also noted that there is essentially no difference in access to arbitration, and the route to arbitration does not require the other party to agree. However both parties, in the event of a matter going to arbitration, would need to agree the Terms of Reference.

On the subject of time limits for referring matters to arbitration, the Committee recalled its earlier discussion which concluded that 7 days was insufficient. The Committee saw no reason why it should not formally initiate an amendment to the Access Dispute Resolution Rules. It noted that the time limit provided in the Access Dispute Resolution Rule C1 specified periods of 7 days or 14 days for giving notice of arbitration. Members agreed that the need for speedy resolution of disputes mitigates against a suggestion of having a common time of 28 days in the Rules. In any case the issue is one of giving notice, after which there is further time allowed for preparing documentation. Accordingly the Committee concluded that it wished the Secretariat to prepare a formal Proposal for Change to cover two features; firstly, that the notice of arbitration specified in Rule C1 should be 14 days in all cases; secondly, that there should also be a route to arbitration following a determination under A5.11.1, except in the case of references made under Conditions D5, F5, G6 or H11.9(a). **Action:** Secretariat

The Committee then reviewed paragraph 8 of the letter it had sent to the Regulator suggesting that it was admissible for a party to refer some, but not other, elements of a determination for arbitration. The Regulator had commented that there appeared to be no reason in principle why a party should not appeal on particular elements of a decision of the Committee without appealing the whole matter, but this would depend on the extent to which the elements are independent of each other. The Committee remitted the Secretariat to review whether any further amendment was required to the dispute rules to clarify the position.

Action: Secretariat

The Committee noted that issues regarding references forwarded to arbitration necessarily involved the Dispute Secretary; in the absence of a specific appointment, the Committee declared that the Committee Secretary should undertake this role.

The Committee discussed whether they wished to know the basis for the resolution of out of court settlements. It took the view that, because the reference had not been formally heard by the Committee, nothing that had been settled between the parties therefore carried the blessing or weight of the Committee. Nevertheless the Committee agreed it would normally wish to know the basis of the settlement for noting at the next meeting. It does not wish to disincentivise parties from settling out of court nor would it normally wish to know any financial arrangements or detailed figures.

14/6 Seeking Legal Advice

Members, in reflection on the previous discussion, noted that consultation to date had taken place with lawyers from within the Railway Industry and, whilst they were content for the time being to continue with these arrangements, they nevertheless recognised the need to consider arrangements for having formal access to independent legal opinion. The Secretariat was instructed to explore the options and prepare a paper for the next meeting of the Committee.

Action: Secretary

14/7 Accommodation

The Secretary advised that he had written to the Railtrack Property Board seeking a tenancy agreement for accommodation on the second floor at East Side Offices at Kings Cross. A reply was awaited. The Railway Industry Dispute Resolution Committee was also seeking accommodation at the same location.

14/8 Collection of the Levy for 1995/96

The Secretary reported that a number of companies had not yet paid the levy for 1995/96; appropriate reminders had been sent to the parties concerned.

14/9 Declarations of Interest

The Committee formally noted the minutes of the meeting of Timetabling Sub-Committee on 20th May 1996 and in particular the issue raised as to whether members/alternates should declare an interest if they held personal share holdings in Railtrack, or if their Company had such an interest. The Committee agreed that members should declare any interest relevant to a dispute being heard and this should cover both personal and their employing company's shareholdings and financial interests in Railtrack or any other industry party. The Secretary was remitted to ask the members/alternates of each Committee and Sub-Committee to declare their interest in companies which are an industry party. This information would not be made public but would be available to members for inspection and internal reference.

Action: Secretary

14/10 Proposals for Change to the Access Dispute Rules

The Committee was pleased to note that these proposals, which were currently undergoing formal consultation with industry parties, included the two measures advocated by the Committee. The proposals to provide a mechanism for the Committee to hold a formal agreement with its Chairman for the supply of his services, and to add a limitation of liability clause on behalf of the Chairman and Secretary, would be formally considered by the Class Representative Committee on 2nd July 1996.

The Committee agreed that the Deputy Chairman would normally act as the signatory on its behalf.

14/11 Communication to Parties to a Dispute

Section 3 of the Committee's procedures define the circumstances under which a company shall be treated as a party to a dispute. The Committee noted that there had been several cases where the Secretariat had notified companies who were advised as being, or perceived to be, an interested party that a hearing was to take place into a dispute; furthermore the Company had been asked whether it wished to be represented by an observer at the hearing, to be represented at the hearing and to make a presentation or, if it did not wish to be represented at the hearing, whether it nevertheless wished to be advised the outcome of the dispute.

The Committee agreed that parties would be entitled to receive the Record of the hearing if they attended the hearing, but otherwise would only receive the Record upon request. Matters relating to a release of information that might be construed as confidential would be subject to the Chairman's discretion in accordance with Rule A5.11.9.

If another party is specifically referred to in the determination then they may receive a copy of the Record. Alternatively a party may ask to receive this, and the Secretary will judge whether the circumstances are such that he should supply it.

Where confidential issues arise, parties directly concerned may need to know who else will have a copy of the Record so that they have the opportunity to request the Chairman to invoke Rule A5.11.9.

As a matter of procedure the Committee considered that it is at that point when the draft Determination is read to parties at the conclusion of a hearing that a decision must be made as to the identity of parties who should receive the full Record.

Finally, it was agreed that, in circumstances where a party was asked to withdraw from a hearing for part of the procedure, the relevant items of the record of the hearing would be expunged from the version sent to that party.

14/12 Appointment of ADR Chairman

The Chairman explained the background to the delays in preparing an agreement between the Committee and himself for the use of his services as Chairman. In particular he expressed concern at the actual length of time taken to prepare and revise the contract documentation, and to refine it to a state in which he, the Committee Secretary and Deputy Chairman had all felt it was fit for use. Both he and the Deputy Chairman had now initialed the document and, when the relevant change to the Dispute Rules [see Minute 14/9] had been approved by the Regulator, it could be formally signed and dated.

The Committee resolved to make a template contract available as part of the documentation to be viewed by potential candidates on the next occasion when a Chairman had to be appointed.

14/13 Hearing of Joint Reference AD5 from Anglia Railways and Railtrack

During the course of the meeting the Committee received a message advising that the dispute had been settled by the parties and no hearing was therefore necessary.

14/14 Class membership

The Committee noted that, as the Access Conditions stand, there is no Condition that explicitly prevents an elected representative continuing to represent the Band that elected him/her if the member transferred employment to that of a member of another Band or Class. The representative can resign, but the only instrument available to members of the Band involved is Access Condition C2.5(a) which provides the facility for removal of a representative.

14/15 Date of next meeting

Wednesday 18th September 1996 commencing at 10.00 in Room 201, Euston House.