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***ACCESS DISPUTE RESOLUTION COMMITTEE***

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**MINUTES of MEETING No. 15  
Held on 18th September 1996**

**Present:**

Bryan Driver (Chairman)  
Tim Clarke (Anglia Railways)  
Nigel Fulford (Great Western Trains)  
Keith Hasted (Railtrack)  
Philip O'Donnell (Railtrack)  
Ian Osborne (Freightliner (1995))  
Bob Urie (Regional Railways North East)  
Michael Woods (European Passenger Services)

**In attendance:**

Chris Blackman (Secretary)  
Martin Shrubsole (Alternate Secretary)

**Apologies:**

Ian Braybrook (Loadhaul)

**15/1 Introduction**

Bryan Driver welcomed Tim Clarke who was attending his first meeting of the Committee as alternate to Lloyd Rodgers.

**15/2 Minutes of Meeting No. 14**

Members approved the minutes of the meeting held on 19th June 1996. The Chairman signed a copy of the minutes as a true record of the proceedings.

**15/3 Matters arising**

14/5: 'Out of court' settlement of disputes

The Secretary advised members that he had received a brief note from the parties involved in reference No.10 to the Timetabling Committee, outlining the basis of their 'out of court' settlement. This would be advised to that sub-Committee at its next meeting. Members of the ADRC, recalling discussion at the previous meeting, directed that in such cases the relevant Committee should be informed regarding the outcome of such settlements and it should normally be recorded that they had 'noted' the outcome. However this should not be regarded as adding to case law as the Committee would not have heard the evidence.

#### 14/10: Proposals for Change to the Access Dispute Resolution Rules

The Committee noted that these had been approved by the Class Representative Committee and formally approved by the Regulator. The Changes had been implemented with effect from 2nd August 1996.

#### 14/12: Chairman's contract

The Committee was pleased to note that the agreement between the Committee and the Chairman for provision of the latter's services had been formally signed by the Chairman and the Deputy Chairman on 2nd August 1996.

### **15/4 Seeking legal advice**

The Committee considered a paper from the Secretariat setting out a range of options. Members recognised that there might be difficulties in seeking a firm of Solicitors having no other connection with the Industry, but it was acknowledged that there should not be a problem with conflict of interests in a reputable firm of significant size, in which discrete teams could ensure integrity. The Committee agreed to engage Solicitors to provide advice on a call-off contract basis and to provide access through to counsel for opinion as required. Furthermore it would not restrict the basis of selection to firms within the London area.

The Secretariat was instructed to proceed to seek tenders on the basis of the following specification:

*To provide expert legal advice on the decisions which the Committee is minded to make in relation to:*

- i) Interpretation of bi-lateral Access Agreements*
- ii) Interpretation of the terms of the Access Conditions (and the Dispute Resolution Rules)*

In the meantime the Committee would continue with the present arrangements of using lawyers from within the Industry, who are well versed in the Industry structure, Access Conditions and other contractual arrangements; this would be on the basis of formal billing.

### **15/5 Committee Decision-making Process**

The Committee considered a paper from the Secretariat which incorporated the previous discussion recorded under Minute 14/5 and approved, subject to minor modifications, the draft proposal for changes to Access Dispute Resolution Rule C1. It was agreed that Philip O'Donnell would formally sponsor the Proposal.

**Action:** Secretary

## **15/6 Accommodation**

The Secretary advised that the Railtrack Property Board had agreed in principle to the two Dispute Committees having tenancy of a total of five rooms on the second floor of East Side Offices at King's Cross. A tenancy agreement would be negotiated and it was expected that the Committees would have access before the end of 1996. Proposals for partitioning of the rooms had been submitted to the local Council and were being progressed.

The Committee endorsed the developments but anticipated potential difficulties if the tenancy were held jointly by the two committees. It wished the arrangements to be in the form of specific tenancies of each room with one Committee only, ensuring that the negotiations avoided a contracted-out tenancy, but provided a facility to sub-let. Agreements should provide for notice of termination, and defined break clauses for the tenants.

Alternatively the ADRC should contract to lease or have tenancy of all five rooms and sub-let two rooms and the use of the meeting room to RIDR.

Insurance was a matter for further investigation and resolution with the landlord.

It was agreed that there should be a meeting of the two chairmen and two secretaries to establish ground rules on arrangements between the two committees.

**Action:** Secretary

## **15/7 Finance matters**

Members noted the paper from the Secretary which reported that all companies had now paid the levy for 1995/96, and all outstanding bills would be settled before the end of September. The accounts for the period would be circulated to all members for approval.

Members agreed that Audit of the accounts would be carried out by Railtrack's auditors in accordance with the terms negotiated for the operation of the bank account.

The Committee agreed the procedure for calculating the levy incorporating rebates in accordance with the Access Dispute Resolution Rules. The Secretary was instructed to progress the raising of the levy for the current year 1996/97.

## 15/8 Jurisdiction of a Dispute

The Committee considered a paper from South Wales & West regarding a reference which that company was preparing on the subject of Moderation of Competition and its impact on timetable offers made on a particular route.

There was a matter of principle as to how the matter should be addressed. The matter had come to light too late to be referred to Timetabling Committee in a previous iteration as the span of 7 days permitted for appeal had elapsed. Whilst there is an opportunity for it to be referred at the appropriate point in the next iteration, there is an underlying issue which is related to the validity and applicability of Access Rights. Members noted that this is potentially a matter for consideration by reference to the ADRC.

A dispute relating to a non-compliant Bid would properly be a matter for the Timetabling Committee, but if a right has been infringed or is challenged then the reference would be heard by ADRC. In this case the Rights of a third party are involved.

The basis of the case appeared to be that a third party had been granted paths through the bid and offer process for which it is alleged that the third party has no supporting Access Rights. The Committee noted that the details of the Access Rights expressed in Schedule 5 are available for inspection by any Industry Party.

Members observed that any changes to Access Rights should be processed through a Section 22 application, which process provides an opportunity for an aggrieved party to protest.

The Committee concluded that, if the matter is referred to Timetabling Committee then that sub-committee would need to establish whether there is an Access Right to support the bid. However, if it emerged that the dispute was on the nature or validity of the rights, then it would be necessary for that to be determined by ADRC, which would introduce delay into the process of resolution.

The pertinent issue to resolve is how to handle the dispute so that the individual strands are sorted in the appropriate sequence, bearing in mind that, so far as Timetabling Committee is concerned, the process is time critical.

The Committee agreed that the way forward should be:

1. To permit the ADRC to test whether there is an existing right or not (for the third party)
2. To use the Timetabling Committee to test any reference as to the validity of such rights in supporting the compliance of the relevant bids (and subsequent offers)
3. If the rights are invalid then there should be appropriate follow up (which might be through the Committee or through Section 22).

The Secretariat would advise South Wales & West Railway accordingly.

### **15/9 Register of Arbitrators**

The Secretary advised the Committee that he had received an application to be placed on the list of Arbitrators which he held in his capacity as acting Disputes Secretary. The applicant had not only world wide experience in investment and technical projects including the settling of associated disputes, but also direct recent experience of the emerging Railway Industry, and was now taking steps to be accredited with the Chartered Institute of Arbitrators.

Whilst the Committee recognised that it had no direct jurisdiction over the Register of Arbitrators, members commented that such background experience and qualifications were typical of those it would expect to see amongst potential arbitrators, mediators or experts.

### **15/10 Dates of future meetings**

Friday 4th October 1996 commencing at 10.00 in Euston House to hear any reference arising from Minute 15/8.

Tuesday 10th December (or Wednesday 11th December) at 16.00 at a venue to be advised in London.