
ACCESS DISPUTE RESOLUTION COMMITTEE

MINUTES of MEETING No. 25 Held on 28th August 1997

Present:

Bryan Driver, Chairman
Tim Clarke (Anglia Railways)
Grahame Cooper (Railtrack)
Gordon Hunt (EWS)
Ian Osborne (Freightliner)
Philip O'Donnell (Railtrack)
Bob Urie (Regional Railways North East)
Michael Woods (Eurostar (U.K.))

In attendance:

Chris Blackman (Secretary)
Martin Shrubsole (Alternate Secretary)
David Fennell (Wragge & Co.)

Apologies:

Nigel Fulford (Great Western Trains)

25/1 Minutes of meeting No.24

The minutes of meeting no.24 held on 17th July 1997 were approved. The Chairman signed a copy of the minutes as a true record of the proceedings.

25/2 Matters arising

Minute 24/4: Reference No [AD]13 from Connex South Central.

The Committee reviewed recent developments:

25/2.1 The Role of members

Bob Urie advised the Committee that he had been made aware, as a representative, of concerns by Connex that the Railtrack representatives on the Committee would be under direction to support the Railtrack submission.

He had taken the opportunity to draw the attention of Connex senior managers to the function of the members of the Committee, which is to adopt an arbitral role and not a partisan role; this was understood and applied by all members and their alternates hearing any matters referred to the Committee.

The Chairman observed that this particular dispute has a status no different from any other. The Committee will deal with items referred to it dispassionately and in a manner which fulfills its arbitral role. There is no justification for any Party to believe otherwise.

25/2.2 Submissions from the Parties

The Chairman commented that the members had now received two good, if lengthy, submissions from the Parties. He wished to see attempts by the lawyers of the two companies to get together, in the next week or so, to make an effort to establish precisely the areas of agreement, and the areas of outstanding disagreement. This will ease the process for hearing the evidence.

He referred to correspondence from the Parties and explained that the aim in accepting the request from Connex for a deferral of the formal hearing previously planned for 28th/29th August was to enable the expanded timescale to be used effectively as described above. Alternative dates of 4/5 or 8/9 September had been examined; however members' availability was such that a quorum, for either pair of dates, was proving difficult to achieve. Failing those dates, the Chairman's next availability would be 29th September.

Most members questioned the usefulness of a possible response from Connex to the Railtrack counter-submission, on the grounds that this could lead to a process of endless iteration. Members echoed the views of the Committee on previous occasions that they always prefer to receive a joint paper on the aspects that are agreed and disagreed, and where relevant setting out the differing viewpoints.

Thus, whilst members were not minded to receive additional papers on top of those already received, they declared that they would accept a short note submitted jointly by the parties that clarified the areas of agreement or disagreement; or, as a result of discussions by the parties jointly with lawyers, on the legal aspect of 'mistake'. In other words the dispute will be heard on the basis of the documents already received, with further information only if it is provided through joint submission; this accords with Rule A5.11.4.

They also stressed that they were well aware of the potential gravity of the financial impact of their decision on the matter.

It was noted that Connex had asserted in their submission that there had been changes in the method (and manner) of recording, but neither party had expanded or commented further on this aspect. Members would expect to obtain clarification of this from the parties.

The Chairman commented that Access Condition B5 refers to co-operation between the Parties; members would wish to see evidence of this aspect of due process demonstrated at the hearing.

25/2.3 Preparations for a hearing

It was agreed that:

- a) the Parties would be sent the approved minutes of the meeting of 17 July;
- b) a number of dates in October will be offered by the Committee to the Parties for a hearing and the Parties will be asked jointly to agree two dates with a third as reserve;
- c) the Committee would field the same team throughout for the hearing when reconvened;
- d) the Parties will be granted the opportunity to present a short paper clarifying aspects of agreement and disagreement; and
- e) no additional submissions will be accepted unless submitted jointly. Such papers will be considered in conjunction with the papers already tabled.

As the Parties had not agreed that there should be a sole hearing covering both the contractual issues and those appertaining to Network and Vehicle change, the Committee asserted that the Network and Vehicle Change Committee hearing should follow the ADRC in accordance with the timescales prescribed at the meeting on 17 July, i.e. approximately two weeks after the hearing of the main reference. The Committee noted that papers had been received from each party in respect of the Network and Vehicle Change aspects. Any further papers to that sub-committee should conform with the parameters specified above for ADRC.

25/3 Tenancy agreement with Railtrack Property

The Committee noted that the tenancy agreement under negotiation with Railtrack Property Board requires that the name of the 'tenant' be identified. Members agreed that they wished the Secretary to be the nominated agent on behalf of the Committee.

Action: Secretary

25/4 Circulation of minutes

Members agreed that, consequent upon the sale of Railfreight Distribution, it would no longer be necessary to circulate minutes, determinations and other documents to the British Railways Board.

Members also agreed to accept the request from the Association of Train Operating Companies (ATOC) that it should receive a copy of Committee determinations.

Action: Secretary

25/5 Centre for Dispute Resolution

Members present were pleased to note that the Committee had been admitted as a member of the Centre for Dispute Resolution (CEDR).

25/6 Other business

The Chairman noted that there was no other business to be conducted. Moreover, as the meeting had successfully dealt with business originally listed for the quarterly meeting in early September, he confirmed that the meeting previously diaried for 9th September would be cancelled.

25/7 Dates of future meetings

9th September 1997 CANCELLED

20th/21st October to hear a reference from Connex South Central

10th December 1997 (next quarterly meeting: afternoon)