
ACCESS DISPUTE RESOLUTION COMMITTEE

MINUTES of MEETING No. 27 held on 10th December 1997

Present:

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

In attendance:

Chris Blackman (Secretary)
Martin Shrubsole (Alternate Secretary)

Apologies:

Nigel Fulford (Great Western Trains)

27/1 Changes in representation on the Committee

The Secretary reported on the result of the elections that had taken place earlier in the day at the Annual Class Meetings. It was noted that there would be no changes to ADRC membership from 1st April 1998, but there would be some new members on the Sub-Committees. Full details are attached as an Appendix to these minutes.

27/2 Approval of the Record of the Hearing of Reference no.13

The Record of the Hearing of Reference no.13 from Connex South Central, which had been circulated in draft, was approved subject to a number of minor modifications. The Chairman declared that he would sign a copy that incorporated all the agreed modifications.

The Committee agreed that the Record should be made available upon request to an arbitrator. A standard rubric will, in future, be appended to all such Records making clear that, whilst the document is a full synopsis covering the main points of the evidence given and the internal discussion of the Committee it is not, in the absence of a shorthand note-taker, a verbatim account of the proceedings of a hearing.

27/3 Matters arising from the minutes of the 26th meeting

The Committee recalled [minute 26/7] that the minutes had been approved at the conclusion of the 26th meeting. The Secretary advised the Committee that Connex South Central had referred the matter of their dispute with Railtrack (reference AD13) to arbitration. As the Disputes Secretary, and following appropriate consultation with the parties concerned, he had appointed Michael Collins QC as arbitrator in accordance with the Access Dispute Resolution Rules.

27/4 Tenancy agreement with Railtrack Property

The Secretary reported that negotiations continued slowly. At the most recent meeting Railtrack Property had finally taken notice of the Committee's concerns about the risk of a substantial increase in the Service Charge and had agreed to the insertion of a cap in the annual increase in any one year.

There are still some other outstanding items to be finalised, and the Committee urged the Secretary to conclude these quickly.

Action: Secretary

27/5 Review of Expenditure against Budget 1997/98

The Committee were pleased to note, in the paper from the Secretary, that the Committee's expenses were within budget under almost every heading. The forecast year-end position indicated that costs would fall short of income; this would lead to a rebate being made to Industry Parties when the levy is calculated for the 1998/99 financial year.

27/6 Preparation of Budget 1998/99

The Committee instructed the Secretary to prepare the 1998/99 Budget modelled on the current year's budget, but to refine it using the experience of this first year in which the Committee had been incurring specific costs as an independent entity. It was recognised that there are nevertheless areas of expenditure, for example professional fees for obtaining legal and technical advice, which are unpredictable on the basis of the limited exposure to date.

The Budget will be formally reviewed at the next quarterly meeting in March 1998.

Action: Secretary

27/7 Annual Election of Deputy Chairman

In accordance with Access Dispute Resolution Rule A3.6.1, Bob Urie was nominated and re-elected unopposed as the Deputy Chairman of the Committee.

27/8 The Regulator's consultation document "Timetabling the Railtrack Network"

The Committee discussed the paper that had been circulated by the Chairman on the subject of the Regulator's consultation paper and noted that Clause 33 was pertinent to the Timetabling Committee.

The purpose of General Approval is to provide an umbrella framework in which the translation of rights into trains can be adjusted without incurring delay in seeking and obtaining Regulatory approval. It is recognised that a General Approval is designed to be used for marginal adjustment to an existing package of rights rather than for new Contractual Rights.

There are concerns that a General Approval for changes should not confer rights that would take precedence over another Train Operator's Firm Contractual Rights and offers should still be made on the basis of the Decision Criteria. Secondly, there are concerns that a General Approval should not last for as long as three timetable periods. Where a Train Operator seeks long-term change then, whilst it may be initially covered by a General Approval thus not delaying timetable development, it must be progressed in a timely manner for formal approval; this is a process in which the Regulator will consult with other interested parties, who thus do not lose their right of challenge. The third concern is that there could be anti-competitive behaviours, for example a re-asserting of a dormant Firm Contractual Right that precludes the GA right.

It was noted that appeals to the Timetabling Committee should only be assessed against the Decision Criteria.

Nevertheless, it is recognised that a General Approval could be a pragmatic way of permitting new business to be developed at fairly short notice whilst ensuring that in the medium/longer term the existing procedures require to be followed. It is therefore logical to limit the duration of applicability of a General Approval to less than three timetable periods.

The Committee also recognised that there could be an increased workload for the Timetabling Sub-Committee, and that the task of resolution of dispute references could become more difficult. Members present wished the Regulator to be aware of the risk that such a development will lead to an increase in appeals, against Committee Determinations, being made to the Regulator's Office.

The Secretariat was therefore instructed to prepare a letter to the Regulator setting out the views of the Committee and seeking clarification on certain aspects.

Action: Secretary

27/9 References pending for hearing

The Committee noted that a reference had been received from Great Eastern and other Train Operators regarding the charges for the financial year 1995/96 at Liverpool Street Station. A counter submission was expected from Railtrack during week commencing 15th December, and the Secretariat would then study the

two submissions. The Committee agreed provisionally to earmark the week commencing 19th January 1998 for a hearing.

The Secretariat had also had discussions with Great Eastern and Railtrack regarding reference TTC37. Although prima facie a matter regarding Rules of the Plan, the submission had exposed a number of issues, jurisdiction over which was not confined to the Timetabling Committee. The Secretariat had had discussions with the parties in order to establish precisely what the dispute is about. Several questions had been posed to the parties and, depending on the responses, the Secretariat would arrange for the issues in dispute to be heard in front of the appropriate Committee.

27/10 The Committee's contract with the Chairman

The Chairman withdrew and the Deputy Chairman took the chair.

The Committee agreed unanimously to renew the Chairman's contract for a further two years.

After further discussion the Committee decided to set up a small remuneration sub-committee with responsibility for negotiating and reviewing contractual terms for the engagement of personnel to do work for, or on behalf of, the Committee. It was agreed that the Deputy Chairman and Brian Burdsall should do this and report back to the next quarterly meeting of the Committee.

27/11 Dates of meetings for 1998

The following dates were agreed for the Committee's quarterly meetings in 1998:

Wednesday 11th March 1998	in Room 230, East Side Offices at Kings Cross
Wednesday 10th June 1998	in Room 230, East Side Offices at Kings Cross
Tuesday 8th September 1998	in Room 230, East Side Offices at Kings Cross
Wednesday 9th December 1998	(venue to be decided)