

---

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

---

### **MINUTES of MEETING No. 31** held at Kings Cross on 10th June 1998

#### **Present:**

Bryan Driver, Chairman  
Karen Bonner (Freightliner)  
Grahame Cooper (Railtrack)  
Tony Deighan (Eurostar (U.K.))  
Nigel Fulford (Great Western)  
Barry Graham (English Welsh & Scottish Railway)  
Bob Urie (Northern Spirit)

#### **Apologies:**

Tim Clarke (Anglia Railways)  
Geoff Knight (Railtrack)

#### **In attendance:**

Chris Blackman (Secretary)  
Martin Shrubsole (*designate*) clerk)

#### **31/1 Introduction and notification of appointment of new alternates**

The Chairman welcomed Karen Bonner to her first meeting of the Committee.

It was noted that Tony Deighan had appointed Ben Harding as his alternate for the Non-Franchised Passenger Class with effect from 22nd May, and Ian Osborne had appointed Karen Bonner as his alternate for Band II of the Non-Passenger Class with effect from 9th June 1998.

#### **31/2 Minutes of meeting No.30**

The minutes of meeting no.30 held on 8th May 1998 were approved. The Chairman signed a copy of the minutes as a true record of the proceedings.

#### **31/3 Matters arising from the minutes of the previous meeting**

##### **Minute 30/6: Contract with the clerk**

Bob Urie reported that the draft contract had gone to Wragge & Co. for checking and it was expected to be ready for signature within a few days.

Minute 30/7: Payment of the levy for the year 1997/98

Members were most concerned to hear that, despite reminders, payment had not yet been received from Centrac Ltd., some twelve weeks after the due date for settlement. The Committee observed that this was a serious breach of the Access Conditions and hence of the Access Agreement between Railtrack and Centrac.

The Secretary was instructed to write to the Director concerned stressing the serious nature of the matter and of the breach of the Access Conditions; the size of the sum outstanding is irrelevant in such context.

**Action:** Secretary

**31/4 Approval of the Record of the Hearing of Reference [AD]16**

The Record of the Hearing of Reference no.16 on 8th May 1998 was approved, subject to one modification. The Chairman signed a copy of the minutes, as modified, as a true record of the proceedings.

It was noted that circulation of the Record is to Committee Members and to those Parties involved at the hearing.

**31/5 Tenancy agreement with Railtrack Property**

The Secretary reported that the Order, relating to the exclusion of the Landlord and Tenant Act 1954, had been received from the Central London County Court and the tenancy agreement had now been signed.

It was noted with approval that the account from Hollingworth Bissell in connection with legal advice on the terms of the tenancy agreement had been received and settled.

**31/6 Accounts for 1997/98**

The Accounts for 1997/98, tabled by the Secretary were approved, subject to formal audit. A copy of the statement of accounts was signed by the Chairman, but members expressed some concern that this document summarising the accounts could be misleading; it was important to express clearly the fact that there was a surplus in the Committee's finances at the end of the year and that this surplus would be rebated to Industry Parties in the following financial year. Whilst the statement showed surpluses in the Bank Account at the end of each of the years 1996/97 and 1997/98, the fact that the surplus at the end of the latter year was less than the previous year suggested, in accordance with normal accounting convention, that the Committee had made a loss during the year. This was a misrepresentation of the Committee's financial affairs.

However, members recognised that, technically, the Committee should show in its accounts provision for surplus to be rebated, or any loss to be recovered, in the following financial year. The accounts thus would show a net amount of 'no money left' at the end of the year in compliance with the Access Dispute Resolution Rules.

The Secretary was remitted to re-draft the summary document in a form in which these factors were properly identified and expressed.

It was noted that a total rebate of approximately £101k would be made to the Industry Parties in the year 1998/99.

### **31/7 Options for imaging the archives**

The Committee noted the report from the Secretary following his discussion with the British Railways Board about the options for imaging the Board's archives relating to Track Access, which currently reside in the custody of the Committee.

In answer to a query as to whether there would be interrogatory facilities on the system envisaged the Secretary confirmed that search facilities would be available.

Members commented that the costs were lower than anticipated, but questioned whether some of the elements needed to be incurred. The Committee agreed that it wished to develop the estimates, obtaining quotes from an alternative contractor, and also to examine costs for the option of holding the archives on a CD-ROM. Such an option would avoid the necessity of providing an electronic link and a security filter for the ADRC to access directly the BRB's archives, as each party could hold the data independently on a CD-ROM; furthermore the data, being historic only, would not require any updating.

**Action:** Secretary

### **31/8 Handling of disputes at St. Pancras station** *(from minute 29/9)*

The Chairman introduced a paper from the (designate) clerk highlighting the changes in procedures that would be required for setting up a sub-committee to handle disputes at St. Pancras station. The urgency for doing this was not as vital as previously envisaged, in view of the latest government announcement regarding the timescales for developing the Channel Tunnel Rail Link. Nevertheless Members recognised that there were some preliminary works that might be necessary which could impact on St. Pancras within the first phase of the link.

In the meantime the Committee considered that the draft proposals were acceptable as a framework, but might need some fine-tuning in the light of any future developments, particularly if there were a change in the parties involved. The Committee therefore agreed that the proposed version of the sub-committee's rules should be regarded as rules in a sufficient state of readiness for final scrutiny and agreement nearer the time when it became appropriate to introduce them.

Secondly the Committee agreed that the document, as drafted, should be sent to the party that had triggered the work explaining that, in response to their request made in accordance with the relevant agreement, the Committee had reached a view on what should happen, but that it might wish to modify and revisit the document as the position is clarified.

A copy of this letter would be circulated to other parties involved and to OPRAF, as sponsor of Thameslink 2000, for information.

**Action:** Secretary

### **31/9 Annual Report for 1997**

The Committee noted that the Secretary was preparing the Annual Report for 1997, and would be circulating a draft for approval in the next two or three weeks

Members agreed that it would be sensible in future for the period of the Committee's Annual Report to be linked to the financial year. The 1997 Report will cover the period January 1997 - March 1998 inclusive and will enable some recent cases in the first quarter of the year 1998 to be included.

**Action:** Secretary

### **31/10 Numbering of Determinations**

The Committee noted that all references to the Committee and its Sub-Committees are serially numbered when received by the Secretariat. In the event of an issue being settled out-of-court a determination is not issued, and the settlement is simply recorded in the minutes of the committee concerned. Although the Secretary, when sending out determinations, normally advises Industry Parties in a covering letter if there is a gap in the numbering sequence, the Committee recognised that cover letters frequently get separated from documents. It therefore accepted a suggestion from the (*designate*) clerk that a determination should itself carry a suitable note in its introduction, to indicate when there has been a gap in the numbering sequence.

### **31/11 Declaration of potential conflict of interest**

The (*designate*) clerk advised the Committee that he had been approached jointly by Railtrack and the Office of the Rail Regulator to re-draft a document related to the Railway Standards Code. He sought the Committee's views and advice on whether this would be considered to compromise his impartial position as clerk to the Committee.

Members endorsed the wisdom of utilising the undoubted skills of the (*designate*) clerk for such a task which is considered to bestride the industry in much the same way as the normal duties of the clerk.

For the record, the Committee concluded, on the basis of the facts presented, that there should be no compromising of the clerk's impartial position.

### **31/12 Date of next meeting**

In the absence of any reference to the Committee, the next meeting will be the quarterly meeting on:

Tuesday 8th September 1998      in Room 230, East Side Offices at Kings Cross