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## *ACCESS DISPUTE RESOLUTION COMMITTEE*

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**MINUTES of MEETING No. 34**  
held at Kings Cross on 10th March 1999

**Present:**

Bryan Driver, Chairman  
Tim Clarke (Anglia Railways)  
Tony Deighan (Eurostar (U.K.))  
Geoff Knight (Railtrack)  
Nigel Oatway (English Welsh & Scottish Railway)  
Ian Osborne (Freightliner)  
Mike Price (ScotRail Railways)

**Apologies**

Graham Cooper (Railtrack)  
Graham Eccles (South West Trains)

**In attendance:**

Chris Blackman (Secretary)  
Martin Shrubsole (Clerk)

**34/1 Introduction**

The Chairman welcomed Nigel Oatway to his first meeting of the Committee.

**34/2 Committee Membership Changes**

The Secretary reported that Nigel Oatway had been elected as Member for the Non-Passenger Class, Band I, in succession to Barry Graham. His alternate is Graham Laycock.

Graham Eccles had been appointed as Managing Director of South West Trains, and as such (see minute 33/2) was now the Member for the Franchised Passenger Class, Band II. He has appointed David Franks as his alternate.

**34/3 Minutes of meeting No.33**

The minutes of meeting no.33 held on 9th December 1998 were approved. The Chairman signed a copy of the minutes as a true record of the proceedings.

**34/4 Matters arising from the minutes of the previous meeting**

*Minute 33/4 [32/7]: Options for imaging the archives*

The Clerk reminded the Committee that the purpose of carrying out the exercise of imaging is to make access easier. Having made a more detailed inspection of the papers proposed for imaging, he had concluded that there is little merit in incurring expense in imaging certain documents whose relevance was questionable; he

therefore suggested to the Committee that it would be more cost effective to leave some of the documentation as hard copy but to electronically record the existence of such papers by cross-reference under a number of high level headings. All other papers will be imaged.

The Committee endorsed this principle and asked the Clerk to exercise due judgment in categorising the papers accordingly. In response to a suggestion that Minutes, records and other papers should be stored in a similar fashion, Members observed that all proceedings of the Committee and other documentation published in the name of the Committee are already available electronically and are capable of being accessed, but a master reference procedure needs to be drawn up.

Action: Secretariat

#### Minute 33/8: References to the Committee

Referring to the lack of specific formal response to the Disputes Secretary on the outcome of the reference to arbitration following the Committee's Determination AD13, Geoff Knight advised the Committee that the Office of the Rail Regulator had approved the changes to the Track Access Agreement which had been agreed between the parties consequent upon Determination AD13 and the subsequent reference to Arbitration, and the matter was now deemed as settled.

#### **34/5 Budget for 1999/2000**

The Committee noted that the paper prepared by the Secretary had incorporated all the discussion and consideration of the draft budget proposals tabled at the previous meeting. Members agreed that it was preferable to be prudent and not to risk having to apply for a second levy during the year, particularly as such action might be construed, albeit erroneously, as meeting the costs of a particular dispute and therefore identifiable with those parties concerned.

After further discussion the Committee agreed without modification the budget figures set out in the paper.

Members endorsed a suggestion from Ian Osborne and asked the Secretariat to communicate with the landlord to ensure that the Committee's premises are 'Year 2000 compliant' as far as items such as fire evacuation systems are concerned. The Secretariat will take steps to ensure that other equipment including the fax machine and air-conditioning units are similarly 'Year 2000 compliant'.

Members asked where the legal liability might lie for accidents that occurred to Committee members or legitimate visitors on the Committee's premises. Any need for insurance should also take account of liability for equipment such as an air-conditioning unit falling into the street below and causing injury.

Action: Secretary

#### **34/6 Update on References**

The Committee noted that there were no outstanding issues in dispute for hearing by the ADRC. The Network and Vehicle Change Committee had not met during 1998 but the Secretary had received a reference on the subject of Network Change concerning the introduction by Connex South Central of Class 375 units on the Southern Zone. This reference had been made to comply with the timescales

specified in Condition F3.4(b)(ii), but the parties had indicated that they wished to have time to resolve the dispute between themselves. Accordingly the Secretary had advised the parties that he would be contacting them in late March; if, at that point, there were no immediate prospect of resolution he would proceed to call a meeting of the Committee to hear the formal submissions from the parties.

The Timetabling Committee had now received a total of 73 references and the proportion of references settled by the parties in advance of a hearing is increasing. However, members noted that over the course of the next twelve months there were two factors that might influence a change in the level of hearings. Firstly the changes to Part D are likely to produce some disputes as the Industry Parties learn to comply with the new processes prescribed; secondly the relaxation of the rules for Moderation of Competition during 1999 may require resolution of emerging issues of principle, some of which may have big price tags. This may involve hearings before the ADRC and the Timetabling Sub-Committee as had happened with the references AD12 and ttc32.

The Committee recognised that, in preparing the budget for 2000/01, it might wish to scale down the budget in the light of the five years experience at that time. It asked the Secretariat to assemble some indicative data on expenditure under the categories of 'cost per dispute heard' and 'cost per dispute submitted'.

The Committee also asked for an inventory of assets to be drawn up in conjunction with the RIDR.

Action: Secretary

#### **34/7 Proposals for Change to the Access Conditions**

The Committee noted that the significant changes to Part D of the Access Conditions had come into force on 4th March 1999. Responsibility for monitoring the efficacy of the new Part D lay with the Class Representative Committee.

#### **34/8 Role of Sub-Committees**

The Secretary presented the paper prepared at the request (see minute 33/11) of the Committee.

It was noted that, in the absence of specific direction in the Rules, the locus of the Technical Committee is determined by the ADRC. Members took the view that, instead of a 'standing committee', it was preferable to have a procedure whereby elections would be called for the purpose of appointing representatives to a Committee to hear a specific reference. This would provide the opportunity, when making nominations, to propose people with an appropriate background to consider the subject of that reference. The Committee, aware that the Technical Sub-Committee had elected members to serve from 1st April 1999 considered that the constitution should remain for the time being, but that the Bands should not elect new members with effect from the year 2001. From that time, the remaining members should stand down and the new method of assembling a Committee to hear issues of a technical nature should come into force.

The Secretariat was commissioned to prepare a further, more detailed, paper for the June meeting following which any recommendation in principle for a change to the Access Dispute Resolution Rules would be submitted to the Class Representative

Committee. It was noted that Group Standards Committees have a list of experts on Technical matters.

Action: Secretary

### **34/9 Arbitration**

The Secretary advised members that a Notice of Arbitration had been received for which the terms of the bilateral agreement provided for arbitration as a method for resolving disputes had adopted the Access Dispute Resolution Rules, but subject to some amendments agreed between the two parties. These included variances to Rule C2.2 which provide for the President of the Law Society, instead of the Disputes Secretary, to appoint an arbitrator in the event of the parties being unable to agree the identity of a suitable arbitrator; also for some variation to the permitted timescales for the process. Members expressed some surprise and concern that such terms had been agreed and wished to be assured that they had been approved by the Regulator.

The Secretary was also asked to consider the force of the clause which provides for the Access Conditions (and hence the Access Dispute Resolution Rules which are annexed to that document) to take precedence over the terms of a bilateral agreement.

Action: Secretary

### **34/10 Date of next meeting**

Wednesday 9th June 1999 at 10.00 in Room 230, East Side Offices at Kings Cross.