
ACCESS DISPUTE RESOLUTION COMMITTEE

MINUTES of MEETING No. 43

held in London on 19th June 2000

Present:

Bryan Driver, Chairman
Tim Clarke (Anglia Railways)
Karen Bonner (Freightliner)
Julia Glenn (Railtrack)
Tony Deighan (Eurostar (U.K.))
Nigel Oatway (English Welsh & Scottish Railway)

Apologies:

Graham Eccles (South West Trains)
Geoff Knight (Railtrack)
Mike Price (ScotRail Railways)

In attendance:

Chris Blackman (Secretary)
Martin Shrubsole (Clerk)

43/1 Minutes of meeting No.41

The minutes of meeting No.41 held on 4th and 28th April 2000 were approved without modification. The Chairman signed a copy of the minutes as a true record of the proceedings.

43/2 Minutes of meeting No.42

The minutes of meeting No.42 held on 6th April 2000 were approved without modification. The Chairman signed a copy of the minutes as a true record of the proceedings.

43/3 Matters arising from the minutes of the previous meeting

41/2 [39/3] Renewal of the Committee's contract with the Clerk

The Clerk reported that he wished to re-negotiate an aspect of his contract. The Deputy Chairman advised that he was undertaking discussions with the Clerk and would report to the next meeting of the Committee.

43/4 Accounts for 1999/2000

The Committee noted the paper prepared by the Secretary and approved the accounts for 1999/2000. Members were pleased to note that the Auditor had expressed the view that the documents were a fair summary of the income and expenditure for the period and were sufficiently supported by various papers that had been inspected during the audit. The Chairman signed the Income & Expenditure statement for the year ended 31st March 2000 and the balance sheet for that financial year.

The Committee agreed that these documents should be circulated with the invoices when the levy for 2000/01 is raised

43/5 Annual Report

The Clerk tabled an initial draft of the preface to the 5th Annual Report. This was intended to form a detailed review of the way in which the Committee had conducted itself over the course of 5 years. A number of headings had been adopted against which to provide effective measurement. Members commented that this would also provide useful criteria for the Industry's measurement of the efficacy of the Access Dispute Resolution Rules in an exercise which the Class Representative Committee (CRC) had committed itself to undertake in preparation for the forthcoming Regulatory Review of the Rules. *[see also minute 43/6 below]*

It was agreed that Members should have a further week to provide written comments on the structure and content of the paper.

43/6 Review of the Access Dispute Resolution Rules

The Chairman and Secretariat reported on discussions that had been held within the industry, during which it had been suggested that not all [Access] disputes were being submitted to the ADRC for resolution. There was anecdotal evidence to suggest that in some cases Industry Parties were allowing disputes to fester, rather than following prescribed processes to reach a resolution of their disagreement. In such instances, as in some cases which do come before the ADRC, it is evident that the parties are likely to be failing to engage in appropriate dialogue to identify precisely the nature of their dispute and the issues involved.

It was suggested that some parties are reluctant to bring disputes to the ADRC because they consider the process of dispute resolution to be too time-consuming. In some quarters apparently there is a desire to have available someone, or some body, capable of providing a quick decision on the merits of a case.

The Chairman reminded members that, following comments made at a regulatory hearing earlier in the year, the Committee had asked its lawyers to review the processes of Committee hearings and to report on whether the Committee had, as alleged, exceeded its remit and authority by attempting to make contracts between parties. The lawyers had reviewed all the cases heard by the ADRC and had reported that there was no evidence to support allegations that the Committee had exceeded its powers. Furthermore, in no case were the Committee's lawyers of the opinion that ADRC had taken excessive time to reach a Determination.

The Secretariat reported that it had also sought legal advice as to any misalignment which might exist between the Access Dispute Resolution Rules and the Arbitration Act 1996. This work is proceeding.

Members of the Committee, in expressing approval of the reported activities of the Chairman and the Secretariat, supported the resolution by the Class Representative Committee (CRC) [at its meeting on 2nd June] to conduct a consultation exercise within the industry, as a precursor to a review of the Access Dispute Resolution Rules. The Committee suggested [*see minute 43/5 above*] that the draft Introduction to the Annual Report might be adapted so that it might be used as a free-standing consultation document and questionnaire designed to ascertain views from within the industry for consideration in the forthcoming regulatory review. This would test the general level of understanding of, and satisfaction (or otherwise) with, the ADRC's stewardship of the Access Dispute Resolution Rules. It would also test an allegation that there is a significant body of disputes affecting access matters that properly, or possibly, could have been brought into the Dispute Rules Procedures, but (for whatever reason) were not. To aid focus on the issues it is recommended that Industry Parties be offered this resume, together with a series of questions that addressed both the effectiveness of the procedures and some suggestions for areas of change. It was recognised that other redrafting would be required to assist parties to make a considered response. It was suggested that the consultation document should include a specific question as to whether it is perceived that the ADRC has failed to do things which it ought to have done.

A programme was agreed for actions leading to the conduct of consultation and the collation of responses on a time scale that would allow consideration of the results by CRC and ADRC at their meetings scheduled for September 8th and 13th respectively.

43/7 Technical Sub-Committee

The Secretary reported that consultation had taken place on 5 sets of Proposals for Change to the Railtrack Track Access Conditions. The Class Representative Committee had endorsed the proposed changes, including the abolition of the Technical Committee, and formal approval by the Regulator was awaited.

43/8 Update on References

The Secretary reported that submissions from both parties had been received in respect of Reference AD21 from South West Trains and Connex South Central. A careful analysis of the submissions had led the Clerk to the view that the matter was not one of philosophical principle, but one that was capable of being dealt with as a series of granular disputes. He had written accordingly to the parties and posed a number of questions. Formulation of the answers should precipitate either the preparation of revisions to the reference, or a fresh - and hopefully joint - reference from the parties.

43/9 Date of next Meeting

The next scheduled meeting will be on Wednesday 13th September 2000 in Room 230, East Side Offices at Kings Cross commencing at 10.00.