

---

***ACCESS DISPUTE RESOLUTION COMMITTEE***

---

**MINUTES of MEETING No. 46**  
held in London on 13 December 2000

**Present:**

Bryan Driver, Chairman  
Karen Bonner (Freightliner)  
Tony Deighan (Eurostar (U.K.))  
Julia Glenn (Railtrack)  
Geoff Knight (Railtrack)  
Mike Price (ScotRail Railways)  
Nigel Oatway (English Welsh & Scottish Railway)

**Apologies:**

Tim Clarke (Anglia Railways)  
David Franks (North Western Trains)

**In attendance:**

Chris Blackman (Secretary)  
Martin Shrubsole (Clerk)

**46/1 Minutes of meeting No.45**

The minutes of meeting no.45 held on 4 & 18 October 2000 were approved, subject to one modification. The Chairman signed a modified copy of the minutes as a true record of the proceedings.

**46/2 Matters arising from the minutes of the previous meeting**

There were no matters arising other than items already listed on the agenda.

**46/3 Review of the Access Dispute Resolution Rules**

Members noted the recent set of responses received from the Industry, and addressed the main issues expressed.

Some Industry Parties, in seeking to reduce costs had suggested a mechanism whereby they might be able to test the strength of their case in advance of a formal preparation of a reference to the Committee by consultation with a legal body, something akin to a judge in chambers. Members agreed that some parties had failed to recognise that this will not preclude the incurring of costs, as any

deposition to be made to such legal body will require proper consideration and preparation.

The Committee took the view that, in line with the recent recommendations of the Woolf Report, any review of the Access Dispute Resolution Rules should lead to increased opportunity and encouragement to use the option of mediation as a first stage in resolving a dispute. Alternatively this may be achieved through modification to bi-lateral access agreements.

The Committee noted the points raised by several respondents about the desirability of having a stronger legal presence at hearings. The Committee recalled that at one hearing it had retained its legal advisers in attendance and, for other disputes, had taken legal advice either before or after the hearing prior to reaching a determination. Following further discussion the Committee concluded that it would arrange for legal advisers to be present at dispute hearings in future, if the content of the dispute were such that this would be the appropriate course of action. The Chairman and Secretariat would review the submissions and decide whether the legal advisers to the Committee needed to be present. The Committee resolved that, if no lawyer were present and during the course of a hearing it became apparent that such legal presence was required, then it would adjourn to take such advice before reconvening, if necessary with legal advisers present.

The Committee agreed that the same principle would be applied in respect of the Network and Vehicle Change Sub-Committee although members anticipated that the frequency of attendance of legal advisers at hearings would be less than for the ADRC. The Committee took the view that hearings in front of the Timetabling Committee would not normally warrant the presence of the Committee's legal advisor as the nature of the disputes were technical rather than legal.

On the issue of process the Committee wishes to remind the industry that the Chairman and Secretariat are available to give advice to any party to a dispute and will give encouragement to parties to attempt to resolve the issues between themselves. This must be seen as separate from formal mediation. However, the role of the Secretariat is to assist the parties in drawing up formal submissions, preferably a joint submission, and to ensure that the parties are clear on what are the issues between them.

Members agreed that there should be laid down timescales for preparing and submitting references to the Committee. The nature of the timetable development process necessitates these being tightly prescribed for the Timetabling Committee but members wished there to be something similar in respect of ADRC and Network and Vehicle Change Committee submissions, albeit with more relaxed specification.

The Committee also recognised the need to take full cognisance of any legal interpretation irrespective of the normal traditional railway understanding "on the ground". This had been revealed in the case of determination [AD]18 and its subsequent referral to arbitration.

The Chairman and Committee were concerned at the frequency of non-attendance by certain representatives of the Franchised Passenger Class. It was noted that one

solution might be for a member to appoint two alternates rather than one, but some members expressed concern that this might dissipate the role of Committee Member.

The need for second alternates is not seen as a real solution, and the Committee asked the Secretariat to consult as necessary with representatives of the Franchised Passengers Bands to encourage members to choose as their alternate someone who would reasonably be available and able to deputise when the Member was unable to attend. The Committee, as a matter of principle, wished to be fully represented by all Bands at hearings.

The Committee will also review in due course its own procedures regarding the issue of reimbursement of Members.

In conclusion the Committee asked the secretariat to prepare a paper setting out the Committee's considered view on the principal issues for approval at the next quarterly meeting.

#### **46/4 Annual Report: draft for comment and approval**

Members acknowledged that the report was a useful aide-memoire and point of reference for the case law so far established to assist any party in preparing a submission. It is preferable that highlighting of changes should be by means of a vertical line in the margin only, as the underlining of large sections of text diminishes its legibility. In conclusion Members agreed the format for the current year but advocated some re-structuring of the report in future years to align with changes to the structure of Part D of the Access Conditions.

Other detailed points were noted by the Secretariat and will be incorporated in the final version of the report.

Action: Secretariat

#### **46/5 Review of Arbitration Interim Award by Richard Siberry QC**

Members received from the Secretariat a report analysing the variance in stance between the Committee and the Arbitrator on the dispute (AD18) referred by North Western Trains. Members noted that the arbitrator had explored a position which had not been examined by the Committee, and indeed had been outside the scope of the Committee's deliberation.

The difficulty in calculating compensation had exposed the need to identify a Comparative Day. The Arbitrator's position, that an Engineering Allowance is a possession because it affects the running of trains and is therefore a restriction of use, comes of a legal view rather than that of an experienced railwayman. The arbitrator referred to inclusion in the timetable as meaning all trains rather than, as the Committee said, 'when the possession is taken'. The Committee accepted that it needs to be able to demonstrate that it has taken a proper account of the legal

view and not merely restrict itself to application of 'traditional railway practice'. The Committee has resolved to address this aspect - see minute 46/3.

**46/6 Budget outturn for 2000/01 and Preliminary budget for 2001/02**

Members noted the Committee's expenditure for the current year was satisfactorily within budget, and that the outturn for 2000/01 indicated a surplus of income against expenditure. Members also endorsed the preliminary budget for 2001/02 and indicated that, subject to some fine tuning, they would formally endorse at the next quarterly meeting. Members were particularly pleased to note that provision had been made for exploiting internet facilities when the work stations were upgraded in 2001.

**46/7 Changes to the Access Conditions**

The Committee noted that some changes to the Access Conditions had taken effect from 19 November 2000; furthermore that a prospective proposal to make changes to Part D was currently under consideration by the Class Representative Committee and would shortly be the subject of formal consultation as a Proposal for Change.

**46/8 Hearing of reference AD22 submitted by Railtrack**

A hearing of reference AD22 had been deferred to enable the parties to conduct further dialogue and a fresh date of Wednesday 18 December was now planned for a hearing. Members expressed encouragement to the parties in their endeavours to resolve the issues between them .

[post meeting note: the reference was subsequently withdrawn by Railtrack.]

**46/9 Date of quarterly meetings for 2001**

The following dates were agreed, with meetings scheduled to commence at 10.00 unless otherwise advised:

Wednesday 14th March 2001	in Room 230, East Side Offices at Kings Cross
Wednesday 13th June 2001	in Room 230, East Side Offices at Kings Cross
Wednesday 12th September 2001	in Room 230, East Side Offices at Kings Cross
Wednesday 12th December 2001	(venue and time to be decided)