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

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### **MINUTES of MEETING No. 48** held in London on 14 March 2001

#### **Present:**

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

#### **Apologies:**

David Franks (North Western Trains)  
Julia Glenn (Railtrack)  
Bil McGregor (ScotRail Railways)

#### **In attendance:**

Chris Blackman (Secretary)  
Martin Shrubsole (Clerk)

#### **48/1 Minutes of meeting No.47**

The minutes of meeting no.47 held on 14 February 2001 were approved. The Chairman signed a copy of the minutes as a true record of the proceedings.

#### **48/2 Matters arising from the minutes of the previous meeting**

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

#### **48/3 To note the conclusion of reference AD24**

The Chairman reported that, following the conclusion of the Committee's deliberations on 14th February (minute 47/4), he had briefed the parties by telephone. The Committee noted the Chairman's written record of this briefing which had also been circulated to the parties.

It noted with satisfaction that the parties had heeded the Committee's advice, conducted further dialogue and negotiated a solution to their dispute.

There had been no requirement to issue a determination and Members directed that, notwithstanding that a hearing had commenced, no Record of the Hearing would be prepared.

#### **48/4 Review of expenditure to date for 2000/01**

The Committee noted that the expenditure outturn for the current year was well within budget, due principally to the requirement to obtain legal advice being considerably less than that budgeted.

#### **48/5 Proposed Budget for 2001/02**

The Committee noted the paper prepared by the Secretary and endorsed the proposals for a budgeted total expenditure of £254,000 in the financial year 2001/02.

#### **48/6 Format of the Annual Report for 2000/01**

The Committee considered the paper prepared by the Secretary and agreed in principle the changes to be made to the format of the next Annual Report.

Members considered that the Report, amongst other matters, should incorporate

1. a new Part to cover a review of significant issues presented to the Committee in disputes during the most recent 12 month period;
2. a cumulative review of significant issues arising from all determinations to date; to be entitled "*A synopsis of case law so far established*";
3. a revision to the structure and layout of the section covering issues and case law relating to Access Condition D which was radically amended in 1999;
4. general comments about the (lack of) speed shown by some parties in preparation and submission of their cases; and the Committee's decision, in one instance, to set up a sub-Committee to facilitate the process of preparing a reference.

The Secretary was remitted to make the Annual Report and the published determinations available on a web site, for access by Industry Parties, when the Committee's work stations are upgraded.

#### **48/7 Review of the Access Dispute Resolution Rules**

The Committee noted the paper prepared by the Secretariat, endorsed the content in principle and made suggestions concerning the inclusion of a brief resume about the role and function of the Committee, and a proforma to guide Industry Parties in preparation of submissions for a Committee hearing.

#### **48/8 Correspondence with the Regulator**

The Secretary advised members that the Regulator had expressed a wish to attend, with his Chief Legal Advisor, a future meeting of the Committee as observers. He

had subsequently accepted an invitation through the Secretary to attend the next quarterly meeting in June 2001.

Members of the Committee welcomed the Regulator's interest and reviewed the issues that it would wish to debate at the next Quarterly meeting. In this context the Committee agreed that the Regulator should be provided with the briefing paper that the Secretariat had put to the December 2000 meeting on lessons in the differences between the ADRC's determination AD18 and the Arbitrator's interim award.

Members debated whether the Regulator might find it helpful to have the opportunity to attend, in the capacity of observer, an ADRC hearing (in the event that there is one during April or May). The Committee was of the view that the terms of such an invitation would need to be clearly understood by the Industry at large, to protect the position of the Regulator, and so as not to prejudice the conduct or outputs of the Committee.

The Committee asked the Chairman to write to the Regulator drawing his attention to the dates provisionally set aside for hearings and indicating his preparedness to invite the Regulator to attend on the following basis:

- (i) The Committee would advise the parties involved, in advance of the hearing, that it was minded to invite the Regulator to attend as observers;
- (ii) The basis of the invitation would be that the Committee would give advance assurance to the parties involved that the Regulator would play no part in the proceedings and would be in attendance on an observer basis only. In the event that either party registered reasonable concern at this proposal the Committee would postpone the invitation.
- (iii) The Committee would take care to ensure that the parties did not contrive to introduce irrelevant material, on the basis of bringing it irregularly to the attention of the Regulator.

#### **48/9 Update on References**

The Secretary advised Members that the hearing of AD23 had again been deferred until Wednesday 28 March. The parties concerned had been urged to ensure that they did not miss a further deadline for receipt of their joint submission

Notification of disputes concerning a gas leak at St James St (Liverpool), water leaks at Norwich and Ipswich stations, and payment for infrastructure alterations on Railtrack Southern Zone had been received and were being progressed.

#### **48/10 Date of next meeting**

28 March 2001, to hear reference AD23.