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

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### **MINUTES of MEETING No. 56**

held in London on 11 June 2002

#### **Present:**

Tony Holland (Chairman)  
Mark Causebrook (Thameslink Rail)  
Bill Davidson (Railtrack)  
Tony Deighan (Eurostar (U.K.))  
Julia Glenn (Railtrack)  
Ian Osborne (Freightliner)  
Niel Wilson (North Western Trains)

#### **Apologies:**

Nigel Oatway (English Welsh & Scottish Railway)  
Mike Price (ScotRail Railways)  
Bryan Driver (Independent Vice-Chairman)

#### **In attendance:**

Chris Blackman (Secretary)  
Martin Shrubsole (Clerk)

#### **56/1 Minutes of meeting No.55**

The minutes of meeting no.55 held on 20 March 2002 were approved without modification. The Chairman signed a copy of the minutes as a true record of the proceedings.

#### **56/2 Matters arising from the minutes of the previous meeting**

There were no matters arising.

#### **56/3 Accounts for 2001/02**

Members of the Committee, in accepting the paper from the Secretary, were pleased to note that the total expenditure for the year was comfortably within budget and that there were no significant exceedances under any sub-heading. The Secretary reported that the accounts for the financial year 2001/02 had been audited, and a formal certificate was expected to be received from the auditors within a few days.

Members formally approved the Accounts without any amendment, and instructed the Secretary to circulate the Balance Sheet and Income & Expenditure Statement with the invoice for the Annual Levy later in the month of June.

Action: Secretary

#### **56/4 The 7<sup>th</sup> Annual Report**

The Clerk reported that work on the preparation of the 7<sup>th</sup> Annual Report had taken longer than expected, but he sought comments from the Members on the general structure of the report. He suggested that the document be issued in 2 parts, each aimed at a discrete clientele.

The Handbook is designed and structured as a reference document containing a cumulative record of Committee decisions. As such it is useful for day-to-day practitioners; in particular the sections relating to decisions in respect of those references stemming from Parts D, F and G of the Track Access Conditions would be beneficial to staff in train planning offices, as well as those with direct contractual responsibilities.

The Review is designed as a document to be read primarily by Senior Managers within the Industry, setting out the highlights of the year in question, and providing a high level commentary on recent cases.

Members supported in principle this approach and the suggested framework, and agreed that the two parts should be indexed as complementary documents. It was agreed that the Handbook should contain highlighting/underlining to indicate new material added since the previous edition, and Members would give thought as to how any deletion of text in the Handbook should be best handled and indicated in future years. The Review, as a simple commentary about the year in question, will contain no such highlighting.

Members agreed to provide the Clerk with comments on points of textual detail by 1<sup>st</sup> July in order that a final revision could be prepared and circulated before the next meeting on 16<sup>th</sup> July.

#### **56/5 New Railtrack / EWS contract: terms relating to the handling of disputes**

Members were concerned at the latest moves to grant certain parties an option for referring disputes to the High Court, rather than to the Industry Committee. It appeared that one party could be forced unwillingly to go to the High Court, and other beneficiaries might be drawn in. This development runs directly contrary to the principles underlying the development of the Access Dispute Resolution Rules, for the ADRC's role was envisaged at the outset as a mechanism for settling the majority of types of dispute by a tribunal of industry peers, quickly and relatively inexpensively, without the need for recourse to the courts.

Members observed that where there is conflict between a bilateral Track Access Agreement and the multilateral Track Access Conditions, the latter takes precedence; furthermore, there is no explicit provision in the Rules for a matter

going to the High Court, although equally it is recognised that this possibility is not excluded.

Members noted from a transcript of a hearing by the Rail Regulator that EWS's counsel had commented that the Committee was "very good at some things, but not very good at other matters". Members also noted, with some surprise, that the Rail Regulator had commented, in respect of another point concerning reference NV33, heard by Network and Vehicle Change Sub-Committee, that "the matter was settled" even though that reference is the subject of a formal appeal to him.

The Chairman advised Members that he would be seeking an early meeting with the Rail Regulator, and would ensure that this topic was raised as a matter of significant importance.

**56/6 Update on other references submitted to the Committee**

The Secretary advised Members that the current position on other references submitted to the Committee was as follows:

AD25 This reference had been stayed, pending a hearing of reference NV5 by the Network and Vehicle Change Sub-Committee. Now that the parties had complied with the directions of the Sub-Committee, Railtrack had formally withdrawn its reference AD25.

There were no other references pending for the Committee to hear.

**56/7 Any other Business**

No other business had been notified to the Secretary.

**56/8 Date of next meeting**

Tuesday 16 July 2002 commencing at 10.00 at Kings Cross