
ACCESS DISPUTE RESOLUTION COMMITTEE

MINUTES of MEETING No. 57
held in London on 16 July 2002

Present:

Tony Holland (Chairman)
Bryan Driver (Independent Vice-Chairman)
Mark Causebrook (Thameslink Rail)
Bill Davidson (Railtrack)
Tony Deighan (Eurostar (U.K.))
Julia Glenn (Railtrack)
Nigel Oatway (EWS)
Stewart Palmer (South West Trains)

Apologies:

Ian Osborne (Freightliner)
Mike Price (ScotRail Railways)

In attendance:

Chris Blackman (Secretary)
Martin Shrubsole (Clerk)

57/1 Introduction

The Chairman welcomed Stewart Palmer who was attending his first meeting as alternate to Niel Wilson.

57/2 Minutes of meeting No.56

The minutes of meeting no.56 held on 11 June 2002 were approved. The Chairman signed a copy of the minutes as a true record of the proceedings.

57/3 Matters arising from the minutes of the previous meeting

56/3: Accounts for 2001/02

It was noted that the auditor's certificate had been received. Invoices for the levy for the current year would be sent out within the next two days.

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

It was noted that it had now been clarified that disputes which may be appealed to the Regulator after a hearing by one of the Sub-Committees are excluded from the list of matters which, under the terms of the new Railtrack/EWS contract, may be referred to the High Court.

It was also noted that the parties concerned now accept that the term Industry Committee is interpreted as being the Access Dispute Resolution Committee itself, and that disputes arising from Parts D, F, and G of the Track Access Conditions, also Condition H11, fall to be heard by the requisite Sub-Committee.

57/4 The 7th Annual Report

The final draft of the seventh Annual Report was tabled, and the Committee noted that it had taken cognisance of all the points and suggestions made by Members.

The Independent Vice-Chairman asked that a small section on page 20 should be redrafted to improve the clarity, but, when this had been done, he indicated that he would be willing to sign off the document, which was in respect of his last year as Chairman.

Members congratulated the Secretariat, and the Clerk in particular, on the professionalism and care which they had taken in preparation of the document.

57/5 Finalisation of Proposals for Change to the Access Dispute Resolution Rules

Members noted the final draft of the proposed changes to the Rules and agreed that they wished both the amendment to Rule A3.9.1 and that to A3.9.3 to be included in the package of the proposals. They also agreed one minor correction to the proposal for Rule A5.4.8.

It was noted that the procedure for making a Proposal for Change is that it should be sponsored by an Industry Party. This had usually been done by Railtrack in the past, but on this occasion Eurostar (U.K.) agreed to act in this capacity.

The Committee also noted that invoices for the levy on all Industry Parties for the current financial year are due to be sent out within the next 48 hours. Members recalled the difficulties experienced in getting Industry Parties to pay the levy invoice within the prescribed period of time. It was foreseen that the measures proposed in respect of amendments to Rules A3.9.1 and A3.9.3 would encourage Industry Parties to comply with the Rules, but Members wished to be advised by the Secretary, by the end of the prescribed period for payment, a list of those companies that had failed to comply with Rules. This list would be minuted at the next meeting of the Committee.

57/6 Inconsistency between appeal procedures in Conditions D, F and G

Members noted that whilst there was a laid down period of time prescribed in Track Access Conditions D5.2, there was no equivalent prescription of time allowed in which to submit an appeal in Condition F (Vehicle Change), nor in Condition G (Network Change). The secretariat advised that, at the time of the drafting of the Access Conditions this apparent discrepancy had not been detected or discussed, and that it appeared to be an act of omission rather than commission.

Members considered that it was inappropriate to leave the position open-ended and took the view that there should be equivalent paragraphs in Conditions F and G to mirror that in the first paragraph of Condition D5.2. Clearly, the period prescribed in Part D (7 days) is necessarily short because of the underlying urgency associated with the timetable preparation process, and a period of no more than 90 days was considered appropriate for specification in Parts F and G. This would allow sufficient time for parties to adequately assess the implications of a Determination.

Members asked for an appropriate amendment to each of Parts F and G to be prepared and submitted as a Proposal for Change at the same time as the proposals already discussed for changes to the Access Dispute Resolution Rules.

Action: Secretary

57/7 “Boilerplate” paragraphs

The Chairman explained that 2 days had been set aside later in the month for the Network and Vehicle Change Sub-Committee to deal with references nv44 and nv45 from Great North Eastern Railway on the subject of compensation for Network Change.

Whilst he is concerned that points of law should be properly addressed, and if necessary this might mean submissions prepared by lawyers, he was concerned that many of the issues in dispute were about the size and applicability of figures, the resolution of this being a managerial exercise rather than a legal one. The matter calls for serious dialogue between managers of their respective companies.

Members recalled that, during the hearing of reference AD21, the two Train Operators concerned had bandied about large sums of money, but when they had been directed by the Committee to list the actual figures in dispute, it emerged that many were very small and in the case of some headings was £NIL. Members agreed that it is up to the Committee to ensure, in line with the philosophy of the dispute resolution processes, that General or Line Managers attend the Committee to present the case and to crystallize the issues.

The Chairman continued by telling the Committee that he had had a further meeting with the Rail Regulator, and the discussion had been extremely useful.

The Chairman advised members that he was seeking to make some adjustments to the style of the drafting of the decisions of the Committee. It was noted that there was a record produced which was a full synopsis, but not a verbatim account, of the proceedings of a hearing. The Determination is a shorter document, but

nevertheless covers much, if not all, of the rationale behind the Committee's thinking which led to the published decision. Members endorsed the suggestion that the Chairman would draft guidelines for adoption and use by the secretariat, to strengthen and tighten the way in which Committee decisions are set out.

57/8 Any other Business

Members noted the paper prepared by the Secretary, who had on the previous day identified a lacuna in the Access Dispute Resolution Rules. Rule A3.9.1 provides for the Committee to raise, in the case of an unlicensed party, a levy which "shall be fair and reasonable". A particular case has come to light where an Industry Party is licensed, but does not pay a licence fee. According to the prescribed calculations the levy on the Industry Party would be zero.

The Committee took the view that, at the time at which the Rules were drafted, it had not been conceived that a zero licence fee was likely. Furthermore, it was unreasonable that an Industry Party in these circumstances should not pay any fee. Members agreed that an amendment to Rule A3.9.1 was required urgently to plug this lacuna, and, in the meantime, the same principles would be applied as to an unlicensed Party. In these circumstances it would ask the particular Industry Party concerned to pay a sum no greater than the minimum paid by any other party.

Action: Secretary

There were no other matters arising.

57/9 Update on other references submitted to the Committee

The Secretary advised Members that there were no other references pending for the Committee to hear.

57/10 Date of next meeting

Wednesday 21 August 2002 ('earmarked' for possible hearing)

Tuesday 10 September 2002 (Quarterly business meeting)

Tuesday 24 September 2002 ('earmarked' for possible hearing)