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

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### **MINUTES of MEETING No. 61** held in London on 18 June 2003

#### **Present:**

Sir Anthony Holland, Chairman  
Jon Bunyan (Freightliner)  
Bill Davidson (Network Rail)  
Tony Deighan (Eurostar (U.K.))  
Julia Glenn (Network Rail)  
Graham Laycock (English Welsh & Scottish Railway)  
Bil McGregor (ScotRail Railways)  
Niel Wilson (North Western Trains)

#### **In attendance:**

Chris Blackman (Secretary)  
Martin Shrubsole (Clerk)

#### **Apologies:**

Tim Clarke (Anglia Railways)

#### **61/1 Introductions**

The Chairman welcomed Jon Bunyan to his first meeting of the Committee as the Alternate to Ian Osborne.

#### **61/2 Minutes of meeting no.60**

The minutes of meeting no.60 held on 24 April 2003 were approved without any modification. The Chairman signed a copy of the minutes as a true record of the proceedings.

#### **61/3 Record of the Hearing of joint reference AD29**

The Record of the Hearing of joint reference AD29 from Great Eastern Railway and Network Rail was approved subject to some minor modifications. The Chairman signed a copy of the Record, duly modified, as a true record of the proceedings. Circulation of the Record is to Committee Members and to those Parties involved at the hearing.

#### **61/4 Matters arising from the minutes of the previous meeting**

*60/3: The 8<sup>th</sup> Annual Report*

Members were pleased to note that a number of positive and favourable comments had been received in response to the Chairman's introductory letter to all Managing Directors.

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

**61/5 Accounts for 2002/03**

Members of the Committee noted that the total expenditure for the year was within budget and that there were no significant exceedances under any sub-heading. The Secretary reported that the accounts for the financial year 2002/03 had been audited, and a formal certificate had been received from the auditors.

Members therefore 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.

Action: Secretary

**61/6 Review of Internal procedures (including distribution policy for documents)**

Members noted the paper from the Secretariat and agreed that it was now appropriate to review the Committee's internal procedures, last updated in 1997, to take account of the prospective changes to the Access Dispute Resolution Rules currently awaiting the approval of the Rail Regulator. At the same time, it should also incorporate other improvements that the Committee agreed to be desirable. Accordingly Members would notify the Secretariat, within the next four weeks, as to suggestions and proposals for amendment to the document.

The Secretariat will produce an updated draft of the "Guide to the Procedures of the ADRC" for consideration at the next quarterly meeting.

**61/7 Update on References**

The Secretary advised Members that in the case of reference AD28 from Thameslink Rail, referred under the Independent Station Access Conditions, the parties had held further discussions. It was now unlikely that a hearing would be needed before August 2003.

Reference AD30 from Maintrain had been resolved with GNER, and no hearing was now required.

Reference AD31 had recently been the subject of further discussions between the parties. The Secretary had reminded them that the Delay Attribution Board comes into existence on 18 June 2003 and would be able to provide guidance.

**61/8 Hearing of joint reference AD32 from English Welsh & Scottish Railway and Network Rail**

The Committee commenced a hearing of joint reference AD32 from English Welsh & Scottish Railway and Network Rail on the issue of the contractual terms set out in the 2002 EWS Track Access Agreement, in specific respect of the proper interpretation of the "cordon cap".

During the hearing it became apparent that much of the argument from the parties related to the reasoning behind the introduction (at the instigation of the Regulator) of the cordon cap into the 1997 agreement, as justifying one or other of their preferred interpretations.

The common ground between the parties was that cordon caps had only been included in both the 1997, and the subsequent 2002 Track Access Agreements, at the direction of the Office of the Regulator. Furthermore, the cordon caps were set at the values stated in the 1997 Conclusions by the Office of the Regulator, on the basis of information about numbers of loaded trains per week supplied by the parties, but that the parties were not

made privy to the methodology used to calculate those values. The values incorporated into the 2002 agreement (with some adjustments and additions as compared with the 1997 agreement) had again been at the initiative of the Office of the Regulator.

There was no common ground as to how, practically, the cordon caps in the 2002 agreement should impact upon the number of Train Slots in the Working Timetable

Because of the prominence given to the 1997 agreement by the parties, the Committee had to give it its full consideration. However, although the parties presented to the Committee details of the request made by the Regulator, in 1997, for information about actual numbers of trains run, and the data that was supplied, they were not able to supply the background commercial and contractual reasoning, and arithmetic, that translated that data into the cordon caps.

The Committee, therefore, sought to establish whether it could discern some helpful correlation between the information on numbers of loaded trains per week at each cordon cap point (as supplied in 1997), and the values for Daily Train Slots that were prescribed in both the 1997 and 2002 agreements. This was in the expectation that this would give a ready insight into the intentions of the drafters in respect of the original cordon caps.

In the event, the Committee could establish no obvious correlation, and therefore concluded that the proper understanding of the value and rationale of the disputed cordon cap required it to seek the disclosure of further background information that appeared not to be in the possession of the parties. To this end the Committee directed that an approach should be made to the Regulator for the release of the relevant information: the Chairman declared that he would appoint an assessor with a remit to assemble all the information necessary to inform the Committee in respect of this key point. He therefore, after advising the parties of the position, and the proposed course of action, adjourned the hearing until 8th July.

Post meeting note:

On 19 June the Regulator published a decision letter, setting out his conclusions on the Section 18 Application by Freightliner Heavy Haul; this document provided a third interpretation (i.e. different from that advanced by either of the parties) as to the force of cordon caps.

The parties subsequently held further discussions taking cognisance of this decision. On Thursday 3 July they advised the Committee Secretary that, without prejudice to agreements made in relation to the detail of the 2003/4 Timetable, they wished “*to withdraw their joint reference in order to evaluate the Regulator’s interpretation of the 2002 EWS track access agreement*”.

**61/9 Date of next meeting**

Wednesday 20 August 2003 (‘earmarked’ for possible hearing)