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

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### **MINUTES of MEETING No. 66**

held in London on 9 June 2004

#### **Present:**

Tony Holland, Chairman  
Bill Davidson (Network Rail)  
Tony Deighan (Eurostar (U.K.))  
Julia Glenn (Network Rail)  
Nigel Oatway (English Welsh & Scottish Railway)  
Jon Bunyan (Freightliner)

#### **In attendance:**

Bryan Driver (Independent Vice-Chairman)  
Chris Blackman (Secretary)  
Martin Shrubsole (Clerk)

#### **Apologies:**

Tim Clarke (London Eastern Railway)  
Mike Price (ScotRail Railways)  
Niel Wilson (North Western Trains)

#### **66/1 Minutes of meeting no.65**

The minutes of meeting no.65 held on 11 March 2004 were approved without modification. The Chairman signed a copy of the minutes as a true record of the proceedings.

#### **66/2 Matters arising from the minutes of the previous meeting**

##### *65/2 [64/6] Outstanding Appeals referred to the Rail Regulator*

Members noted that the Regulator had still not yet published his reasons for his decision on an appeal against the NVCC's determination NV33.

##### *65/2 [64/7] Outstanding approval by the Regulator of Proposals for Change to the Access Conditions (ADRR)*

The Secretary reported that a response had been received on 28 May from the Regulator, who had declined to approve any of the proposals and instead had wanted further clarification. Members were disappointed to hear this, particularly after a 15-month wait. The Secretary was asked to seek, in conjunction with the Secretary of the Class Representative Committee, further discussions with the Regulator and to identify any opportunity for positive progress to be made.

### *65/2 [64/10] Renewal of contracts*

With appropriate advice from Wragge & Co., a contract between the Committee and the Committee Secretary has been finalised. It is expected that this will be signed within the next seven days.

### **66/3 Update on References**

AD31 The parties, Great Eastern Railway, Anglia Railways and Network Rail, are still seeking guidance from the Delay Attribution Board;

AD34 The parties, West Coast Trains and Network Rail, and other interested parties have held further constructive discussions. They have now advised that a solution has been found to some aspects of the dispute, and have sought a deferral of the hearing in order to give more time to reach a solution on the remaining aspects;

AD35 from Great Eastern Railway concerning reimbursement of cost of repairs and renewals of Retail Telecoms equipment at Liverpool Street station; further discussions between the parties are taking place, and if unresolved, the parties will consider using the option of mediation, or, failing that, a hearing will take place in August;

AD36 from Thames Trains concerning reimbursement of cost of repairs and renewals of Retail Telecoms equipment (at various Thames Valley stations); further discussions between the parties are taking place, and if unresolved, the parties will consider using the option of mediation, or, failing that, a hearing will take place in August;

AD37 from Thames Trains concerning reimbursement of cost of repairs and renewals of Retail Telecoms equipment at Paddington and Gatwick Airport; further discussions between the parties are taking place, and if unresolved, the parties will consider using the option of mediation, or, failing that, a hearing will take place in August;

AD38 from Arriva Trains Wales and Network Rail re allocation of delays; this will be the subject of a hearing at the next meeting.

### **66/4 Approval of the Accounts for 2003/2004**

The Secretary reported that the accounts had been prepared, and income and expenditure had been correctly balanced. It was noted that an audit had been carried out on 24 May 2004, and a formal report was awaited. Members approved the accounts for 2003/04, and the Chairman signed the Income & Expenditure sheet.

### **66/5 Preparation of the 9<sup>th</sup> Annual Report**

Members endorsed, subject to some corrections, the draft of the report that they had received, and noted that the handbook followed previous year's practice, giving a summary of significant output on all determinations issued in 2003/04.

Members noted the peculiar circumstances surrounding the hearing of Reference AD32, but agreed that no further comment was required.

**Action:** Secretariat

## **66/6 Changes to the Dispute Resolution procedures proposed by the Regulator**

Members noted that the Rail Regulator had a few days previously issued a document entitled “Reform of the Rail Industry Dispute Resolution Regime (June 2004)” being a consultation document for which responses were expected in less than three weeks from the date of receipt. The Chairman said that he considered that any issues relating to fundamental changes to the structure were a matter in the industry’s hands. The current procedures had been in existence for ten years and it was appropriate to review them at this stage. However, he considered, and all Members fully agreed, that the timescale for consultation was absurdly short and considerably less than that prescribed in the Access Condition C5 procedure for making changes to the Track Access Conditions, and the Access Dispute Resolution Rules.

Members were most concerned that there had been no previous discussions, either through preliminary consultation or through the mechanism of a working party, as had been adopted for consideration of proposal for change to other parts of the conditions. Members considered that careful, measured consideration of various options was essential, rather than commenting on one proposed scenario.

Members noted that this consultation was one of three with similar short timescales for responses and the same mechanism proposed for introduction. It was, however, the only one of the three for which there had been no previous consultation. Therefore, Members were particularly critical that responses had been demanded to timescales that were far too short. Further concerns were expressed about the proposals for handing over much of the workload of drafting of decisions, and setting up of meetings and inspection of submissions, to Counsel to the Committee. It was of particular concern that Counsel to the Committee would be in effective control of both the whole process and have sole control of which disputes would go to the proposed tribunals. Members were concerned on behalf of their constituents at the likely significant increase in the cost of running the process, as compared to the existing cost of the ADRC.

Turning to particular sections of the Regulator’s proposals:

- 4.26 Sir Anthony Holland commented that he had presided over only two hearings, namely that those relating to NV44 and NV53, which had any significant ‘legal’ content in his two years as Chairman.
- 4.34 The proposal that Counsel to the Committee should have at least five years qualification with experience in industry, but independent of all industry parties, would effectively rule out any solicitors who work for Train Operating Companies or Network Rail.
- 4.38 the proposals would in effect hand control from the Committee to Counsel. In particular it gives Counsel the right to examine the parties directly. Members were concerned at the prospect of a significant increase in time required at a hearing for the process of drafting, with greater likelihood of

the tribunal reconvening at a later date to finalise determinations. There would be considerable changes to the dynamic of conducting a hearing.

- 4.41 The Regulator's view that there should be a presumption in all cases that a dispute will involve legal issues is totally inappropriate, and shows a lack of understanding of the content and nature of disputes referred to ADRC and its sub-committees. A further problem is that there does not seem to be any distinction made between the ADRC and the work of its sub-committees.

In conclusion Members agreed that the matter needs a lot of careful consideration by the industry. The likely additional costs to be borne by the industry need to be fully assessed. Furthermore, Members were concerned that, on an initial assessment, the overall process for handling disputes could be much slower, particularly those currently dealt with by Timetabling Sub-Committee.

Other matters to be considered are whether Counsel to the Committee would implement a process akin to 'discovery', which would have a very significant impact upon dispute content, workload and cost. It will also be necessary to undertake an analysis of the hundred or so cases that the Committee and its Sub-Committees have heard to ascertain factually, with legal support, which disputes have been strictly legal in nature.

The Chairman summed up by saying it was essential that alternatives should be looked at. The key areas required of the dispute for resolution in the Railway is speed, cost, and proper workable process.

Members asked the Secretariat to review the proposals paragraph by paragraph with the Committee's legal advisers and to identify any issues that have not been fully addressed. A report should be prepared quickly for Members to consider and agree, before being sent with a Chairman's covering letter to the Regulator by the deadline of 25 June. The draft report would be circulated also to Members of the Sub-Committees for information.

**66/7 Any Other Business**

There was no other business.

**66/8 Date of next meeting**

Wednesday 16 June  
Wednesday 14 July