
ACCESS DISPUTE RESOLUTION COMMITTEE

MINUTES of MEETING No. 67 held in London on 14 July 2004

Present:

Tony Holland, Chairman
Bill Davidson (Network Rail)
Tony Deighan (Eurostar (U.K.))
Bil McGregor (ScotRail Railways)
Nigel Oatway (English Welsh & Scottish Railway)
Ian Osborne (Freightliner)

In attendance:

Chris Blackman (Secretary)
Martin Shrubsole (Clerk)

Apologies:

Alan Wilson (Wessex Trains)
Julia Glenn (Network Rail)
Niel Wilson (North Western Trains)

67/1 Membership changes

The Secretary reported that Alan Wilson, Managing Director of Wessex Trains, had been elected as Member for Band III of the Franchised Passenger Class with effect from 1 July 2004. Alan Wilson has appointed Mark Causebrook as his alternate.

67/2 Minutes of meeting no.66

The minutes of meeting no.66 held on 9 June 2004 were approved subject to a number of modifications. The Chairman signed a copy of the minutes, as modified, as a true record of the proceedings.

67/3 Matters arising from the minutes of a previous meeting

65/5 The proposed network code

The Secretary reported that, with effect from 1 August 2004, the Railtrack Track Access Conditions would be renamed as the Network Code. The Access Dispute Resolution Rules (ADRR) will remain as an Annex to the Network Code.

66/2 [64/6] Outstanding Appeals referred to the Rail Regulator

Members noted that the Regulator had now published his reasons for his decision on an appeal against the NVCC's determination NV33. The Secretariat will produce a memorandum, for comment and review by Members setting out in detail the implications of the Regulator's decision.

Action: Secretariat

66/2 [64/7] Proposals for Change to the Access Conditions and ADRR

The Committee Secretary reported that, following receipt of the response on 28 May from the Regulator, the Class Representative Committee had reviewed the matter. Subject in some cases to minor modifications as approved by that Committee, the Office of Rail Regulation had now approved five of the original 22 proposals. The other proposals would be subject to further review in the light of the emerging debate on the Industry's requirements for revision of the dispute resolution regime.

64/10 Renewal of contracts

The Committee's contract with the Committee Secretary was signed with effect from 20 June 2004.

66/4 Approval of the Accounts for 2003/2004

The Secretary advised that the auditors had reported that the accounts for 2003/04 were satisfactory.

67/4 Changes to the Dispute Resolution procedures proposed by the Regulator

Members noted that the Rail Regulator had, on 2 July 2004, published his final conclusions on the proposed reform of the Rail Industry Dispute Resolution Regime, including a notice, given under Access Condition C8, that would implement his proposed reform in its entirety with effect from 12 May 2005. The implementation of the Condition C8 notice can be averted if the industry itself produces alternative proposals, formally approved by the Class Representative Committee pursuant to Conditions C5 and C6, by 31 March 2005, and if it has them approved by the Office of Rail Regulation by 12 May 2005.

Members were concerned that, despite the general thrust of comments from various Industry Parties in response to the consultation process, the Rail Regulator had nevertheless proceeded to issue the Condition C8 notice with very few changes.

Members agreed that it would be appropriate for the industry to commence its own review of the industry's dispute resolution processes that it wished to see in the future, by commissioning a working party to take forward industry ownership of the dispute resolution process and to recommend a way forward for adoption. Bearing in mind that, in the event that the industry produced no alternative, the Regulator's Condition C8 Notice would become effective on 12 May 2005, Members asked the Secretariat to prepare a memorandum on the Regulator's

proposal drawing attention to the key issues that will need to be taken into account, and in particular to prepare a job description for the proposed Counsel to the Committee and the necessary revisions required in such circumstances to the procedures of the Committee. This will enable an assessment of how the processes would work, whether the duties and processes could be fully compatible, and to identify potential problem areas. Members wished to receive this no later than early August for discussion at its next meeting on 18 August.

In the meantime Members recalled that, on previous occasions, the Class Representative Committee had commissioned a working party to review, amongst other matters, Part D of the Access Conditions. It was therefore desirable that a meeting of the Class Representative Committee should be convened quickly, in accordance with Condition C3.1.1, in order to provide the mechanism for setting up a working party to perform the task of reviewing the dispute resolution processes.

The industry will need to set terms of reference for such a working party and ensure that it concludes its deliberations in time to formulate a clear set of Proposals for Change to the Access Dispute Resolution Rules, to be consulted through the mechanism provided in Access Condition C5, and approved by the Class Representative Committee ready for submission to the Office of Rail Regulation by 31 March 2005.

The working party will need to address the future not only of the ADRC, but also the existence and standing of the current Sub-Committees.

In the meantime the Committee will seek for a meeting to be arranged between the Chairman of the Committee and the Chairman of the Regulatory Board at the Office of Rail Regulation.

67/5 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 resolved some aspects of the dispute, and report good progress towards a solution on the remaining aspects; in the circumstances the Secretary has agreed to a further deferral of a hearing;

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 has been referred back to the Delay Attribution Board for further advice.

67/6 Any Other Business

There was no other business.

67/7 Dates of next two meetings

Wednesday 18 August

Tuesday 24 August