
ACCESS DISPUTE RESOLUTION COMMITTEE

MINUTES of MEETING No. 68 held in London on 18 August 2004

Present:

Tony Holland, Chairman
Bill Davidson (Network Rail)
Elaine Davies (Eurostar (U.K.))
Julia Glenn (Network Rail)
Bil McGregor (ScotRail Railways)
Nigel Oatway (English Welsh & Scottish Railway)
Alan Wilson (Wessex Trains)
Niel Wilson (North Western Trains)

In attendance:

Chris Blackman (Secretary)
Martin Shrubsole (Clerk)

Apologies:

Ian Osborne (Freightliner)

68/1 Introductions

The Chairman welcomed Alan Wilson, Managing Director of Wessex Trains, to his first meeting of the Committee.

68/2 Deputy Chairman

Nigel Oatway was elected unopposed as Deputy Chairman of the Committee in succession to Tim Clarke. Members agreed that he should also replace Tim Clarke as one of the five signatories able to authorise Committee expenditure.

68/3 Minutes of meeting no.67

The minutes of meeting no.67 held on 14 July 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.

68/4 Matters arising from the minutes of meeting no.67

67/3 [64/7] Proposals for Change to the Access Conditions and ADRR

The changes approved by the Office of Rail Regulation had come into effect with the Network Code on 1 August 2004.

68/5 Hearing of reference AD36 from Thames Trains

Members noted the submissions that had been supplied by the parties and the sizeable bundle of appendices. The Chairman commented that there were significant legal issues underlying the parties' positions, including the application of the Limitation Act, the law of Restitution and [possibly] the Landlord & Tenant Act.

It was noted that the parties had not, despite encouragement from the Secretariat, elected to attempt to resolve the issues through mediation, but it was appropriate that the Chairman should now direct them to do so. The Chairman signed a formal set of directions to the parties to proceed to mediation in accordance with section B of the Access Dispute Resolution Rules, and this was issued to the parties concerned. The parties agreed to meet with the Disputes Secretary after the termination of the Committee's meeting in order to commence the processes set out in section B.

68/6 Changes to the Access Dispute Resolution procedures

Members noted that a paper from the Secretariat will shortly be circulated for comment. The Chairman reported that, accompanied by the Secretariat, he had attended a useful meeting with Chris Bolt and others at the Office of Rail Regulation. There had been a clear indication that the Office of Rail Regulation was willing to consider alternative proposals for an Access Dispute Resolution Regime submitted by the Industry.

It was noted that initial informal discussions, attended by the Secretariat, had already taken place under the auspices of the Class Representative Committee, and would be formalised at that committee's next meeting on 3 September.

68/7 The Regulator's reasons for his decision on an appeal against determination NV33

Members noted that the Secretariat's memorandum on the former Regulator's reasons for his decision on an appeal against determination NV33 will be circulated for comments in advance of the next meeting

68/8 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, have resolved the issues relating to watering facilities at Carlisle, and West Coast Trains has formally withdrawn the reference;

AD35 from Great Eastern Railway concerning reimbursement of cost of repairs and renewals of Retail Telecommunications equipment at Liverpool Street station; now likely to be in abeyance pending completion of the mediation process in respect of AD36;

AD37 from Thames Trains concerning reimbursement of cost of repairs and renewals of Retail Telecommunications equipment at Paddington and Gatwick Airport; now likely to be in abeyance pending completion of the mediation process in respect of AD36;

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.

68/9 Preparation of the 9th Annual Report

The publication of the annual report had been held up pending publication of the belated reasons for the Regulator's decision on the appeal in respect of reference NV33, and the Regulator's decisions on the proposals consulted during June on the future of the Access Dispute Resolution Regime. Members agreed that they wished now to proceed to publication subject to incorporation of a suitable paragraph explaining what had happened, and outlining the steps that the Industry was intending to take to consider alternate procedures for access dispute resolution.

68/10 Any Other Business

Statement by the Chairman

The Chairman explained that, in the light of the proposed reform of the Access Dispute Resolution Regime published in a notice given under Network Code Condition C8, he considered that it would be appropriate that he resigned as Chairman. In his view the role of the Chairman would change radically in the future, and the advent of a Counsel to the Committee would diminish the need for the Chairman to be legally qualified. Furthermore, his input and opinion on the forthcoming changes would carry more weight if he were seen to be without any interest in the outcome.

Members expressed concern at this announcement of his intention, and strongly urged him to stay. The Committee needed him to act as a spokesman, and for the wealth of his experience and specialised knowledge, which gave authority to his views and opinions. Members stressed that the way in which he had discharged his duties throughout his tenure of the position of Chairman, and particularly in recent months in discussion both informal and formal about the proposed changes, meant that he had the full confidence of the Committee.

Members reminded him that the industry was intending to conduct its own review and to formulate alternative proposals during the coming autumn. Members pointed out that there would be technical difficulties in accepting his resignation as the uncertainty about the future role of the Chairman made it difficult to specify with confidence the future role of the Chairman (and thus to advertise for a successor). The Members stressed that they wished him to stay at the helm, and strongly urged him to reconsider his position and intention, at least through any transitional period.

After further consideration the Chairman agreed to withdraw his resignation.

68/11 Date of next meeting

Members agreed that it was not necessary to meet on Tuesday 24 August; nor on 15 September as there was no specific business for the quarterly meeting. Members will, however, consider the issues in the forthcoming memoranda from the Secretariat [see minutes 68/6 and 68/7 above] and comment in correspondence.

The next meetings are scheduled to take place on Wednesday 29 September and Wednesday 13 October