
NETWORK and VEHICLE CHANGE COMMITTEE

Determination no. NV 58

Hearing held at Kings Cross on 19th April 2004

[Note: previous published determination was determination NV 57]

1. The Committee was asked to determine whether or not Network Rail Infrastructure Ltd (Network Rail) was entitled to implement a Network Change, contained in the proposal of 10th November 2003, to close and recover Ruscombe Up Goods Loop (“the loop”) on the Great Western Main Line (GWML), and to plain line the Up Relief Line (URL). The first elements of the work required would be undertaken in early Summer 2005, in possessions already identified in Version 2 Rules of the Route for 2005; the loop would be unavailable to trains from that date.
2. The reference was brought jointly by Network Rail, English Welsh & Scottish Railway Limited (EWS), GB Railfreight Ltd (GBRf), First Great Western (FGW), Thames Trains Ltd (now First Great Western Link) (TTL), all of whom took part in the hearing, and by Virgin Cross Country, who were not represented at the hearing.
3. The Committee found as matters of fact that
 - 3.1. The points (installed 1975), and the catch points (installed 1942), at the entry to the loop were approaching life expiry, and required to be renewed, or plain lined, by no later than 2007. Renewal of the points (both mainline and trap points) at the loop exit would not normally be scheduled until 2010.
 - 3.2. The loop is currently able to accept freight trains of up to 78SLUs length. If the points at either end of the loop were to be renewed in the appropriate RT60 Rail, and to modern 40mph configurations, the limits on the land available would result in a reduction in the effective length of the loop to 73SLUs.
 - 3.3. The scheduled length for many freight trains on the GWML is for more than 80SLUs.
 - 3.4. The loop is not available for use by trains conveying passengers
 - 3.5. Analysis of “Control Centre of the Future” (CCF) data had identified that, in a recent period of 21 months (644 days), the loop had been used by trains on 161 occasions. The only regular timetabled use of the loop related to Friday Only light engine movements, although some planned use is made of the loop in fulfilment of Short Term Planning/Spot Bid requirements. The trains using the loop are split between revenue earning trains and engineering trains run at the behest of Network Rail.
 - 3.6. Figures stated for renewal, or for recovery, of the loop, appeared to suggest that renewal would cost around twice recovery, in the short term, and would be accompanied by ongoing switch and crossing (S&C) maintenance costs.

- 3.7. There was no dissent that the need for a decision on the future of the loop was driven by the deteriorating state of the entry points, and could not be long deferred.
4. It was the contention of Network Rail that the loop no longer served a strategic purpose, and that the economies from recovering the assets, rather than renewing them, meant that this was the most responsible course to take in the discharge of the stewardship of the overall Network.
5. The Train Operators, by contrast, argued that, in the interests of both future growth prospects, and retaining facilities to cope with perturbed working, the loop should not be recovered, but should be renewed as necessary, to keep the facility in full working order. In addition the argument was advanced that the removal of the loop would constitute a change in the “freight operating constraints” and that, for this reason alone, it should potentially be challenged. The Train Operators were also of the view that any closure of a recessing facility on the GWML should be considered as unwise and premature when GWML timetables were in a state of uncertainty as a consequence of
 - 5.1. the combining of the FGW and TTL services with effect from December 2004;
 - 5.2. the possible conclusions of a Capacity Utilisation Study about to be launched, and
 - 5.3. the practical impact of the “2 Track Railway Timetable” maintenance strategy.
6. In respect of the due operation of the laid down procedures in Track Access Condition G, the Committee found that
 - 6.1. Network Rail had complied with all necessary timescales in respect of the issuing of the Network Change notice, and of the bringing of a reference to the Committee.
 - 6.2. Network Rail had been zealous in issuing reminders to all Train Operators as to the dates by which responses, and/or objections should be submitted. It was worthy of note that some of the parties to the dispute had not actually complied with the prescribed deadlines, but had nevertheless been admitted as parties to the formal dispute.
 - 6.3. Condition G2.1 prescribes that “*the Train Operator shall give notice to [Network Rail]*” in a number of specifically defined instances. This is the mechanism by which the Train Operator is enabled to protect its own interest, provided it is done in a way that complies with the Condition, both as to content, and timeliness.
 - 6.4. In this case, the terms in which the objections or statements, as prescribed in Condition G2.1 (a) or (b), had been expressed by the Train Operators were largely general, and did not “*contain such detail as is reasonable to enable [Network Rail] to assess the merits of the Train Operator’s decision*”. In particular,
 - 6.4.1. no instances were advanced as evidence that “*the implementation of the proposed change would necessarily result in [Network Rail] breaching an access contract to which that Train Operator is a party*” (Access Condition G2.1(a)(i));
 - 6.4.2. no instances were advanced as evidence that “*[Network Rail] has failed....to provide sufficient particulars to that Train Operator...*” (Access Condition G2.1(a)(ii));

- 6.4.3. no instances were advanced as evidence that “*the implementation of the proposed change would result in a material deterioration in the performance of that Train Operator’s trains which cannot adequately be compensated under this Condition G2 (Condition G2.1(a)(iii)); and*”
- 6.4.4. no notice had been given in compliance with Condition G2.1(b) that any Train Operator “*should be entitled to compensation from [Network Rail] for the consequences of the implementation of the change*”.
7. The Committee noted that a significant part of the exchanges between the parties related to the differing interpretations that could be put upon the figures for the relative costs of recovery and renewal. The Committee considered that these arguments related essentially to Network Rail’s internal evaluation procedures. As such, they would only come within the jurisdiction of the Committee in circumstances where they were being presented as justification for “*breaching an access contract to which that Train Operator is a party*”. Where no such breach has been substantiated, the Committee may note the existence of a process, but has no jurisdiction to make a judgement as to its adequacy.
8. Similar considerations apply in relation to any views of the Committee on the merits of the Network Change proposal within the context of the current performance of the GWML. Were the proposal likely to have a demonstrable impact upon a defined access right, then, as part of its assessment of the relative merits of the respective cases, the Committee would be empowered to express a view as to the rightness or wisdom of the proposed course of action. As far as this Network Change is concerned, in the absence of such a demonstrable impact, the Committee has no jurisdiction to pass any such judgement.
9. Taking all considerations into account, the Committee decided that, within the terms of the Track Access Conditions, no adequate demonstration had been made that any Train Operator had, or would, suffer detriment to a degree that gave the Committee grounds for ruling against Network Rail. In reaching that decision, the Committee sought to balance the following factors:
- 9.1. There must always be great care taken in any decision that results in the reduction of Network capability, in particular in respect of facilities that can help to minimise the impact upon service perturbations. As a general rule facilities that are closed are unlikely to be easily re-instated. In the context of continuing performance problems on the GWML, Network Rail should be particularly mindful of the need to make a soundly based decision on such a matter.
- 9.2. Whatever the merits of the particular case, Network Rail was to be commended on the fact that it was seeking to apply a structured approach to ensuring that S&C renewal funds were deployed to best effect. The Network Change procedure is the prescribed means to ensure that the decisions consequent upon such an approach can be properly assessed, and, where appropriate, challenged and qualified.
- 9.3. In respect of some elements of the freight operating constraints, namely the Rules of the Route/ Rules of the Plan, there is ample precedent, in the determinations of both this Committee, and of Timetabling Committee, that changes can be opposed, and

overturned, but only on the basis that changes would infringe specific access rights. There is no precedent for challenging change in the generality.

9.4. It would be illogical to treat other aspects of the freight operating constraints differently. At any time they are the product of past history and duly applied change procedures (Condition D or Condition G as appropriate), and any objection to change should logically require to be justified on the basis of identified specific impact on contractual rights. It cannot be right to challenge a Network Change solely on the grounds that it would result in change to the Network.

9.5. Where no rights, or reasonably prospective rights, are infringed, it would be wrong to curb Network Rail's freedom to exercise its discretion as to the detailed management of the Network, given that it is Network Rail that is the accountable body for both the efficiency and the safety of that Network.

10. The Committee therefore determined that

10.1. if Network Rail has satisfied itself that the closure of the Ruscombe Up Goods Loop is the best use of its resources, and that it is prepared to sustain any consequent performance risks, then it may proceed with the Network Change;

10.2. if Network Rail wishes, as part of managing its relationship with the Train Operators, to invite further representations in respect of compensation possibly payable under Condition G2.1(b), it shall not be barred from so doing. However,

10.3. as no such representations were lodged by the Train Operators in compliance with the timescales or the letter of Condition G2.1(b), there shall be no requirement for it to act further in this regard.

Sir Anthony Holland

Chairman