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## ***NETWORK and VEHICLE CHANGE COMMITTEE***

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### **Determination NV74**

Hearing held at Kings Cross on 2 September 2004

*[Note: previous published determination was determination NV60]*

#### **Brief Summary of dispute**

1. The Committee was asked by Virgin Cross Country (“VXC”) to determine that the format of the documentation now being supplied by Network Rail in respect of Section 7 of Rules of the Route for 2005 had changed in ways, and to an extent, that it should be construed as a Network Change, and so consulted on using Network Code Part G. By contrast, Network Rail sought a determination that the changes in question were as the consequence of the introduction of the Possessions Planning System (“PPS”), and therefore outside the scope of the definition of Network Change.

#### **The Committee’s standing in respect of the dispute**

2. Although voluminous, the papers presented to the Committee were not self-explanatory, whilst the presentations by the parties also did not expose clearly the points at issue. In considering the reference the Committee therefore had to isolate three discrete aspects of the discontent expressed by VXC, only one of which fell within the jurisdiction of Network and Vehicle Change Committee. Specifically, the issues raised by the parties broke down as follows;
  - 2.1. the information presented at Versions 1 to 4 of Rules of the Route 2005 had contained anomalies and issues that VXC would wish to challenge;
  - 2.2. the volume of the information now presented, and changes in the conventions with regard to the layout of the data, and the highlighting of amendments and deletions, were of such an order that they imposed significant extra workloads on Train Operators, particularly in the case of VXC, who had to deal with the Rules of the Route data across the entire Network. Neither in the past, nor yet currently, was there full consistency of layout of the data as presented by each Network Rail train planning centre;
  - 2.3. the information required to deal with Rules of the Route consultation was no less available than previously; however, it was now drawn directly from PPS, which incorporates a facility for each Train Operator to configure the information into a format that better suited its business needs, although there was a lack of knowledge required to enable this facility to be used by Train Operators. This means that some Train Operators compile their own data configurations manually.
3. In the context of this case as made by VXC, the Committee concluded that matters of data content (2.1 above) should properly be the subject of appeal by VXC, using the appeal protocols and timescales set out in Network Code Part D. Such matters therefore did not fall to be considered by the Network and Vehicle Change Committee.

4. Equally, “any change to any System or System Interface of any System owned or used by Network Rail or a Train Operator” is explicitly excluded from the definition of Network Change, and therefore does not come within the jurisdiction of the Network and Vehicle Change Committee.
5. By contrast, the central issue of concern to VXC, whether or not there had been a change to the format of operational documentation of sufficient significance to qualify as Network Change, is a matter that falls directly within the jurisdiction of the Network and Vehicle Change Committee, and that is the matter that is addressed within this determination. The Committee noted that the interest of VXC in having the matter brought within the scope of Network Code Part G lay in the possible compensation provisions in Condition G2, and that VXC considered that it merited consideration of additional costs incurred to handle the 2005 Rules of the Route consultation.

### **Summary of Evidence presented**

6. The parties, in their joint submission, and in oral evidence, presented
  - 6.1. long and involved correspondence between Network Rail and a number of Train Operators (including VXC), regarding technical and interpretational problems with the information provided by Network Rail to support the 2005 Rules of the Route consultation;
  - 6.2. a selection of off-prints of various hard copy documents, in a variety of formats, some generated for the 2005 Rules of the Route consultation, and some described as renderings of 2005 data into formats used in an earlier consultation;
  - 6.3. the assertion by VXC that there had been a huge (seven-fold) increase in the volume of the data that required to be scrutinised, because Network Rail had provided the Train Operators with the totality of the Section 7 information in PPS, and that, setting aside any questions of data accuracy, the process of scrutiny could no longer be encompassed within the time frames prescribed by Network Code Condition D2.1, other than at significant (but un-quantified) cost in terms of manpower and/or computing capability;
  - 6.4. the assertion by Network Rail that the virtue of PPS was that it contained details of all possessions proposed for all parts of the Network, and that “*Network Rail has always made it clear at consultation workshops held with Train Operators that the use of the PPS would require a change in working practice. The change in working practice requires users to use the system in a similar manner to browsing the internet. It was also expected that users would use the reporting functions to “cut and slice data” tailored to the enquiry. Because possession data is held in PPS in more detail, it is inevitable that printing of unfiltered data would result in very large reports*” (Closing statement by Network Rail representative, repeating assertions made under questioning).

### **Issues of Interpretation considered by Committee**

7. In the view of the Committee the matter, as presented by VXC related to four aspects of the definition of Network Change, namely

- 7.1. did the information in question fall within the scope of “operational documentation” (a term not otherwise defined within the Network Code)?
  - 7.2. had there been a format change?
  - 7.3. had the change met any required measure of materiality? and
  - 7.4. is the change not one that is excluded because it is “any change to any System or System Interface of any System owned or used by Network Rail or a Train Operator”?
8. Only if it could be demonstrated that the matter in question fulfilled all four of these tests could the Committee conclude that VXC had indeed been the beneficiary of a Network Change and was entitled to consideration under Network Code Condition G2.2.

### **Relevant precedents considered**

9. The Committee noted as relevant precedents for its consideration:
- 9.1. AD1, in which the Committee had addressed the question of whether the invoking of the Network Change process required the parties to be in agreement as to whether the Network Change procedures applied. In that determination the ADRC had opined that “it was not open to any party to keep a proposal for change outside the formal processes of Part G unless all parties agreed” and “a reference under Condition G6 to the Network and Vehicle Change Committee would determine the materiality of the change”.
  - 9.2. NV2, in which the Committee had given guidance as to the responsibilities of [Network Rail] in relation to the information that should be procured in respect of weather forecasts, and the extent that, given that such documentation fell into the category of operational documentation, [Network Rail] had to comply with [Network Code] Part G when it sought to discontinue providing such information.
  - 9.3. NV33 (in this aspect unaffected by the appeal findings of the Regulator) underscored that, in any consideration of materiality, the test relates not to the magnitude of any change, but to the consequence, or impact of the change, viz, “likely materially to affect the operation of the Network, or of trains operated by that operator on the Network” (Part G Definitions.).

### **Factors influencing, and reasons for, the Committee’s decision**

10. The Committee can only base its assessment on the information that it was given, and/or which otherwise was known to the Members because it was already common knowledge.
11. In respect of whether or not information provided to support Rules of the Route consultation could be deemed to be “operational documentation”, the Committee concluded that this was documentation to support a process which determined at which locations and at which times, the Network would be made unavailable for the operation of trains. As such it had a direct impact upon both “the operation of the Network” and on “trains operated by that operator on the Network”. For this reason, although the Rules of the Route documentation does not have the intimate real time applicability of, say, the

Rule Book, it has quite as substantial an impact on the formulation of the Working Timetable (indisputably an “operational document”) and the manner in which a train service is operated. It would be illogical therefore to exclude it from the category of “operational documentation”.

12. In respect of the question of whether or not the format of the Rules of the Route consultation data had changed, the Committee was in some difficulty because
  - 12.1. it appeared that there had always been significant differences in local practices;
  - 12.2. in the examples given, it did not appear that the information required by VXC was significantly less accessible than previously, and that, furthermore
  - 12.3. the issue was complicated by a lack of clarity as to whether or not the difficulties alleged by VXC arose because of a lack of understanding of the purpose and workings of PPS.
13. That said the Committee was also left uncertain as to how far Network Rail had actually provided VXC with any guidance or instruction as to how to interrogate the PPS database and manipulate the data to produce the outputs in the format tailored to its needs. The Committee could only judge from
  - 13.1. the assertion from Network Rail that such an answer to VXC’s needs existed and that the failure to take advantage of the facility was due to the lack of effort by VXC; and
  - 13.2. the absence of any assertion to the contrary by VXC.
14. The Committee acknowledged that it had no jurisdiction in respect of the “system” implications, insofar as they are excluded by the Part G definitions. It may, however, have an interest if the consequence of a System change was that information upon which another party depended, both as regard content and ready accessibility (format), was denied to that party. In this case the issues appeared to relate more to excess, rather than denial of data, albeit that such excess compromised the intelligibility of information.
15. The Committee was not satisfied by any evidence presented by VXC that the consequence of the various inconveniences that it had detailed, was that *the operation of the Network, or of trains operated by that operator on the Network*” was materially affected, in the sense that trains will not run that otherwise might have done, or that the operation of trains will be less safe, or less efficient.

### **The Committee’s determination**

16. The Committee therefore determined that:
  - 16.1. Rules of the Route documentation supplied (by whatever medium) to Train Operators, in compliance with Network Code Part D, reasonably fell within the definition of “operational documentation”.
  - 16.2. A change to the **format** of the Rules of the Route could **potentially** fulfil the requirements of the definition of Network Change, **provided that** it also satisfied

the test of materiality in relation to *the operation of the Network, or of trains operated by that operator on the Network*. In these respects the Committee endorses VXC's position that the issue raised **might** be a Network Change.

16.3. The introduction of PPS is not a Network Change. However, the introduction of this system does change the route by which information is collated for inclusion within the Rules of the Route documentation.

16.4. The information that is generated by PPS is intrinsically more comprehensive than has previously been incorporated into Rules of the Route documentation and requires Train Operators to vary their working practices. There is a presumption within PPS that Train Operators will make proficient use of the interrogation facilities installed within PPS to render the Rules of the Route data into the format of most utility to their individual businesses.

16.5. The current situation is that there has not been adequate consultation with, or instruction of, Train Operators in the use of PPS interrogation facilities. It is conceivable that the requirement to address this matter is being obscured by the preparedness within the community of train planners to improvise alternative simplifiers.

16.6. VXC

16.6.1. has not demonstrated, to the Committee's satisfaction, that the degree of change in the format of the Rules of the Route outputs is of an order that it necessarily meets the test of materiality in its impact upon *the operation of the Network, or of trains operated by that operator on the Network*. Equally, it

16.6.2. has not demonstrated, to the Committee's satisfaction, that the approach that it has adopted in relation to the output available from PPS, takes adequate advantage of the facilities provided by the system to facilitate its own decisions and so avoid materially affecting *the operation of the Network, or of trains operated by that operator on the Network*.

16.7. Therefore, notwithstanding that the Rules of the Route documentation is operational documentation, and that it has changed in format, the change does not in the ultimate qualify as Network Change because it has not had the impact that would fulfil the test of materiality.

16.8. The Committee could not support, on the basis of the specific case before it, a proposition that the changes to the documentation in respect of Rules of the Route require to be subject to the provisions of Network Code Condition G2.

17. For the avoidance of doubt

17.1. this conclusion is without prejudice to the right of any Train Operator, including VXC, to bring a further case to Network and Vehicle Change Committee should it consider that Network Rail has failed in its duties in respect of Network Code Condition G2.1(a)(ii) "*to provide sufficient particulars to that Train Operator under Condition G1.1*".

17.2. It is the Committee's expectation that, in the medium term, Network Rail will require to implement fully all the interrogation facilities for PPS. The Committee commends to Network Rail, on the basis of the lack of understanding between the parties evidenced in this case, that it give serious consideration as to whether this implementation might be done most cost effectively, and achieving the highest level of Train Operator "buy-in" and support, by using a process analogous with Part G of the Network Code, or indeed that very Part.

Bryan Driver

Chairman