
TIMETABLING COMMITTEE

Determination No. 105 and 106

(following a hearing at Kings Cross on 7th December 2000)

[Note: previous published determinations were determination no.95, and Determination no.109 and 110. This last was heard on 1st November 2000]

1. The Committee was asked by Freightliner Ltd (FL), and by English Welsh & Scottish Railway (EWS), to rule against Railtrack in respect of the alterations to the Rules of the Route for the 2001/2002 Timetable, proposed in respect of weeknight possessions for the line between Derby and Clay Cross.
2. The Committee noted that both references were made in accordance with Track Access Condition D2.4.6. Although there were differences in both the arguments advanced, and the remedies sought, there was sufficient common ground that, with the agreement of the parties, the Committee elected to consider both references together, and to issue only a single determination.
3. The Committee noted that the point at issue was the proposal, by Railtrack, to revise the present (i.e. Rules of the Route 2000/2001) possession times of 0130-0530 (4 days per week, 10 weeks per year) to become 2325-0530, 4 days per week, 9 weeks per year. For Railtrack the practical benefit of such an amendment was that it increased the utility of each individual possession taken, by extending the productive time remaining, after allowing 40 minutes for set up and termination of each possession, from 3hours 20 minutes to 5 hours 25 minutes, per possession. Furthermore, there would be a 47 % gross increase in productive weeknight possession hours, over the duration of the timetable.
4. Railtrack cited a general concern that the standard of maintenance on the section of line in question had fallen back, and required extra input to restore it to the appropriate level. In addition, Railtrack was concerned to ensure that the available productive time was adequate for various standard tasks, in particular those associated with track welding. Railtrack drew the Committee's particular attention to the applicable Group Standard (GC/EH0032 of September 1993); here standard minimum times are set for planning various welding tasks, ranging from one hour for "Production of a single weld in a multi-weld site excluding grinding" to 3 hours and 40 minutes for "Installation of a closure rail involving two welds and including grinding".
5. The Train Operators, whilst recognising the need for adequate maintenance of such a section of line, objected to the Railtrack proposal because of the impact upon the running of specific services, for which Firm Contractual Rights existed and had been asserted, and for which there were no suitable alternative timings or routings. Thus
 - 5.1. for Freightliner, the revised times would prevent the passage through Derby (due 0036 MX) of 4E76 2013 Millbrook FLT to Leeds FLT, a train operated on contract to P&O; a proposed alternative routing of this train via Castle Donington, Sheet Stores Jct. and Toton would have journey time penalties, and would require Freightliner to carry out significant driver training for a route not currently used by Freightliner services; the

standard industry alternative of hiring route conductors had been explored and found to be undeliverable;

- 5.2. for EWS the revised times would impact on three Royal Mail services:
 - 1E41, 1723 SX Plymouth to Low Fell, (booked Derby 2327-2342)
 - 1E94 2215 SX Bristol Parkway to Low Fell (booked Derby 0048-0103)
 - 1V28, 2024 SX Low Fell to Bristol Parkway (booked Derby 2354-0004);diversions proposed (via the Erewash valley line), to permit the extended possessions, would add 19 to 41 minutes to arrivals at subsequent key points, and would have the additional complication that each train would be reversed leaving Derby: given the asymmetrical form of TPO stock, and the significance of the formations in relation to loading and unloading at intermediate stations, EWS considered this proposal unacceptable in every respect, because it would put it in serious breach of its contract with Royal Mail.
6. In the course of questioning the Committee elicited the following additional matters.
 - 6.1. In addition to a backlog of maintenance, the prospective introduction of a half-hourly CrossCountry service, will raise the maintenance workload: the proposed extended possession times will therefore likely be sought in future Rules of the Route and not just for 2001/2002. However, it is not anticipated that the nine weeks of such possessions will follow consecutively, but will be spread through the full year.
 - 6.2. There is an extensive programme of weekend possessions on this section of line, during the Timetable year: train operators, including EWS (an affected party), had agreed that, for the 2001/2 Rules of the Route, these weekend possessions on the line be increased to cover period 5 as well as period 4.
 - 6.3. Although shorter possessions, and staggered possessions, might not allow some lengthy tasks to be undertaken, there were other tasks, such as tamping of plain line, which could be undertaken safely. This might not be the most efficient use of contractors' resources, but the Decision Criteria (Track Access Condition D4) required that such a consideration was only to be taken into account alongside all the other possible concerns of the Train Operators and Railtrack.
 - 6.4. The existing possessions require the nightly diversion of some 21 other EWS services per week; EWS have made counter-proposals for extended overlapping possessions on the up and down lines which would require the diversion of a further 11 EWS services per week, but would still permit the uninterrupted passage of the three Royal Mail services. EWS have also now made an alternative proposal with minimal overlap of up and down possession times (Up line 0110-0530: Down line 0125-0545) which would give a minimum productive time period for a double line possession of 3 hours and 40 minutes.
 - 6.5. EWS was prepared to accept that possessions in line with this proposal take place on 5 nights per week, and over 10 weeks (as in current arrangements) giving an increase of 38% in total productive time; if a still greater increase in annual weeknight possession hours was required, EWS proposed possessions in line with the above proposal affecting 11 or 13 weeks.

- 6.6. Any of EWS counter proposals would still permit FL's service to run without diversion.
7. The Committee noted that both EWS and Railtrack had sought to depend on determination ttc87 to support their respective positions. The Committee was of the view that this case was different from ttc87 because, in that case, the issue had been a proposal that Rules of the Plan be changed in a way that would mean certain Royal Mail services be timed not in compliance with Firm Contractual Rights, and for the duration of a whole timetable. In this case, the timetable will be compliant with the Firm Contractual Rights. There is a second issue of the precise interpretation of paragraph 7 of Schedule 1B of the EWS Access Agreement, on which ttc87 also opined¹; in the context of the rest of its determination, the Committee took the view that neither party had successfully demonstrated that its interpretation of this provision was either correct, or supported its point of view, and therefore declined to take it into account as a determining factor in relation to the carrying out of the works that Railtrack had described.
8. The Committee determined that:
- 8.1. whilst it accepted that there might be a need for a greater level of works on the line in question, requiring an increase in the total annual possession hours, it had not been convinced by the case that this needed to be achieved by taking possessions that prevented the running of either the FL or EWS services in timings compliant with their Firm Contractual Rights;
- 8.2. Railtrack has not demonstrated that the current times for weeknight possessions are too short to permit the safe carrying out of useful maintenance work; it follows that the longer times proposed by EWS, although shorter than those sought by Railtrack, will be more useful. They do provide the planning time for the welding activities cited by Railtrack; however, they may not, in every instance, provide the appropriate conditions for the possessions to be taken or surrendered safely;
- 8.3. Railtrack is directed to review, in conjunction with its contractors, its whole programme of work for the year 2001/2002 for this section of line, taking account of the totality of the works required, and the totality of the possession times available both at weekends, and during the week under the EWS proposal at 6.4 and 6.5 above, with a view to accommodating all tasks within that programme of possessions;
- 8.4. if, as a consequence of that review, Railtrack considers it is unable to deliver the totality of necessary works, it may propose specific additional possessions; if these impact upon the EWS services in question, then Railtrack may seek to implement them using the Supplemental Timetable Revision Process, Track Access Condition D3.8, recognising that this provision, at D3.8.7, allows the Train Operator a right of appeal.
9. For the avoidance of doubt, the Committee made the following further clarifications:

¹ "Railtrack, in order to permit the carrying out of the planned programme of works, shall be empowered to make use of the provisions of the Supplemental Timetable Revision Process (Access Condition D3.8), and Paragraph 7 of Schedule 1B of the EWS Access Agreement, to vary the timings of 1F02 and 1C00, within the currency of the Timetable. In exercising these discretions, Railtrack will ensure that the impact, and the number of occasions when these trains are required to be timed to run other than in compliance with the contracted timing envelopes, is kept to the minimum." [ttc87 para. 24.3]

- 9.1. until Railtrack has re evaluated the level of possessions required, in accordance with paragraph 8.3 above, the Rules of Route possession times should revert to their current timings of 0130-0530, as these are the only times for which there is agreement;

- 9.2. if Railtrack is able to meet its needs for the year 2001/2002 by adopting the possession times and arrangements set out in paragraphs 6.4, 6.5 and 8.3 above, then it may implement the necessary changes to Rules of the Route;

- 9.3. in the event that Railtrack do seek to include in the Rules of the Route possessions over and above those set out in paragraph 9.2 above, then the Train Operators shall retain the right, if they consider it warranted, to appeal to this Committee against those proposed additional possessions.

Bryan Driver
Chairman
Timetabling Committee