
TIMETABLING SUB-COMMITTEE

Determination No. 11

(Hearing held at Euston House on 22nd March 1996)

The Committee was asked to hear a reference by Rail express systems Ltd (Res) in relation to three claims for which the offers received did not satisfy the terms of the bid.

The Committee satisfied itself that the three claims in question had been the subject of bids that were compliant with the terms of the Res Track Access Contract, an unregulated Track Access Contract in being at 1 April 1994.

Taking account of the representations made, the Committee stressed that it advocated that the parties to complex agreements should engage, from the earliest possible date, in the fullest possible dialogue; and that, furthermore, where one agreement may have an impact for other parties, there should be multi-lateral discussions. The Committee was concerned that discussions should not be delayed, resulting in a need to have fire-fighting recourse to the disputes procedures.

The Committee directed the parties to hold further discussions on the three bids for which no satisfactory offer had yet been received, and required Railtrack to propose offers that would be compliant with the terms of the Res contract.

In giving this direction, the Committee acknowledged that this might only be achievable if Railtrack were to exercise a right to vary an offer already accepted by another operator, as provided for in Access Condition D3.3.5. The Committee ruled that this decision should not imply that other affected operators should be required to accept any modification to their Firm Contractual Rights, nor that they would lose any of their own rights to bring a dispute to the Timetabling Committee. Any proposal from Railtrack would be subject to a test of reasonableness, in relation to its application of the Access Conditions including the Decision Criteria.

Given that time was of the essence, the parties were asked to ensure that the Committee was advised of progress towards a resolution by means of a fax message to the Secretary to be received no later than 17.00 on Wednesday 27th March 1996. Railtrack should ensure that any discussions with other affected parties should have taken place by that deadline, in order that, if there is any consequential dispute, it might be referred to the meeting of the Timetabling Committee scheduled for Friday 29th March 1996.

The Committee further noted that Res, in its submission, had sought to claim that implementation of the Res contract constituted a Major Project. The Committee ruled that this was not the case by the terms of the definition of Major Project in Part D of the Access Conditions.

T.P.Worrall
22nd March 1996