
TIMETABLING COMMITTEE

Determination No. 129

(following a hearing at Kings Cross on 8th February 2002)

[Note: previous published determination was determination no.132 of 30th November 2001]

1. The Committee was asked by English Welsh & Scottish Railway Ltd (EWS) to find that Railtrack should be directed to amend the proposed Rules of the Route for the route section between Preston and Law Junction, so that paths could be found for two mail (Consignia) and two express freight services, compliant with their declaration (their asserted Firm Contractual Rights (FCRs)) made under Track Access Condition D2.1.2.
2. The Committee noted that Railtrack's proposals for revised Rules of the Route had been progressed in accordance with the procedures laid down in Track Access Condition D2.4, and that first advice of a possible dispute had been notified to the Secretary to the Committee within all the laid down timescales. Since that date the parties had engaged in intensive discussions, as a consequence of which the number of train paths in dispute (over the northern half of the West Coast Main Line) had fallen to the four now in question.
3. The Committee commended the parties for the thoroughness of their (clearly documented) dialogue and the fact that it had led to a very large measure of agreement, in respect of a large number of other services. At the same time the Committee was concerned that the formal dispute had not finally been brought to its attention until so much time had elapsed, and the 2002/3 Timetable brought to such an advanced state of finality, that there was the possibility that the Committee might consider its freedom to determine the matter on its merits to be constrained by the practical difficulties of making late changes to the Timetable.
4. Railtrack's proposals were for the Rules of the Route to provide for longer weeknight possessions than in previous years, together with a cyclic pattern of Single Line Workings constraining the capacity of the route (regardless of direction) to a total of 4 trains per hour during the hours affected. The location of the Single Line Working would alternate during the week between a worksite on Scotland Zone and one on North West Zone. By these means Railtrack aspired to achieve a much higher level of output per possession taken, and so start to achieve the necessary on-going volume of maintenance.
5. The consequences of implementing such Rules of the Route for EWS, and the subject for this hearing were that
 - 5.1. the timing envelopes for two Royal Mail services (1C00 Willesden RMT to Carlisle, and 1S09 Cardiff Central to Shieldmuir RMT) could not be met, with 1C00 being timed to arrive 24 minute later than specification at Carlisle on three days a week, and 1S09 to arrive 8 minutes later on five days per week;

- 5.2. two recently instituted express freight services between Walsall Tasker St and Aberdeen PD (1S03) and between Walsall Tasker St and Inverness TC (1S05) had not been offered any acceptable paths in the 2002/3 Timetable.
6. EWS was concerned that
 - 6.1. both 1C00 and 1S09 were key postal services, playing a significant role in Consignia's overall mail handling arrangements. In the context of other recent service withdrawals by Consignia (as a sequel to service disruptions following the accident at Hatfield in October 2000), EWS was fearful that the timings proposed would cause these two services also to be withdrawn. This would in turn put the corresponding Up workings at risk;
 - 6.2. both 1S03 and 1S05 represented new services serving precisely those markets which were key to the Strategic Rail Authority's aims to increase Rail freight carryings by 80%. There had been significant investment in terminals to launch these new services on behalf of parcels' forwarders, and the momentum to develop this new market could easily be lost.
7. The Committee accepted that, in the view of the parties, the works that Railtrack intended should be undertaken in the extended possessions were necessary, and that the Network would be in a better state to meet the traffic aspirations of the Train Operator as a result. This common understanding had helped the parties reach agreement on satisfactory paths for all but the 4 remaining services in question. At the same time the Committee was concerned to press Railtrack as to
 - 7.1. the extent to which it was making the fullest possible use of weekend possessions;
 - 7.2. the measures it was pursuing to reduce the length of (unproductive) time needed to set up and give up each possession, and the extent to which such productivity gains might permit a reduction of the duration of some of the proposed possessions; and
 - 7.3. its reasons for starting the blockages at the hour chosen, as compared with the alternative of starting later, and finishing correspondingly later in the morning.
8. Past determinations of this Committee (and, in respect of Major Project Notices, of the Network and Vehicle Change Committee) have generally taken the view that a change to the Rules of the Route (or indeed to the Rules of the Plan) cannot be enforced, if to do so would result in Railtrack being unable to satisfy any FCRs that a Train Operator has duly asserted. In this case the situation was complicated because there has been no settlement as between the parties as to the rights of EWS in respect of the 2002/3 Timetable, and indeed there is an application tabled with the Regulator for Access Rights to be granted under Section 17 of the 1993 Railways Act.
9. The practical implications of this situation for this Determination are that, as at the date of this hearing, EWS does not enjoy any FCRs expressed in terms that might warrant the Committee taking the view that the proposed Rules of the Route should be rejected, or modified, because they led to a curtailment of rights. There are however differences between the two groups of services:

9.1. whilst the timing envelopes for 1C00 and 1S09 are part of the not yet re-negotiated rights, there are residuary rights derived from the Royal Mail contract in force at the incorporation of Railtrack. These residuary rights, although they have been subsumed into subsequent EWS/Railtrack Track Access Agreements, still have some years to run. However

9.1.1. those residuary rights do not reflect many of the origins, calling points or destinations of the services EWS now aspire to operate;

9.1.2. Track Access Condition D2.1.2 does not provide for a Train Operator to make parallel alternative declarations. As EWS' declaration followed the detail of the more recent contract, any claim for paths under the undeclared residuary rights would relate only to quantum;

9.1.3. Railtrack has given notice to EWS of a wish to negotiate changed rights in respect of Consignia services in any new Track Access Agreement;

Nevertheless the Committee considered that the combination of such residuary rights, and the immediate past Track Access Agreement do confer general obligations on Railtrack in respect of providing a certain level of service to the Royal Mail. The issue for the Committee was whether that obligation could reasonably be construed to have been met by the offers in respect 1C00 and 1S09;

9.2. by contrast, Railtrack was adamant that any rights that had been agreed in respect of 1S03, and of 1S05, for the 2001/2 Timetable, had been subject to the specific caveat that no equivalent paths could be guaranteed in subsequent Timetables. EWS had stressed the importance, for the fulfilment of the long term SRA strategy for Freight, of initiatives such as these, and the need to ensure that they are pathed competitively. Railtrack, in its turn, did acknowledge the commercial significance of the services for the Train Operator, but did not see this as implying that it was under an obligation to perpetuate the previous paths.

10. The Committee, in making its determination, therefore considered the following factors to be decisive:

10.1. the changes proposed for the Rules of the Route for the 2002/3 Timetable were necessary, in order to meet a significant increase in the maintenance workload. That workload, and therefore the necessary Rules of the Route, was not likely to diminish in the foreseeable future, even with further progress on the productive use made of possessions, and of Single Line Working;

10.2. there was no dispute in respect of Railtrack's assessment of the necessary nature of the works for which the revisions to Rules of the Route were being sought;

10.3. previous determinations of this Committee, and of Network and Vehicle Change Committee, had consistently upheld the proposition that changes to the Rules of the Route cannot be enforced, where to do so would curtail the asserted Firm Contractual Rights of Train Operators;

10.4. in the current case, Access Rights for the Parcels Trains 1S03 and 1S05 had specifically only been granted in respect of the 2001/2002 Timetable. The rights, as at the date of this hearing, in respect of the timings (but not of the quantum) for the Consignia services 1C00 and 1S09 were not effective beyond the end of the 2001/2002 Timetable. The status of these rights was a matter of common ground between the parties.

11. The Committee therefore determined that

11.1. Railtrack should be allowed to implement the disputed Rules of the Route for the 2002/3 Timetable;

11.2. EWS should be directed to accept the paths proposed for 1C00 and 1S09, as being reasonably compliant with their aspirations in respect of rights still to be confirmed;

11.3. Railtrack should continue to seek, for the Walsall-Scotland parcels services, two paths as nearly comparable with those in the 2001/2 Timetable as is compatible with the proposed Rules of the Route for 2002/3.

Bryan Driver
Chairman