
TIMETABLING SUB-COMMITTEE

NOTE OF EXTRAORDINARY DELIBERATIONS (MEETING AT EUSTON HOUSE 1ST JULY 1996)

1. This is a note of extraordinary deliberations by the Timetabling Committee at a meeting held to address representations received from South Wales and West, Central and Cross Country Train Operating Companies, in relation to aspects of Section 6 "Train Planning Process" of the Rules of the Plan for the Summer 1997 Timetable.
2. Having heard the representations from the TOCs, and from Railtrack, the Committee decided that, for technical reasons described below, it could not accept the representations as a formal reference under the Access Dispute Resolution Procedures, and therefore it could not make a formal determination. Nonetheless, the Committee considered that, in order to reach that decision, it had required to address matters of process and interpretation that should be published as an aid both to the future conduct of the periodic review of Rules of the Route and Rules of the Plan, as prescribed in Track Access Condition D3.4.1 - D3.4.5, and to the operation of the Access Dispute Resolution Procedures.
3. The representations from the TOCs sought to challenge Railtrack
 - 3.1 for having introduced large amounts of changes, and new material, to Section 6 of the Route Compendium "Train Planning Process", at the final Rules of the Plan Proposal stage (Track Access Condition D3.4.4(a); and
 - 3.2 in relation to specific parts of the new material, as they affect bids for dated services, Bank Holiday special arrangements, and occasional WTT only (i.e. non-passenger) trains.
4. The Committee noted that the points at issue should properly have been identified, and made the subject of reference to the Committee within seven days of the publication of the Rules of the Plan Proposal, as required by Track Access Condition D3.4.5. In practice, the matter had been formalised only after the expiry of the seven day deadline and following the circulation, by the Secretariat at the Committee's request, of a letter dated 19 June 1996, offering to consider late representations on Section 6 "Access Planning Process" of the Route Compendium.
5. The Committee reviewed the scope of its powers and decided that, as the timescales for the referring of challenges to the Timetabling Committee are specified on the face of the Track Access Conditions, such timescales could not be extended without formal amendment of the Track Access Conditions in accordance with the procedures in Track Access Condition "C". The Committee therefore concluded that it could not reach a determination, binding on the parties, in relation to any of the specific points at issue within Section 6 "Access Planning Process", (i.e. paragraph 3.2 above).

6. In making this decision the Committee stressed that:
 - 6.1 the Access Planning and the Access Dispute Resolution processes rely upon compliance with prescribed deadlines;
 - 6.2 compliance with deadlines means that each Access Party must take responsibility for reviewing documents submitted for consideration within the prescribed deadlines, if it wishes to protect its right to make a subsequent reference to the Committee;
 - 6.3 failure to make a reference within the prescribed deadline will commit the Access Party to observing the emerging Rules as contained in any final Proposal; however, this does not preclude any reference at a subsequent consultation cycle conducted in accordance with Track Access Conditions D3.4.1 to 3.4.5.
 - 6.4 The Committee, in deciding it cannot make a determination on the late references in relation to Section 6 is not to be construed as having expressed either its support or lack of support for Section 6, in the event of any future dispute relating to the content and force of Section 6.

7. The Committee was concerned that where deadlines are set for responding to processes of consultations such deadlines require that the consultation itself is conducted in a manner subject to tests of reasonableness. The Committee reviewed the content of Track Access Condition D3.4.1 to D3.4.5 and concluded that, as drafted, this condition invited tests of reasonableness such as:
 - 7.1 are the changes contemplated justified in terms of either D3.4.1(a) or (b)?
 - 7.2 Has Railtrack consulted with each Train Operator "likely to be affected by the applicable Rules of the Route or the applicable Rules of the Plan"? (D3.4.1)
 - 7.3 Has Railtrack served each Bidder with the notice of changes required by D3.4.2(a)? Has it supported that notice with "its reasons" as required by D3.4.2(b)?
 - 7.4 Has Railtrack engaged in discussions with each Bidder as required by D3.4.3(a)? And/or received representations from Bidders in line with D3.4.3(b)?
 - 7.5 Can Railtrack demonstrate that the changes that it decides to adopt (D3.4.4(a)), and to notify to Bidders (D3.4.4(b)), could reasonably have been expected by Bidders as a result of the procedures carried out in compliance with D3.4.1 to D3.4.3?
 - 7.6 Has the whole process prescribed in D3.4.1 to D3.4.5 been conducted in such a way, for example, by the use of "highlighting" to denote changes in successive texts, that any TOC might reasonably expect to identify and review any changes in time, if necessary, to "refer any aspects of the proposal... for determination by the Timetabling Committee under condition D5,... within 7 days" (D3.4.5).

8. The Committee was concerned to note explicit references within Section 6 to representations from a body "GBPRT Board" which is not an "affected Bidder" within the terms of D3.4.1 to D3.4.5.
9. In the context of the Summer 1997 Rules of the Route and Rules of the Plan the Committee exhorted Railtrack to review the manner in which it had discharged its obligations under D3.4.1 to D3.4.5, and, to the extent to which it might be considered that this manner did not meet possible tests of reasonableness, to exercise discretion in the manner in which it implemented Section 6 "Access Planning Process" of the Route Compendium.

Bryan Driver
Chairman, 3rd July 1996