
TIMETABLING COMMITTEE

Determination Nos. 211, 212 and 213

(following a hearing at Kings Cross on 23rd March 2004)

[Note: previous published determination was determination no. 205]

- 1 The Committee was asked by three Train Operators (Freightliner Ltd (FL), English Welsh & Scottish Railway Ltd (EWS), and ScotRail Railways Ltd (SRR) to direct Network Rail Infrastructure Limited (Network Rail) that new 36-hour blockades of the West Coast Main Line, formally documented only on 8th March 2004, and the first of which would take place on 27th March 2004, should not take place as proposed.
- 2 Network Rail asked the Committee to uphold its right to introduce the specific new blockades (between Hemel Hempstead and Bletchley) on the grounds that
 - 2.1 the works remaining to be completed before the introduction, in September 2004, of an enhanced Timetable, permitting 125mph running on the WCML required blockades beyond those previously agreed through the laid down procedures for Rules of the Route/ Rules of the Plan (Track Access Condition D2.4 (White Pages); and that, therefore,
 - 2.2 it had complied with Section 3 of the National Rules of the Route/ Rules of the Plan “*Procedure for Altering Rules of the Route/ Rules of the Plan other than with effect from a Passenger Change Date*” (PARTP) Version 7.0 May 2003, in bringing forward new proposals.
- 3 The case made by EWS had two discrete elements, namely that
 - 3.1 In the circumstances of this case, Network Rail had no right under PARTP to introduce such a radical increase in the number (and scale) of all-line blockades, at such short notice as compared with the criteria laid down in PARTP 1.2, and that
 - 3.2 The timescale that Network Rail was seeking to impose offered little scope for the parties to propose and agree alternative timings or routings of the 50 plus services affected, not least because the necessary resources and routes were already subject to other commitments.
- 4 FL advised the Committee that its case against Network Rail’s actions was essentially the same as those advanced by EWS, except that FL was concerned that the proposed long blockades would impact upon 18 services, of which 11 are definitely required to run.
- 5 SRR advised the Committee that its concern was primarily to establish the point of principle that Network Rail had acted beyond its contractual rights in introducing new and severe blockades without due regard to the Informed Traveller criteria included in PARTP 1.2. There appeared to be a realistic prospect that an alternative route, meeting the needs of most of its customers, could be found for the sleeper services affected by the proposed blockades in question

6 The Committee reviewed its jurisdiction in this case, being a reference made in accordance with paragraph 5.4 of PARTP, and found that, under its powers, as defined in Track Access Condition D5.5.3(a), it had the discretion

“(i) to direct [Network Rail] to comply with directions which specify the result to be achieved but not the means by which it shall be achieved (“general directions”); or

(ii) to direct the parties to accept any submissions made by [Network Rail] as to any Train Slots”.

7 The Committee considered that these powers were sufficient for it, having reviewed the evidence presented by the parties,

7.1 to confirm whether or not Network Rail had acted in compliance with the procedures set out in Track Access Condition D and PARTP;

7.2 to direct the Train Operator as to whether or not it was entitled to insist upon the running of certain services, and therefore

7.3 to determine whether or not Network Rail could, within the interpretation of the Track Access Agreement and the Track Access Conditions (and any National Rules of the Route/ Rules of the Plan agreed in accordance with Track Access Condition D2.4), proceed with the desired blockades on the dates proposed.

8 The Committee found as matters of fact that

8.1 The imperatives associated with the completion of works in time for the introduction of the enhanced Timetable in September 2004, were recognised by all parties. The Train Operators did not, however, accept that the problems associated with delivery of those works had only manifested themselves so recently as to require precipitate action to impose a programme of possessions without regard to the Train Operators’ access rights.

8.2 The Train Operators held rights in respect of all the services in dispute.

8.3 The potential number of services to be affected by 36-hour blockades, could be materially varied, according to the start/finish times. In the case of late notice blockades, these would normally be matters that would be resolved through the processes of consultation specified in PARTP.

8.4 In this instance the Train Operators had only had a first intimation of the requirement for new blockades at a meeting on 4th March. This meeting had outlined requirements, which had then been issued, as a formal document for consultation, on 8th March. On 10th March, and before the lapse of laid down periods for consultation (10 working days PARTP 4.1) Network Rail advised all the Train Operators that the possessions, generally as advised at 8th March, would be imposed by Network Rail.

8.5 The appeals from the Train Operators were brought on the grounds that Network Rail, in seeking to impose blockades in this way, was acting beyond its contractual rights.

- 9 The Committee considered the full force of PARTP, and whether it could be interpreted as conferring upon Network Rail rights to impose a new blockade in the manner to which the Train Operators were objecting. In particular, the Committee considered the implications of PARTP 1.3, which states that *“Where a need arises to amend Rules of the Route/ Rules of the Plan to cater for urgent safety requirements or other emergency situations, all parties concerned will co-operate in accelerating the normal timescale in this procedure commensurate with the urgency of the circumstances”*.
- 10 Taking all these considerations into account the Committee concluded that
- 10.1 The procedures for agreeing Rules of the Route/ Rules of the Plan, and for introducing amendments between Timetable Change dates are clearly documented in Track Access Condition D2.4 and PARTP.
- 10.2 The function of PARTP is to ensure that, where it is unavoidable that Rules of the Route/ Rules of the Plan must be amended, this is done with the minimum impairment of Train Operator’s asserted Firm Contractual Rights, and to Timescales that are consistent with the Informed Traveller process.
- 10.3 Network Rail is entitled to propose any change that it considers necessary to the Rules of the Route/ Rules of the Plan, in accordance with the PARTP; however, unless or until, it has proposed, and had agreed, an amendment to PARTP, in conformity with the procedures laid down in Condition D2.4, Network Rail may not expect that proposals made under PARTP, but not compliant with the timescales in PARTP 1 Introduction, will be agreed to by Train Operators.
- 10.4 Network Rail is entitled to rely on the force of PARTP 1.3, in circumstances where it can demonstrate that there are relevant exceptional factors that require it to achieve speedy agreement for changes; however
- 10.4.1 Network Rail has not brought forward any compelling argument as to why the circumstances of this case, where the new blockades are sought because the agreed Rules of the Route/ Rules of the Plan have not delivered the anticipated output, should be construed as *“for urgent safety requirements or other emergency situations”*.
- 10.4.2 The provision in PARTP 1.3 to *“accelerate the normal timescale in this procedure commensurate with the urgency of the circumstances”*, creates an obligation that falls as onerously upon Network Rail as it does upon the Train Operator. It offers the facility by which the parties may, by agreement, dispense with the normal laid down periods for proposals and responses. It does not create any right, for either Network Rail or the Train Operator, to circumvent the need to reach agreement through a process of consultation, or to impose one point of view.
- 11 The Committee therefore determined, in accordance with its powers under Condition D5.5.3(a)(i), that Network Rail is not entitled under either Track Access Condition D, nor PARTP, to impose the proposed additional 36-hour blockades in weeks 1, 2, and 4, to the detriment of the contractual rights of FL, EWS or SRR. Unless it can

demonstrate that, with its collaboration, the Train Operators have been enabled to run alternative services in reasonable fulfilment of their rights, Network Rail is directed to desist from taking the extended 36-hour blockades between Watford and Bletchley on the weekends of 27th/28th March, 3rd/4th April, and 17th/18th April.

Bryan Driver

Chairman of Committee