
TIMETABLING COMMITTEE

Determination No. 252

(following a hearing at Kings Cross on 25th February 2005)

[Note: previous published determination was determination no. 251]

Brief Summary of dispute

1. The Committee was asked by Northern Rail Limited (NRL) to find that the arrangements, proposed in Alterations to Rules of the Route 2004/5, for three 52 hour weekend possessions at the end of July 2005, between Armathwaite and Petheril Bridge Junction, were unreasonable as to their timing, and should not be allowed to proceed.

[Note 1: This dispute originated during the period when the passenger franchise for the Settle and Carlisle route was held by Arriva Trains Northern. During the currency of the dispute the Franchise, with all attendant rights and responsibilities, has transferred to Northern Rail Limited, and it is in the name of Northern Rail Limited that were made to the Committee. For simplicity the appellant is referred to throughout as Northern Rail Limited (NRL).]

Note 2: All procedures invoked by the parties were those governed by the version of Part D of the Network Code in force between August 2004 and January 2005.]

2. The possessions are proposed to allow the complete renewal of all the current main line connections (totalling 6 point ends) at Howe and Co Sidings, the fringe signal box to Carlisle Signalling Centre for the Settle and Carlisle route. The dispute arises because there have been a series of proposals and counter-proposals as to the scope and timings of the works to be undertaken, which have not led to a basis for agreement between NRL and Network Rail.

Other Interested parties

3. At the centre of the dispute is that fact that, whilst NRL is the only operator of scheduled passenger services over the route, for which it holds clear Firm Rights, the Settle and Carlisle line is also used by growing volumes of freight (in particular coal from Scottish sources to English power stations), and is also the strategic diversionary route for all traffics when the West Coast Main Line is not available. The Committee took into account representations on the prospective interests and concerns of English Welsh & Scottish Railway (EWS) and Freightliner Heavy Haul (FLHH).

The Committee's considerations of principle in respect of the reference

4. Disputes of this nature have been considered by the Committee in the past, and, in general, require the Committee to weigh up, by reference to the Decision Criteria (Network Code Condition D6), the relative standings of

- 4.1. the Firm Rights of the Train Operator to operate trains at specified times;

- 4.2. the scale of any detriment to the Train Operator’s business (including the ability to meet contractual obligations to outside parties) resulting from the taking of the proposed possessions;
- 4.3. the extent to which the Train Operator would be able to provide alternative services, either using diversionary routes or by road transport;
- 4.4. the rights of Network Rail to take the possessions, in effect to cause them to be included within the “*applicable Rules of the Route*”;
- 4.5. the extent to which the need for the possessions can be substantiated by reference to such factors as
 - 4.5.1. the need to do works (whether renewals or maintenance);
 - 4.5.2. the implications of doing the works at the times specified, or over the durations specified;
 - 4.5.3. the engineering choices made by Network Rail; and
 - 4.5.4. the impact on the business of other Train Operators on the route concerned of the proposed duration and dating of the possessions, and any change to these sought by the appellant.
5. In addition, the Committee may consider the adequacy of the procedures adopted by the parties to the dispute, including the extent to which there has been full and sufficient consultation on any proposals.

The Committee’s findings of fact in respect of the reference

6. The Committee noted that NRL held Firm Rights for 6 round trip services between Leeds and Carlisle on Saturdays, and for three round trips on Sundays. The Sunday service increases to 5 round trips on Summer Sundays.
7. The proposal against which NRL is appealing is for possessions between 00:01 Saturday, and 04:00 Monday on the last three weekends in July, requiring all 11 weekend services to be terminated at Armathwaite station, with bus connection provided to Carlisle. Such possessions would interrupt the busiest period of passenger demand when many trains are operating in full four-car formations, requiring the capacity of 6 buses for onwards movement to and from Carlisle.
8. Network Rail, for its part, stated that the works required were essential renewals of equipment that was approaching life expiry. In response to the Committee’s questions it was established that
 - 8.1. the current layout, involving a crossover, two single leads, and a slip crossing, is to be replaced on a totally like for like basis. This includes retaining 15mph speed restrictions over all diverging routes. There was a declared wish not to become involved in any changes that might require re-signalling, or the invoking of the Network Change provisions of the Network Code;
 - 8.2. the trap points at either end of the Up and Down Goods Loop will be retained, and do not require renewal;

- 8.3. the loop no longer serves any other sidings or source of traffic. It is only 945ft in length (45 SLUs) and therefore is of no value for refuting coal trains, which are normally 60 SLUs in length. The loop is, however, used for the staging of ballast trains and other engineering equipment and is the only location where this can be done between Carlisle and Appleby;
 - 8.4. the crossover(s) at Howe and Co Sidings have been used on over 30 occasions in the last year for Single Line Working operations on the Settle and Carlisle. Were a crossover not available at Howe and Co Sidings, there would be significant operational difficulties in extending Single Line Working to and beyond Petheril Bridge Junction;
 - 8.5. the trackwork at the location is not currently subject to any condition of track Temporary Speed Restrictions, in contrast to the situation in many other places on the route.
9. Network Rail's proposals for the works had undergone a number of revisions:
- 9.1. The first proposal had been for a 9 day blockade in September 2005, although errors in presenting information in both Versions 1 and 2 of the Rules of the Route had meant that the proposal was documented as only a 2 day possession.
 - 9.2. A clarified proposal, for a full nine days in September, had appeared in Versions 3 and 4. NRL had, in each case, objected to the proposal, and counter-proposed that the possession should take place in November 2005, after the close of the October School Half Term holiday, which marks the effective end of the main tourism demand on the route.
 - 9.3. Network Rail then proposed, under the provisions of Section 3 of the National Rules of the Plan (*Procedure for Altering Rules of the Route or Rules of the Plan other than through the Twice Yearly Process Having Effect from a Passenger Change Date*) (PARTP), two 72 hour midweek possessions in weeks 32/33. This reduced proposal reflected the decision to leave the trap points un-renewed. Again NRL declined and proposed a 5 day blockade in November.
 - 9.4. Network Rail proposed, again under PARTP, 3 x 52 hour weekend possessions in weeks 23-25 (September), which was again declined by NRL. Therefore, in October, NRL amended its proposal to weeks 16-18 (July), and notified its decision on 3rd November, whence this appeal.
10. In two previous years, lengthy (4 week) blockades to achieve essential renewals have been imposed upon the Settle and Carlisle route during November. This timing has been chosen as a "least bad" compromise between a tailing back of the markets served by NRL, and the ramping up of demand for coal movement from Scottish sources.
11. Coal traffic over the route is operated by both EWS and FLHH. Both Train Operators hold level 2 rights under their respective Track Access Agreements, being rights to quantum rather than specific timings. However, projected demand for coal movements is forecast to rise significantly during the whole of 2005, to a point where the demand will exceed the sum of the current level 2 rights. The freight operators were opposed to any proposal that would materially interrupt the autumn to winter programme of coal movements which, it was said, would require services to operate 7 days per week over the Settle and Carlisle.

Other Considerations

12. NRL pointed out that the passenger traffic using the Settle and Carlisle was heavily influenced by the tourist demand, including a worthwhile coach market where passengers would travel one way by rail and the other by road. All this clientele is looking to make the whole journey to Carlisle, and not to transfer into a substitute coach, even as close to Carlisle as Armathwaite.
13. There are apparently problems with getting coach access to Armathwaite station, a function of narrow roads, the lack of space to turn coaches at the station, and a particularly low bridge over one of the access roads.
14. It was apparent to the Committee that the timing of works on the Settle and Carlisle route would need to take account, not just of the traffics on the route, but also the extent to which
 - 14.1. the route would be carrying traffic diverted off the West Coast Main Line (WCML); and
 - 14.2. traffic off the route could itself be diverted, either onto the WCML, or, via Newcastle onto the East Coast Main Line.
15. Although there was documentary support that there had been frequent exchanges of statements between the disputing parties, there did not appear to be real evidence of constructive dialogue, nor any attempt to hold reasonable discussions involving all the interested parties (passenger, freight and infrastructure). This is an essential component of PARTP, and cannot reasonably be dispensed with by Network Rail.
16. Network Rail makes reference to the Decision Criteria (Network Code Condition D6) as having informed its deliberations. The Committee was not given any indication as to the way in which Network Rail considered that the Decision Criteria should be applied, nor any arguments as to why any such application would make the case for the possessions proposed.

The Committee's findings in respect of the merits of the case

17. The Committee therefore found that the evidence presented by the parties did not provide satisfactory answers to any of the following questions, all of which are germane to the Committee's determination:
 - 17.1. Why do the works at Howe and Co Sidings need to be undertaken during 2005?
 - 17.2. Why is the whole layout being retained, and what would be the implications of
 - 17.2.1. deferment of renewals of some or all of the switches & crossings affected; or
 - 17.2.2. a decision to reduce the scope of the works by simplifying the layout; or
 - 17.2.3. a combination of these?
 - 17.3. How much possession time is actually required? Given the apparent options of an unbroken blockade of between 9 and 5 days, two shorter blockades, or 3 x 52 hour weekend possessions, which

- 17.3.1.least disrupts the business of the appellant?
 - 17.3.2.least disrupts the discharge, by Network Rail, of its access obligations to other Train Operators? and
 - 17.3.3.best meets the engineering need to maintain the Network?
 - 17.4. Which alternative timings for the work have been evaluated, and/or have been the subject of adequate consultations with all interested parties?
 - 17.5. What is the scope for minimising the disruption to Northern Rail, or to other Train Operators, at each of the different times, and, in particular, how far has the availability and capacity of diversionary routes at each time been evaluated?
 - 17.6. In what respect has there been any actual reference to the “Decision Criteria”, and what respective weighting has been given to each criterion in relation to the contested proposal?
18. Without convincing answers to these questions the Committee considered that it could not accept that the case had been made that Network Rail’s decision that the proposed possessions should take place in July, against which Northern Rail has brought this appeal, was the most appropriate to all the circumstances.

The Committee’s determination

19. Therefore the Committee determined that
- 19.1. the Appeal by Northern Rail against the published proposal is upheld.
 - 19.2. it is not convinced that
 - 19.2.1.this implies that a date in November is the only viable alternative; or that
 - 19.2.2.there has been sufficient constructive dialogue, involving all affected parties, about other possible alternative arrangements, not excluding dates at the close of Period C/ opening of Period D.
 - 19.3. Network Rail is required to carry out sufficient further evaluation to come up with revised proposals.
20. To the extent that revised proposals from Network Rail may impact upon the interests of other Train Operators, it is acknowledged that, in such instances, such Train Operators should have the scope to bring relevant appeals to this Committee.

Bryan Driver

Independent Vice-Chairman