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## ***TIMETABLING COMMITTEE***

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### **Determination No. 265**

(following a hearing at Kings Cross on 23<sup>rd</sup> February 2005)

*[Note: previous published determination was determination no. 256]*

#### **Brief Summary of dispute**

1. The Committee was asked by Arriva Trains Wales (ATW) to find that the arrangements, proposed in Version 2 of the 2006 Rules of the Route, for a 13 week continuous blockade between Crewe North Junction and Cheadle Hulme, commencing 11<sup>th</sup> December 2005, was of significant harm to the commercial interests of ATW, and should accordingly be deemed unacceptable, and that Network Rail should be directed to propose alternative arrangements.

#### **Other Interested parties**

2. The nature of the dispute had been drawn to the attention of other operators of services over the routes affected; a written response had been received from Virgin Cross Country (VXC), and representations were made at the hearing on behalf of Northern Rail, Freightliner, and English Welsh & Scottish Railway (EWS).

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

3. 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
  - 3.1. the Firm Rights of the Train Operator to operate trains at specified times;
  - 3.2. 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;
  - 3.3. the extent to which the Train Operator would be able to provide alternative services, either using diversionary routes or by road transport;
  - 3.4. the rights of Network Rail to take the possessions, in effect to cause them to be included within the "*applicable Rules of the Route*";
  - 3.5. the extent to which the need for the possessions can be substantiated by reference to such factors as
    - 3.5.1. the need to do works (whether renewals or maintenance);
    - 3.5.2. the implications of doing the works at the times specified, or over the durations specified;
    - 3.5.3. the engineering choices made by Network Rail; and
    - 3.5.4. the impact on the business of other operators on the route concerned of the proposed duration and dating of the possessions and any change to these sought by the appellant.

## **The Committee's findings of fact in respect of the reference**

4. The Committee noted the nature of the rights held by ATW; in particular that
  - 4.1. rights exist in respect of both quantum and journey time for services between Manchester Piccadilly and Cardiff for weekdays (14 services) Saturdays (12 services) and Sundays (4 services);
  - 4.2. rights exist in relation to practicable diversionary routes between Crewe and Manchester, including via Warrington. Such routes have been used before, including during the previous Crewe to Cheadle Hulme blockade, but they impose penalties in respect of journey times (20 to 30 minutes), numbers of units (plus one or more) and numbers of train crew (plus three).
5. As an integral part of its winning bid for the Wales Franchise, ATW had given an undertaking to schedule all franchised services onto a regularly repeating "Standard Pattern Timetable" (SPT). This had now been converted into firm proposals which were intended to be implemented across the whole Franchise commencing at the start of the 2006 Timetable in December 2005. Given the significance of the Manchester to Cardiff services within the overall business of the Franchise, a need to introduce the SPT with diversions in force on that route, was perceived to have significant deleterious effects for ATW's business plan.
6. ATW were of the view that the works in question could, and should, have been completed before December 2005, or that, failing that, the blockade should be scheduled to a later date, in order to permit a franchise-wide launch for the SPT.
7. VXC, in a written representation, made the case that any change to the timing of the blockade, as now proposed, would require an unacceptable re-scheduling of significant other parts of the West Coast Route Modernisation works.
8. Northern Rail, in a statement to the Committee, was critical of the past failures in Network Rail's programme of works that had resulted in the need for a second blockade of this section of route. It drew the Committee's attention to the fact that it was the Train Operator whose services would suffer the most disruption from the blockade, and that, because there are no diversionary routes applicable to its services, it would be involved with extensive substitute bus programmes. Nevertheless Northern Rail had accepted that a blockade starting in December 2005 and lasting up to the end of Period A was now the least bad option, although, there was pressure, in particular from the Greater Manchester PTE, that the blockade should not start until after the Christmas shopping period was complete.
9. In respect of Network Rail, the Committee was informed that
  - 9.1. the blockade was considered to be the most cost effective and least disruptive way of completing the re-modelling and re-signalling of the line between Crewe and Cheadle Hulme. This work should have been undertaken during the previous blockade (in February to May 2004) but had been postponed due to technical problems in relation to the signalling system being introduced for the area to be controlled from the Manchester South signalling centre;

- 9.2. Network Rail had previously proposed that the outstanding works be undertaken during a succession of 52hr weekend possessions, culminating in a blockade of no more than 8 weeks at the end of 2005. The current proposal, for all but some preparatory works to be undertaken during a single blockade of 13 weeks, had been developed in response to representations from the majority of the Train Operators (4 passenger and 4 freight companies) using the route;
- 9.3. still outstanding was the precise start date for the blockade; in principle Network Rail favoured December 11<sup>th</sup> (the start of the new 2006 Timetable) whereas others, in particular Northern Rail, were concerned to protect services into Manchester in the run up to Christmas, and therefore sought a later commencement date. It was recognised that a 13 week blockade had, within it, scope to permit adequate driver route learning; a later start could put this in jeopardy;
- 9.4. the scope for timing the blockade to a different period is, at this time, very limited. The residual signalling design works cannot readily be completed for a start date earlier than December 2005. On the other hand, the performance of the existing signalling equipment cannot reasonably be guaranteed beyond the end of 2005;
- 9.5. all of the re-modelling works, and questions of compensation to parties affected, are covered by the provisions of Network Code Part G Network Change;
- 9.6. the ultimate decision as to when the blockade takes place has been influenced by its position in the larger West Coast Route Modernisation (WCRM) programme, not least to ensure that a blockade does not coincide with works on other routes needed for diversionary purposes. These interactions are more clearly to be understood by reference to the Major Project notice (MPN). It was regretted that the necessary consultation on this MPN had still not been completed;
- 9.7. the SRA, in its role in relation to the WCRM project, has been party to the decision as to the timing of this blockade.

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

10. The Committee therefore found that
  - 10.1. the possession in question is also contained in the MPN for the WCRM works in the 2006 Timetable. As the MPN process has still to be completed, it does not yet constrain the right of Train Operators to appeal against the Rules of the Route proposed in this instance, nor does it preclude this Committee from making a decision on the merits of the specific matter before it. However, in the event that progressing the MPN raised questions, whether or not they had been addressed in this hearing, those questions would fall, unfettered, to be addressed by the Network and Vehicle Change Committee;
  - 10.2. ATW does possess Firm Rights for the stretch of line between Crewe and Cheadle Hulme of a standing such that any proposal to introduce changes to the Rules of the Route is legitimately subject to challenge, and determination by this Committee, as to whether they should be incorporated into the "*applicable Rules of the Route*";

- 10.3. ATW can legitimately assert its Firm Rights, at the expense of the proposal to subject the Crewe to Cheadle Hulme section to a blockade of 13 weeks commencing 11<sup>th</sup> December 2005. However, this Committee, in assessing the merits of the determination sought by ATW, namely that the blockade be retimed to a different period in order not to conflict with the opening three months of its proposed SPT, has to take account of issues of practicality as well as issues of principle;
- 10.4. the compelling issues of practicality are that
- 10.4.1. the proposal for the timing of the blockade, as compared with other alternatives considered, appears to have the support of all other affected Train Operators, passenger or freight;
  - 10.4.2. whilst the blockade will imply a temporary curtailment of Firm Rights for Timetable periods 0 and A, at other times it will have no impact;
  - 10.4.3. the necessity for the blockade at this time, and the lack of freedom of manoeuvre, are a consequence of past failures, by Network Rail (or its agents), to implement the relevant re-signalling works at dates previously proposed, as a consequence of which the performance of the current signalling equipment cannot reasonably be guaranteed beyond late 2005;
  - 10.4.4. the design workload associated with the re-signalling to be carried out during the blockade is not capable of being completed to a timescale that would permit the possession to commence at an earlier date;
  - 10.4.5. the works once completed, will significantly raise the line speed, capacity and reliability of the infrastructure on Crewe to Cheadle Hulme section of route; however, this enhanced capability has not yet been factored into the Rules of the Plan;
  - 10.4.6. were this blockade to be rescheduled, it would, in consequence, require other significant possessions to be amended or re-scheduled, with potential impact upon a wide range of Train Operators;
  - 10.4.7. during the period of the blockade, as currently proposed, adequate diversionary routes will be available for affected services.
- 10.5. Although ATW had advanced the argument that a delay in implementing its SPT, as it affects Manchester-Cardiff services, would put ATW in possible breach of its Franchise Agreement (a matter of consequence to the Committee because of the terms of Network Code Condition D6(b)), there was evidence that the SRA was also party to the decisions relating to the timing of the blockade. The Committee considered that, in these circumstances, any decision that it might make was potentially neutral in respect of ATW's obligations to the SRA.

### **The Committee's determination**

11. The Committee therefore determined that there are compelling grounds for Network Rail to proceed with the current schedule for the Crewe to Cheadle Hulme blockade from a start date during December 2005, and that therefore ATW is directed to accept Network Rail's proposal.
12. For the avoidance of doubt, Network Rail is to understand that the Committee does not take kindly to situations, such as this, where, because past failures of planning and/or delivery of works have narrowed down the scope for discretion, the potential outcome of disputes is constrained.

Bryan Driver

Independent Vice-Chairman