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## **TIMETABLING COMMITTEE**

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### **Determination No. 82**

(following a hearing at Kings Cross on 15th September 1999)

*[Note: no determinations have yet been issued in respect of references 76 to 81 inclusive; the previous published determination was determination no.75]*

- 1 The Committee was asked in a joint reference from Great Western Trains (GWT) and Railtrack to determine whether Railtrack had acted improperly by declining to include, in the Draft Timetable for 2000/01, aspirations of GWT to run three additional services.
- 2 The Committee noted that this was the first reference brought under the auspices of the revised Part D which had come into force in March 1999 applicable to the preparation of the Summer 2000 and subsequent timetables. The reference was concerned with the newly introduced processes whereby Bidders should, before the Priority Date, declare those rights which they wish to use during the period of the Summer 2000 and Winter 2000/2001 timetables, and give an indication of the services that they will seek to run during that period with the underlying support of the rights that they have declared or are seeking.
- 3 The Committee reiterated that Railtrack has a right, at any time up until the last permitted date for formal declaration of the Draft Timetable, to advise a Train Operator if it has made a decision to include or exclude an aspiration by a Train Operator for a particular Train Slot. Furthermore upon the receipt of such a decision a Train Operator has the right, if dissatisfied with the content of such a decision, to refer the matter in accordance with Condition D5.1 to the Committee for determination.
- 4 The Committee noted that the substance of the reference was the correct application of Access Condition D2.1 and the interpretation by Railtrack of GWT's aspirations, some of which were declared before the Priority Date and some subsequently, in relation to GWT's Firm Contractual Rights in its Track Access Agreement, Railtrack's flexing rights and its interpretation of Rules of the Plan, conflicting rights of other Train Operators and application of the Decision Criteria. The Committee acknowledged that such matters were wholly within the scope of the Committee's remit, and therefore accepted that the matter should be heard. The Committee further noted that the issues before the Committee arose because of the decisions of Railtrack in relation to accommodating the timeously expressed aspirations of Thames Trains, CrossCountry Trains and English Welsh & Scottish Railway, and that therefore it was appropriate that those parties had been given opportunity to be represented at the hearing.
- 5 The Committee was very disappointed that GWT had not put forward as aspirations at the Timetabling Conference two of the three additional services which are now the subject of the dispute. This would have enabled meaningful discussion with other Train Operators before the Priority Date. The Committee commended Railtrack's recent initiative to invoke Condition D2.2 for development of the Winter 2000 and Summer 2001 timetables on the routes in question, and enjoined the parties to make full use of this initiative to optimise the overall pattern of service.
- 6 The Committee considered whether, as a matter of principle, Railtrack must, in preparing the Draft Timetable, reflect a Train Operator's aspirations in all its details. The Committee took the view that Railtrack may modify or exclude the declared aspirations, but such modifications or exclusions should be influenced by the provisions of Conditions D2.1.3, D2.1.4 (Priorities in compiling the Draft Timetable) and D4 (Decision Criteria).

- 7 The Committee noted that two paths in dispute, a 09.33 service from Worcester - Paddington and a 14.33 departure from Paddington - Worcester, presented different detail issues from the third path, a 18.42 departure from Paddington - Worcester, and elected to review them separately, even though the following issues of principle were raised in common. The Committee **determined** that:
- 7.1 where agreed Sectional Running Times (SRTs) do not exist for new rolling stock, then until such SRTs are agreed through Rules of the Plan it would be appropriate for the Draft Timetable to be developed using timings for rolling stock with the nearest equivalent, inferior, performance;
  - 7.2 where an aspiration for a train is tabled by a Train Operator after the Priority Date the aspiration will not enjoy the protection of priority prescribed in Access Condition D2.1.4, and Railtrack is not obliged to include it in the Draft Timetable. However this does not preclude it being included in the Draft Timetable at the discretion of Railtrack nor does it deny the Train Operators the right to submit a Bid for it during the Bidding Period.
- 8 Taking account of these common features the Committee considered the issues relating to the specific trains and **determined** that,
- 8.1 in the case of the 09.33 departure from Worcester - Paddington and 14.33 departure from Paddington - Worcester, the aspirations had not been declared by the Priority Date, and therefore, as Railtrack had been unable to find a path that did not conflict with other trains which had been properly declared before the Priority Date, Railtrack's decision to exclude these two trains is upheld; and
  - 8.2 in the case of the 18.42 departure from Paddington - Worcester that had originally been declared by the Priority Date as an aspiration using an HST as rolling stock, but resubmitted after the Priority Date using Class 180 rolling stock, Railtrack's decision at this stage to exclude this service, as no path exists based on agreed SRTs, is upheld.
- 9 The Committee noted that the parties were not agreed on an aspect of the application of quantum rights. The Committee was not convinced by the evidence that the rights might be applied in the manner described by GWT, but took the view that this is not relevant to the outcome of this reference. Such an issue is a matter which is properly the subject of a reference to the Access Dispute Resolution Committee if the parties are unable to reach agreement.

Bryan Driver,  
Chairman,  
15th September 1999