
TIMETABLING COMMITTEE

Determination No. 88

(following a hearing at Kings Cross on 5th January 2000)

[Note: previous published determination was determination no.87]

1. The Committee was asked by English Welsh & Scottish Railway (EWS), on behalf of its sister company Rail Express Systems (RES) to rule that Railtrack had been incorrect to reject its Bid for a weekly time-tabled charter (steam-hauled) train from London Waterloo to Salisbury; the service in question, and the related Ancillary Movements, to operate on 17 consecutive Wednesdays during the Summer 2000 Timetable.
2. The Committee noted that the key issue in dispute related to Railtrack's ability to find Train Slots for the trains requested, and whether granting such slots would introduce an unacceptable level of performance risk to the generality of services over the line of route. The main issue was clouded by certain aspects of the processes employed at the June 1999 Timetable conference, specifically that
 - 2.1. EWS had made no open declaration of aspirations at the South West lines meeting at the Timetable Conference, nor had they included the trains in their priority date declaration; and
 - 2.2. Railtrack had obtained the consent of South West Trains and Anglia Railways that, in the interests of allowing the parties to concentrate on improving performance for the enhanced timetable first introduced in 1999, there should be no introduction of new services in the Summer 2000 Timetable.
 - 2.3. Railtrack did not wish to make an offer in respect of a new EWS special service, when it had declined other new regular services.
3. The Committee shared Railtrack's concern that all Train Operators should make full, and open, declarations of aspirations at Timetable conferences; this process could only be harmed if other operators believed that it was possible to achieve some form of tactical advantage by making late declarations. Equally, in circumstances where there were several Train Operators with aspirations to the last remaining Train Slots, there was value in a process that weighed the merits of all options and allocated the scarce resource accordingly. The Committee was pleased to note the statement from EWS that the failure to make a timely declaration at the Timetable Conference was not a deliberate ploy, but an omission that, in similar circumstances, would not be repeated.
4. The Committee acknowledged that the Decision Criteria (Access Condition D4) required Railtrack to
 - "maintain.. and improve.. the levels of service reliability" (D4(c))
 - "avoid.. wherever practicable frequent timetable changes" (D4(k)) and at the same time
 - "ensure.. that where practicable appropriate provision is made for reservation of capacity to meet the needs of Bidders whose businesses require short term flexibility" (D4(h)).

5. In respect of the rights held by RES, and exercised on their behalf by EWS, the Committee took account of the following:
 - 5.1. RES' Access Agreement in regard to special trains confers a general right to bid into practicable "white space"; such Bids, which do not require further approval by the Regulator,
 - 5.1.1. can only be exercised in relation to a timetable that has been firmed up;
 - 5.1.2. are subject to such flexing as Railtrack deem necessary to avoid impact upon other Bidders' Firm Contractual rights;
 - 5.1.3. acquire, once the subject of an accepted offer, the force of Firm Contractual Rights; but
 - 5.1.4. do not have any standing, or implied obligation on Railtrack, beyond the dates of operation of the train within the Timetable in question.
 - 5.2. in relation to Access Condition D3.4.1, and the rights of other Bidders, the Bid made for the Salisbury service has the lower priority of Access Condition D3.4.1(b);
 - 5.3. EWS has been working up the proposal for the London-Salisbury service, on behalf of a client, with the Railtrack Special Trains Account Executive team; as a consequence the Bid was not a surprise proposal.
 - 5.4. EWS has been encouraged by Railtrack to make Bids into the Timetable Development process (starting with the Summer 2000 Timetable), in order to bid for recurrent services on a block basis, rather than as individual Spot Bids; the objective being to improve train performance, and certainty of operation for RES and the end customer.
6. The Committee noted the steps taken by Railtrack to focus attention upon improving reliability of performance, and the agreements reached with South West Trains, and with Anglia Railways, to defer major service enhancements to the Summer 2001 Timetable. The Committee was of the view that these agreements could not be represented as implying that the Timetable should be constructed with no practicable "white space". EWS was not therefore inhibited, in principle, from bidding for special passenger charter services, in accordance with the RES Access Agreement.
7. However, this did not remove from Railtrack the responsibility for ensuring that any offers made to EWS related to robust Train Slots which did not impact adversely on other Bidders' rights or performance. In this respect, the Committee were satisfied that a Train Slot offer corresponding closely to the EWS Bid, would, at least in relation to the Waterloo to Woking journey leg, import a significant risk of adverse impact on other regular services. Concern was also expressed, by other interested parties, about the possible risks arising from the associated Ancillary Movements.
8. Whilst noting that a service of similar concept had been operated on 16th December 1999, the Committee was not inclined to judge whether this gave a representative guide to the impact of a regular weekly train.

9. The Committee therefore determined that:
- 9.1. Given that EWS was concerned to secure a regular time-tabled Train Slot for this service, the failure to make an open declaration of its aspirations at the Timetable Conference, neither assisted the Timetabling process, nor served EWS' own best interest. The consequence was that the Bid for a special charter service between Waterloo and Salisbury had a lower priority than aspirations declared at the conference.
 - 9.2. RES' Access Agreement in respect of the running of special trains, secures the general right to bid for special trains to operate in "white space". Whilst these rights are quite clear, there is an issue, for further discussion between the parties, as to when it will help, to smooth the overall process if EWS declare aspirations, or bid, in anticipation of eventual "white space".
 - 9.3. Whatever the nature of the understandings reached, by Railtrack, with other Train Operators, about the introduction or deferment of enhanced services, those agreements must not be construed as implying that the Timetable is to be constructed without "white space"; nor is EWS to be precluded from exercising its rights to bid for services to operate in practicable "white space".
 - 9.4. Railtrack is right, given its responsibilities in respect of devising a robust Timetable, to exercise care in determining whether or not a service operated in "white space" is likely to impact adversely on other services. However, this does not relieve Railtrack of the obligation to entertain, and to seek to accommodate, reasonable Bids, made by EWS in accordance with the terms of the RES Access Agreement, and to give reasons where a bid is rejected; and that
 - 9.5. There should be further, and thorough, discussions, between Railtrack and EWS, to seek a mutually acceptable solution that permits Railtrack to meet its performance obligations, and EWS to operate a service close to the specification sought by its client. For the avoidance of doubt, if such discussions do not result in a mutually acceptable solution, then, provided that the parties shall have observed the provisions of the relevant Access Conditions, there will be the option of a further reference to this Committee; such a reference would be determined on the merits of the cases as presented at such time.

Bryan Driver
Chairman