
TIMETABLING PANEL of the ACCESS DISPUTES COMMITTEE

Determination in respect of disputes reference TTP1331 and TTP1376
(following a hearing held at 1 Eversholt Street, London, on 8 November 2018)

The Panel:

Stephen Murfitt Hearing Chair

Members appointed from the Timetabling Pool

Jo Lang elected representative for Franchised Passenger Class, Band 3
Robin Nelson elected representative for Non-Passenger Class, Band 1
Hannah Linford appointed representative of Network Rail

The Dispute Parties:

For GB Railfreight Ltd ("GBRF")

Ian Kapur Head of Capacity Planning
Jason Bird LTP Timetabling Manager

For Network Rail Infrastructure Ltd ("Network Rail")

Matthew Allen Head of Timetable Production
Rachel Gilliland Head of Customer Relationship Management & Policy
Hazel Chalk Project Manager (Timetable Change)
Simon Henderson of Counsel (4 Pump Court)
James Shackleton Legal Director, Eversheds Sutherland (International) LLP

Interested parties:

For DB Cargo (UK) Ltd

Nigel Oatway Access Manager

For Freightliner Ltd and Freightliner Heavy Haul Ltd

Peter Graham Rail Strategy Manager, Freightliner Group

In attendance:

Tony Skilton Committee Secretary ("Secretary")
Writer from Ubiquis

Gerri Trifonava (GBRF), Josh Watkins (XC Trains Ltd) and Yasmine Sullivan (Network Rail) - observers

Table of Contents

A Background and Jurisdiction	page 3
B History of this dispute process and documents submitted	page 4
C Outcomes sought by the Dispute Parties	page 4
D Relevant provisions of the Network Code and other documents	page 5
E Submissions by the Dispute Parties	page 5
F Oral evidence at the hearing	page 8
G Interested Parties	page 10
H Analysis/Observations and Guidance	page 10
I Determination	page 12

A Background and Jurisdiction

1. Dispute TTP1331 was raised by GBRf by service of a Notice of Dispute on 22 June 2018 in respect of Network Rail's decision (offer) made on 8 June 2018 in respect of the New Working Timetable for 2018 (which was to take effect from 9 December 2018). GBRf noted that there were a number of Train Slots (some with Firm Rights) rejected or missing, there had been unsatisfactory flexing of schedules and some of GBRf's Access Proposals had not been actioned; additionally, there was no confirmed offer in respect of weekend schedules.
2. Subsequently, on 23 August 2018, GBRf raised Dispute TTP1376 by service of a Notice of Dispute because Network Rail had issued a replacement Working Timetable for December 2018 (the "Hybrid Timetable"). GBRf noted that Network Rail had not received its permission to change any Train Slots but GBRf was prepared – acting in good faith – to accept a proportion of the revised Train Slots. However, there were a number of instances whereby Train Slots previously offered on 8 June 2018 had been revoked by Network Rail or their status had become unclear; some previously offered Train Slots had been flexed outside of their contractual window or to an extent that they were commercially unacceptable and in some instances the Train Slots were not compliant with the Timetable Planning Rules or the Engineering Access Statement. Train Slots were now offered for Saturdays and Sundays, but similar shortcomings existed regarding them.
3. Regarding both dispute notifications, GBRf advised that discussions were ongoing with Network Rail and there was no requirement for the dispute resolution process to be commenced.
4. On 28 September 2018 GBRf indicated to the Secretary that a Timetabling Panel hearing appeared necessary in respect of the two Disputes and, due to staff availability consideration, 8 November 2018 was considered to be a suitable target date for the hearing.
5. On 11 October 2018 the Allocation Chair ordered that the two Disputes should be resolved together on the grounds that they concerned the same or similar subject matter and that it would be in the interests of efficient and fair resolution to do so.
6. The Secretary had experienced some difficulty in securing a quorate Panel for the hearing but upon eventually being appointed as Hearing Chair on 11 October 2018, I satisfied myself that the matters in dispute included grounds of appeal which may be heard by a Timetabling Panel convened in accordance with Chapter H of the ADR Rules to hear an appeal under the terms of Network Code Condition D5.
7. In its consideration of the Parties' submissions and its hearing of the Disputes, the Panel was mindful that, as provided for in ADR Rule A5, it should 'reach its determination on the basis of the legal entitlements of the Dispute Parties and upon no other basis'.
8. The abbreviations used in this determination are set out in the list of Parties above, in this paragraph 8 and as otherwise defined in this determination document:

"ADR Rules" mean the Access Dispute Resolution Rules

"Chapter H" means Chapter H of the ADR Rules

"Part D" means Part D of the Network Code

"TTP" means Timetabling Panel

"website" refers to the Access Dispute Committee's website

B History of this dispute process and documents submitted

9. At my request (and as permitted by ADR Rule H21), the Dispute Parties were required to provide Sole Reference Documents. The proposed Panel hearing was notified generally by means of the website.
10. On 23 October 2018 GBRf served its Sole Reference Document and Network Rail served its Sole Reference Document on 1 November 2018, both in accordance with the dispute timetable. With these documents posted on the website, DB Cargo (UK) Ltd, Freightliner Ltd and Freightliner Heavy Haul Ltd declared themselves to be interested parties.
11. Certain aspects of the Sole Reference Documents called for clarification and under ADR Rules A9 and A10 a request for the required information to be provided (mostly at the start of the hearing or beforehand if practicable) was sent to the Dispute Parties on 6 November 2018. On that date the Dispute Parties were also advised – for the purposes of ADR Rule H18(c) – of relevant issues of law which I had identified as being raised.
12. The Sole Reference Documents, the request for information and the resulting documentation are available on the website.
13. In view of the potential complexity of exchanges during the hearing, I directed (as provided in ADR Rule H47) that a full transcript should be taken to assist the Panel's subsequent consideration of the issues. I regard the transcript of the hearing as being an aide memoire for the Panel in its consideration of the issues and not a document for issue to the Parties or for eventual publication.
14. The hearing took place on 8 November 2018. The Dispute Parties made opening statements and provided information requested of them. The Panel asked questions concerning various points and the interested parties were given opportunity to make comment (although only DB Cargo took this opportunity). The Dispute Parties also made closing statements.
15. I confirm that the Panel has read all of the papers submitted by the Dispute Parties. I confirm that I have taken into account all of the submissions, arguments, evidence and information provided to the Panel over the course of the dispute process, both written and oral, notwithstanding that only certain parts of such material are specifically referred to or summarised in the course of this determination.

C Outcomes sought by the Dispute Parties

16. GBRf sought outcomes of principle and specific determinations from the Panel as follows:
 - i. A determination that the Train Slots offered by Network Rail at D-26 (8 June 2018) and subsequently withdrawn were contractually binding on Network Rail. GBRf sought a determination that the Train Slots revoked by Network Rail be included in the December 2018 Timetable.
 - ii. As a matter of principle, did Network Rail have authority to alter the due date of D-26 without prior authority under Condition D2.7 by publishing a subsequent New Working Timetable after D-26?
 - iii. A determination that Condition D4.2.2 required Network Rail to consider all Access Proposals and that rejection is only an option where there is no timetabling solution. GBRf sought a determination that Network Rail give further

consideration to including the requested Train Slots in the December 2018 Timetable.

- iv. A determination that Train Slots requested by GBRf on the Priority Date, but not processed by Network Rail, be included in the December 2018 Timetable.
- v. A determination that Train Slots where amendments were requested by GBRf be included in the December 2018 Timetable.
- vi. A determination that Train Slots offered by Network Rail at D-26 or 17 August 2018 be compliant with applicable Train Planning Rules and or other Train Slots.
- vii. A determination that disputed Train Slots listed in Appendix D to GBRf's Sole Reference Document be offered by Network Rail to GBRf in a compliant manner for the December 2018 Timetable.

17. Network Rail sought determinations from the Panel as follows:

- i. A determination that the Panel does not have jurisdiction or power on appeal under Condition D2.7.2 to address points of principle relating to the issue of the New Working Timetable. The Panel's jurisdiction relates to the determination of disputes relating to the contents of the New Working Timetable and the allocation of capacity made within it and not issues relating to the production of the New Working Timetable.
- ii. A determination that the D-26 Weekday Timetable had been replaced by the Hybrid Timetable which is now the New Working Timetable. The Panel has no jurisdiction to hear disputes relating to the D-26 timetable because it is no longer the New Working Timetable.
- iii. A determination that the issue of a Hybrid Timetable by Network Rail at D-16 was not a breach of contract or a breach of the Network Code by Network Rail.

D Relevant provisions of the Network Code and other documents

18. The versions of the Network Code Part D and the ADR Rules dated 12 July 2017 were applicable to these dispute proceedings.

E Submissions by the Dispute Parties

19. In making an opening statement to the Panel, GBRf made clear that it did not accept that the Hybrid Timetable was the New Working Timetable and submitted that Network Rail had no right to impose such a Timetable. GBRf advanced an argument that it was the D-26 Timetable that was the New Working Timetable and the Panel had jurisdiction to hear appeals relating to the D-26 Timetable.

20. GBRf submitted that it had been disadvantaged by Network Rail's failure to follow the processes stipulated by Part D.

21. GBRf regarded the stance taken by Network Rail to be a transparent trap for GBRf to accept the validity of the Hybrid Timetable, or for its appeal to the Panel to fall outside the scope of Condition D2.7.2. GBRf did not accept that the Hybrid Timetable was the New Working Timetable.

22. GBRf considered that its case was straightforward. Network Rail had made an offer of Train Slots at D-26 in accordance with Part D which was incorporated in GBRf's Track Access Contract. Network Rail had no right, as a matter of contract, either to withdraw those offered Train Slots or to impose upon GBRf the Hybrid Timetable.
23. GBRf considered there could be no doubt that Network Rail had no right, contractually or otherwise, to issue a Hybrid Timetable at D-16 after the publication of the New Working Timetable at D-26. The D-26 Timetable, and not the Hybrid Timetable, constituted the New Working Timetable for the purposes of Conditions D2.7.1 and D2.7.2.
24. The dispute with Network Rail related to issues of timetabling and the fact that the dispute raised questions of law ought not to prevent the Panel from hearing it. Alternatively, the dispute between the parties related to which timetable should be treated as the New Working Timetable and that was an issue that could be determined by the Panel.
25. GBRf had not ignored the ruling made in a Timetabling Panel Directions hearing (for Dispute TTP1233 and others) on 27 April 2018 as to the matter of a Panel's jurisdiction. This dispute with Network Rail concerned different factual and legal issues and invoked different and separate sections of the Network Code to the matters before the Panel in April 2018.
26. The remedies sought by GBRf were for Network Rail to re-instate the previously offered Train Slots to GBRf, or to offer alternative Train Slots acceptable to GBRf. These issues of timetabling fall squarely within the remit of the Panel.
27. The Track Access Agreement is between Network Rail and GBRf (save as to regulatory oversight) and no express permission had been given by GBRf to Network Rail to deviate from the terms of the contract.
28. The Panel may not consider itself empowered to determine points of principle, nevertheless a determination was required as to the 63 Train Slots remaining in dispute, and guidance and recommendations were requested to assist in the process of future timetable development.
29. GBRf did not make a submission for the D-26 timetable to be reinstated in full but sought a determination from the Panel as to the specific Train Slots identified in its Sole Reference Document. GBRf have a right of appeal for all Network Rail's timetabling decisions.
30. GBRf advanced a case that the Panel had jurisdiction to determine the following issues, namely, questions associated with the New Working Table at D-26, whether Network Rail was permitted to publish a subsequent New Working Timetable after D-26 and whether the D-26 Timetable is contractually binding on both parties to the dispute.
31. Network Rail had not arranged any contractual discussion with GBRf as to the Hybrid Timetable. The Hybrid Timetable was not, in GBRf's opinion, the least risky option for train service operations in the current industry situation. There was real concern at the abandonment of Part D by Network Rail because the timescales set out in Part D are there for a reason, and they should not be changed unilaterally.
32. The importance of new Access Proposals cannot be underestimated. They demonstrate on the part of GBRf an ability to provide a service and to develop the market. Network Rail

had not processed such Access Proposals or used its Flexing Rights. Such an approach on the part of Network Rail was unacceptable.

33. GBRf submitted that it was also unacceptable for Network Rail to offer Train Slots that were not compliant with the Train Planning Rules.
34. GBRf raised a number of miscellaneous items that required attention, and some would be surprisingly easy to fix. The details were in GBRf's Sole Reference Document.
35. In an opening statement to the Panel, Network Rail submitted that there was a fundamental point to be determined relating to the scope of the Panel's jurisdiction, and its powers, as a result of an appeal under Condition D2.7.2.
36. Network Rail submitted that the Panel did not have jurisdiction under Condition D2.7.2 to address points of principle or any issue relating to the production of the New Working Timetable published at D-16 on 17 August 2018. The jurisdiction of the Panel related to the determination of disputes relating to the contents of the New Working Timetable published as a Hybrid Timetable at D-16 and the allocations of capacity made within it.
37. The D-26 Weekday Timetable had been replaced by the Hybrid Timetable and it was no longer the December 2018 Timetable, nor was it the New Working Timetable. Therefore, any disputes as to the contents of the D-26 Weekday Timetable could no longer be the subject of disputes before the Panel. The D-26 Weekday Timetable was never a final decision for the purposes of Condition D4.7.
38. The Hybrid Timetable published on 17 August 2018 (and due to come into effect on 9 December 2018) was the New Working Timetable and any appeals under Condition D2.7.2 can only relate to the Hybrid Timetable. GBRf can appeal under Condition D2.7.2 against a decision of Network Rail as to a part of the New Working Timetable. The jurisdiction of the Panel is limited to determining specific capacity allocation disputes that arise as a result of the contents of the New Working Timetable.
39. Condition D5.3.1 sets out the powers of the Panel and underlines the jurisdiction of the Panel to assist in the allocation of capacity in a certain, narrow and carefully prescribed way. Condition D5.3.1 does not provide the Panel with jurisdiction to determine which versions of a timetable are properly to be treated as the New Working Timetable.
40. GBRf is not permitted (because the Panel does not have jurisdiction) to submit that Network Rail was not entitled to issue the Hybrid Timetable which then became the New Working Timetable. Network Rail did not accept that the issue of a Hybrid Timetable was either a breach of contract or a breach of the Network Code on the part of Network Rail.
41. The conclusion of the TTP Directions hearing held on 27 April 2018 was that a TTP does not have the necessary jurisdiction to determine contractual disputes of the type now being advanced by GBRf. It would be unsatisfactory for this Panel to take a different approach.
42. The Timetables for both May 2018 and December 2018 created a number of well published challenges for the industry. In the main, these challenges have affected all Access Parties and the possible remedies have required their consideration.
43. The December 2018 New Working Timetable was the result of a significant collaboration and consultation with the rail industry, overseen by the Secretary of State for Transport. Ultimately the New Working Timetable was as a consequence of acceptance by the

Secretary of State for Transport, on the recommendation of Andrew Haines the then Network Rail CEO designate, following industry wide collaboration and consultation. Any challenge to this process was for another forum in circumstances where a number of other parties would be entitled to be heard, together with an examination of a further substantial range of complex factual issues.

44. Network Rail was entitled to issue the Hybrid Timetable pursuant to its obligations in its Licence Conditions, the various Track Access agreements to which it is a party and its obligations under Condition D1 of the Network Code.
45. A decision to issue the Hybrid Timetable caused in broad terms for GBRf to have its May 2018 Timetable rolled over to become the December 2018 Timetable. GBRf was invited by Network Rail to identify business critical Train Slots that it also wanted to be included in the Hybrid Timetable and a number of Train Slots were subsequently identified. Network Rail understood that prior to October 2018 there were two additional Train Slots which remained unresolved. The service of the GBRf Sole Reference Document on 23 October 2018 revealed a dispute regarding approximately 70 Train Slots which had not been previously disclosed as of concern to GBRf.
46. The disputed Train Slots, as understood by Network Rail, were set out in Network Rail's colour coded Appendix 6 to its Sole Reference Document. The Train Slots identified as white were the trains understood by Network Rail to be a priority for GBRf. Those highlighted in yellow were the disputed Train Slots rolled over from the May 2018 Timetable. These latter Train Slots had been included in the Hybrid Timetable but in respect of which GBRf wished to make changes. The Train Slots highlighted in grey related to the D-26 Weekday Timetable and therefore did not relate to the New Working Timetable at all.
47. Network Rail submitted it was not possible to give individual consideration to each of the yellow and grey coloured slots without risking both the December 2018 and May 2019 Timetables.
48. Network Rail presented to the Panel at the hearing a Schedule entitled '*2018 Working Timetabling Disputed Train Slots Summary*' which captured the position as understood by Network Rail as at 7 November 2018. It was envisaged that there would be further discussion during the hearing, with the Dispute Parties ascertaining whether further agreement may be possible. There were 10 Train Slots listed as being at various stages of discussion between the Dispute Parties. There were, however, serious practical constraints upon Network Rail as to what it could do without jeopardising the issue of the December 2018 and May 2019 Timetables. GBRf had brought its appeal very late.

F Oral evidence at the hearing

49. GBRf confirmed that during an adjournment of the hearing, agreement had been reached with Network Rail as to Train Slots 5D56EA, 6F76EA, 6M76EA, 6E71GB and 6E74GB.
50. In response to questions from the Panel, GBRf provided the following answers.
51. The D-26 Timetable was the New Working Timetable. GBRf had as a matter of good faith accepted the majority of that New Working Timetable but did not accept that the reasons advanced by Network Rail justified the replacing of the D-26 Timetable with the Hybrid

Timetable. GBRf remained unclear as to how Network Rail could submit that the Hybrid Timetable was the New Working Timetable.

52. GBRf submitted that ADR Rule H1 provided a much wider jurisdiction for the Panel than was accepted by Network Rail.
53. GBRf submitted that the Panel was authorised under Condition D5.3.1(a) to make all the determinations sought by GBRf. In particular, the Panel had jurisdiction to make a determination that the D-26 was the New Working Timetable.
54. GBRf suggested that when Network Rail applied the Decision Criteria, it tended to focus only on the criteria of performance which prevented transparency of the remaining criteria.
55. In response to questions from the Panel, Network Rail provided the following answers.
56. The jurisdiction of the Panel had been triggered by an appeal in respect of the New Working Timetable. The Panel needed to reach a decision that the Hybrid Timetable was the New Working Timetable and subsequently to determine allocation capacity questions that then arose.
57. Any challenge to the process of the evolving Hybrid Timetable was for another place, possibly the High Court, but not the Panel. Network Rail accepted there could be a debate about the process that caused the Hybrid Timetable to be issued, but that debate could not take place before the Panel.
58. The Hybrid Timetable was the New Working Timetable and the timetable to be implemented. Any finding that some other timetable might be the New Working Timetable would be plainly wrong and there were many practical reasons as to why the Panel must make a finding that the Hybrid Timetable was the New Working Timetable.
59. GBRf had failed to address the priorities of the 60 disputed Train Slots. Had the Train Slots been raised as priorities, as part of the timetabling process, then they would have been the subject of debate with Network Rail.
60. Condition D5.3.1 does not provide any jurisdiction for the Panel to consider the process by which the Hybrid Timetable came into operation on 17 August 2018.
61. The Panel does not have jurisdiction to decide points of principle. It is the task of the Panel to consider legitimate complaints about the Train Slots in the Hybrid Timetable, but not to adjudicate on the process of the evolving Hybrid Timetable.
62. All decisions made by Network Rail in respect of the Hybrid Timetable had been made in accordance with the Decision Criteria set out in Condition D4.6. In relation to the remaining disputed trains in the Hybrid Timetable (6L13HA, 0E05GA and 4V52DA), Network Rail had applied Condition D4.2.2 and taken a view as to level of flexing that may be appropriate in relation to each of the Train Slots.
63. In relation to 0E05GA, GBRf submitted that this Train Slot had Firm Rights, and Network Rail agreed to ascertain the position because if Firm Rights were in place, then that undermined the position as to priority for inclusion as required by Condition D4.2.2 and relied upon by Network Rail.

64. Network Rail attempted to record the application of the Decision Criteria on any notice or relevant documents but did not always communicate in an acceptable way the application of the Decision Criteria to the Train Operator. In the present case, Network Rail accepted that for the relevant outstanding disputed Train Slots, GBRf had not been provided with an adequate explanation of the application of the Decision Criteria.
65. GBRf suggested that pathing which prevented acceptance of new Access Proposal 6L13HA had been given incorrectly to Govia Thameslink Railway ("GTR") in preference to GBRf. Network Rail agreed to ascertain whether GTR had Firm Rights for that Train Slot. [Network Rail subsequently confirmed that GTR had Firm Rights for the relevant Train Slot.]
66. Network Rail agreed that ADR Rule H1 was relevant, but it only became engaged once the Panel had jurisdiction to decide the issues between the Dispute Parties.

G Interested Parties

67. Mr Graham of Freightliner Group did not have any representations to make to the Panel. Mr Oatway of DB Cargo (UK) Ltd indicated he was present because it was of importance to DB Cargo whether the root of the December 2018 Timetable was the Hybrid Timetable or the Timetable published at D-26. DB Cargo had an outstanding valid Notice of Dispute in relation to the Hybrid Timetable which was still the subject of discussion with Network Rail; there was an expectation on the part of DB Cargo that the outstanding issues would be resolved without requiring a Panel to adjudicate.

H Analysis/Observations and Guidance

68. A central issue in this determination was the jurisdiction and powers of the Panel as a result of an appeal under Condition D2.7. Condition D2.7.1 requires the New Working Timetable to be published by Network Rail at D-26 subject only to variations made in the course of the appeal process described in Condition D2.7. Network Rail published at D-26 a Weekday Timetable but did not formally offer weekend Train Slots.
69. The implementation of the May 2018 Timetable was severely disrupted and there was significant political and public pressure on the rail industry to produce a stable December 2018 Timetable. Following an industry-wide collaboration, a Hybrid Timetable was published on 17 August 2018.
70. The first issue of jurisdiction was whether the D-26 Weekday Timetable or the Hybrid Timetable is the New Working Timetable? The latter is due to be effective from 9 December 2018.
71. The Panel was satisfied that the D-26 Weekday Timetable has been replaced by the Hybrid Timetable in exceptional factual circumstances due to difficulties arising with the operation of the May 2018 timetable. The Hybrid Timetable is the New Working Timetable. The Panel accepted, as submitted by GBRf, that the New Working Timetable had not evolved by a consideration of Part D which normally would be the first consideration. The Panel was satisfied that Network Rail was entitled to produce a Hybrid Timetable by reference to its obligation under its Licence, in the various Track Access agreements to which it is a party and under the Network Code at Chapter D.
72. Network Rail was in breach of Condition D2.7.1 and the position may be that GBRf has further remedies for breach of contract in an alternative dispute forum. However, an

investigation as to the process whereby the Hybrid Timetable evolved would require the involvement of a significant number of industry parties and a consideration of substantial complex facts. The Panel was satisfied that it did not have the jurisdiction, or the appropriate structures in place, to undergo such an investigation.

73. In any event, clear guidance is given by Condition D5.3 as to the powers of the Panel. Condition D5.3.1 provides,

5.3.1 In determining any appeal pursuant to this Part D, any Timetabling Panel or the Office of Road and Rail (as the case may be) may exercise one or more of the following powers:

- (a) it may give general directions to Network Rail specifying the result to be achieved but not the means by which it shall be achieved;*
- (b) it may direct that a challenged decision of Network Rail shall stand;*
- (c) it may substitute an alternative decision in place of a challenged decision of Network Rail*

provided that the power described in (c) above shall only be exercised in exceptional circumstances.

74. The Panel was satisfied that the powers set out in Condition D5.3.1 do not extend to allow the Panel to determine:

- (a) issues relevant to the production of the New Working Timetable;
- (b) the points of principle advanced by GBRf; or
- (c) matters of contract, namely whether the D-26 Weekday Timetable is contractually binding on the Dispute Parties or a breach of the Network Code.

75. It therefore follows that any dispute as to the contents of the D-26 Weekday Timetable, or the process as to how the Hybrid Timetable came into effect, cannot be the subject of any relevant dispute before the Panel. The Panel's jurisdiction extends to considering any appeal by GBRf under Condition D2.7.2 against a decision of Network Rail as to part of the New Working Timetable. It is an example of the principle that parties consider and work towards the Final Decision of Network Rail.

76. Having concluded that the Hybrid Timetable is the New Working Timetable, then the Panel was no longer required to consider the GBRf schedule of 63 disputed Train Slots because they were substantially drawn from the D-26 Weekday Timetable. The Panel reminded GBRf that insofar as business-critical Train Slots were concerned, it is able to bid under Short Term Planning (STP) arrangement or to submit a Train Operator Variation Request (TOVR).

77. The schedule of disputed Train Slots produced by Network Rail at the hearing related to the Hybrid Timetable and contained 10 Train Slots. By the conclusion of the hearing the number of disputed Train Slots had been reduced to three. The Panel was satisfied that 6L13HA and 4V52DA had been rejected by Network Rail for valid reasons.

78. 0E05GA was a GBRf Train Slot supported by Firm Rights and Network Rail had failed to consider Firm Rights as part of its reasons for rejection. The Panel directed a review by Network Rail for the Train Slot to be included in the New Working Timetable for December 2018. In the event that there is an application of the Decision Criteria by Network Rail then the same to be communicated in writing to GBRf.

I Determination

79. Having carefully considered the submissions and evidence and based on my analysis of the legal and contractual issues, my determination is as follows.
80. The Hybrid Timetable replaced the D-26 Weekday Timetable issued on 8 June 2018. The Hybrid Timetable issued on 17 August 2018 is the New Working Timetable effective from 9 December 2018.
81. As a result of paragraph 80 above, any disputes as the contents of the D-26 Weekday Timetable can no longer form part of any relevant dispute before the Panel.
82. The Panel's jurisdiction is defined by Condition D5.3.1 which does not authorise the Panel to determine points of principle or allow the Panel to make a determination as to disputed issues relevant to the production of the Hybrid Timetable or matters of alleged breach of contract.
83. Network Rail is directed to carry out an urgent review of Train Slot 0E05GA for inclusion in the New Working Timetable for December 2018. If Network Rail considers the application of the Decision Criteria to be appropriate, then the reasoning is to be communicated to GBRf in writing.
84. No application has been made for costs and I do not consider there to be any reason to make such an order.
85. I confirm that so far as I am aware, this determination and the process by which it has been reached are compliant in form and content with the requirements of the Access Dispute Resolution Rules.



Stephen Murfitt
Hearing Chair
20 November 2018