

Sole Reference Submission to Timetabling Panel

Freightliner Group Limited

TTP1306

31st May 2018

1 DETAILS OF PARTIES

1.1 The names and addresses of the parties to the reference are as follows:-

- (a) Freightliner Limited ("*Freightliner Intermodal*") whose Registered Office is at G&W UK/Europe Region Companies, 3rd Floor, 90 Whitfield Street, LONDON, W1T 4EZ "Freightliner Intermodal" ("the Claimant"); and
- (b) Network Rail Infrastructure Limited whose Registered Office is at 1 Eversholt Street, London NW1 2DN "Network Rail" ("the Defendant").
- (c) Freightliner Limited ("*Freightliner Intermodal*") contact details: David Beadle, Timetable Planning Manager, Freightliner Intermodal, 3rd Floor, 90 Whitfield Street, LONDON, W1T 4EZ. BeadleD@freightliner.co.uk

1.2 Freightliner Intermodal understands that Greater Anglia is also a Dispute Party and that MTR (Crossrail) wishes to be an interested party.

2 THE CLAIMANT'S' RIGHT TO BRING THIS REFERENCE

2.1 This matter is referred to a Timetabling Panel ("the Panel") for determination in accordance with Condition D3.5.3 and D5.1.1 of the Network Code.

3 CONTENTS OF REFERENCE

This Sole Reference includes:-

- (a) The subject matter of the dispute in Section 4;
- (b) A detailed explanation of the issues in dispute in Section 5;
- (c) In Section 6, the decisions sought from the Panel in respect of
 - (i) legal entitlement, and
 - (ii) remedies;
- (d) Appendices and other supporting material.

4 SUBJECT MATTER OF DISPUTE

4.1 This dispute arises with regard to the proposed Restriction of Use (RoU) for Freightliner Intermodal services on the Great Eastern Main line between Stratford and Ipswich Yard/Felixstowe and vice versa in connection with the demolition of the A127 road over railway bridge between Gidea Park and Harold Wood stations at Ardleigh Green.

4.2 This dispute arises over the interpretation of the Decision Criteria as detailed in Part D Clause 4.6.2 of the Network Code.

4.3 The aforementioned bridge is currently under reconstruction by Transport for London (TfL) and is one of their top priority renewals. Phase 1 demolition of the existing structure was carried out during the 72 hour May Day Bank Holiday weekend 29th April to 1st May 2017 in an all lines Restriction of Use (RoU).

Phase 2 demolition is planned for the 72 hour Spring Bank Holiday weekend 26th to 28th May 2018 in another all lines RoU.

The first advice from Network Rail that an additional possession would be required for further work was on the **6th April 2018** when David Foster, NR Controlling Minds Team (CMT), spoke informally to Simon Barrett (Freightliner Engineering Access Manager) during a break in a Christmas 2018 meeting being held in the NR offices at Stratford to seek his thoughts with the **Week 11 (Saturday 9th to Monday 11th June)** suggestion that had already been discussed the GA and MTR. SB advised DF that Freightliner would not accept any further additional late notice possession proposals.

On the **11th April 2018** an email was sent from David Foster to Simon Barrett with David Beadle copied in requesting preferences between weeks 10 and 15 as the additional possession would be required within 6 weeks of the Week 9 agreed possession to which the latter responded at 12.13 (**see Appendix A**) and then a further email sent at 13.19 (**see Appendix B**). Freightliners preference for any additional access proposals would be for Weeks 21 to 26 when our services are

already diverted via Ely, Peterborough, Leicester and Nuneaton due to engineering works at North Wembley and then Witham.

Also on the **11th April 2018** I was advised by Paul Breese at MTR (Crossrail) that there was to be another Ardleigh Green Bridge (AGB) meeting scheduled for 14:00 on **12th April 2018** but PB couldn't see that Freightliner, or any other Freight operator, had been invited hence his contact. As it happened I was already due to attend another meeting in the NR offices at Stratford before the allotted time for this meeting so would be available.

This meeting on **12th April 2018** was with representatives from TfL Streets, their contractor, Network Rail Asset Protection (ASPRO) and Network Rail Route Access Planning (RAP) along with Abellio Greater Anglia and MTR (Crossrail).

It should be noted at this meeting that I raised the question of why we, or other freight companies who use the route, had not been party to any previous correspondence or meetings in connection with this additional access for which there was some embarrassed apologies by the NR ASPRO representative in response. Also at this meeting we were advised verbally by the Network Rail ASPRO that they had been in discussions with Network Rail RAP "**for some months**" over the requirement for this additional access. In light of this statement then if Freightliner had been involved in those discussions we may have been able to accept the Week 11 proposal as we would have had sufficient notice to plan resources and brief our customers on the disruption.

Also at this meeting David Lee (NR RAP) advised that he would be issuing a Proposal Notice within the next day or so.

Subsequently though it was a week later, on **19th April 2018**, that the Network Rail RAP issued a Proposal Notice but for **Week 14 (Saturday 30th June to Monday 2nd July)**. After contacting Dean Warner at GA it transpires that on the **17th April 2018** Network Rail National Access Planning Team (Milton Keynes) chaired a Late Change Conference Call for which the additional RoU for AGB in Week 11 was on the agenda. In various debates with regards to issues between GA/NR it then came to light that because of the delays and the problems that NR were encountering with the Informed Traveller process the additional RoU was now being looked at to take place

in Week 14. Chris Chadwick (Freightliner Short Term Planning Manager) responded to David Lee (NR RAP) advising that Freightliners stance remained the same and we would be declining the request. A response was received from NR RAP on **25th April 2018** to both the email of the 19th to Chris Chadwick and also to Simon Barrett (25th) who had reiterated the Freightliner stance on this proposal (**see Appendix C**).

On **26th April 2018**, and despite the negative comments received, Network Rail subsequently published their Decision Notice for the 52 hour all lines RoU for the AGB in Week 14 (noted that there still was no PPS reference number included) and requested that all timetable participants to bid by 0900 Tuesday 1st May (**see Appendix D**).

Even though we were aware of our intention to appeal this decision we were obliged to submit a bid in accordance with the Decision Notice. An outline train plan was therefore provided to NR Capacity Planning Freight Informed Traveller Team at Milton Keynes (**see Appendix E**) subject to the outcome of any appeal to the Timetable Panel. In telephone conversations with the Team Leader Leann Eames due to her teams workload issues a confirmed date for the offer to Freightliner is still awaited as of **23rd May 2018**.

Unfortunately Freightliner acknowledges that it missed the opportunity to give its Notice of Dispute against the Decision Notice but were advised that this document could still be accepted at this dispute hearing by the panel. (**see Appendix F**).

5 EXPLANATION OF EACH ISSUE IN DISPUTE AND THE CLAIMANT'S ARGUMENTS TO SUPPORT ITS CASE

- 5.1 Freightliner believes that Network Rail did not follow due process for Week 11 and make all operators of the route aware that this was an additional requirement.
- 5.2 Due to the above this therefore forced Network Rail to subsequently then defer and instead propose Week 14 as a consequence of the state of the Informed Traveller Recovery Plan.

5.3 Freightliner believes that Network Rail has failed to apply:

- Part D 4.6.2 (a) because this is a Third Party road scheme which does not maintain, develop or improve the capability of the Network.
- Part D 4.6.2 (c) because this planned possession does not maintain or improve train performance. As far as Freightliner is concerned the potential risk is now high given the short notice of the RoU and the possibility of not getting the diverted paths agreed by NR.
- Part D 4.6.2 (f) because as far as Freightliner is concerned the potential impact on our commercial business is now high given the short notice of the RoU and as a possible consequence of (c) above.
- Part D 4.6.2 (i) because as far as Freightliner is concerned the potential impact would be to replace some services that are electrically hauled with diesel traction.
- Part D 4.6.2 (j) because as far as Freightliner is concerned the potential impact would entail reworking the train crew diagrams with possibility of non-balancing/inefficient working.

6 DECISION SOUGHT FROM THE PANEL

6.1 The Panel is asked to determine that Network Rail be directed to withdraw the Week 14 Decision Notice and return to the negotiating table, ensuring that all the relevant Timetable Participants be included, to look at future access opportunities.

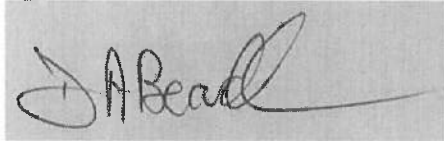
7 APPENDICES

The Claimant confirms that it has complied with Access Dispute Resolution Rule H21.

8 SIGNATURE

For and on behalf of Freightliner Group Limited

Signed

A handwritten signature in black ink on a light grey background. The signature appears to read "D Beadle" in a cursive style.

Print Name

DAVID BEADLE

Position

TIMETABLE PLANNING MANAGER

This is a control mechanism; it provides the Panel with assurance that the dispute has been referred with the knowledge and understanding of the disputing corporate body. This is important, as engaging in formal dispute resolution implies a commitment to accepting the outcome of that process.

In this context, the Claimant is reminded that in sending representatives to argue its case before the Panel, "it shall... ensure that

- (a) the competencies, skills and knowledge of any chosen representative are appropriate to the issues involved in the dispute (content, subject and value); [ADR Rule A19]*

then provide

The Appendices