

1 DETAILS OF PARTIES

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

- (a) DB Cargo (UK) Limited whose Registered Office is at Lakeside Business Park, Carolina Way, Doncaster, South Yorkshire, DN4 5PN ("DBC") ("The Claimant"); and
- (b) Network Rail Infrastructure Limited whose Registered Office is at 1 Eversholt Street, London NW1 2DN ("Network Rail") ("The Respondent").
- (c) Contact details for DB Cargo: Graham White, Access Manager South, Lakeside Business Park, Carolina Way, Doncaster, South Yorkshire, DN4 5PN.
- (d) Contact details for Network Rail: Duncan Lovatt & Richard Hooper, Network Rail, Wales Route.

2 DETAILS OF REFERENCE

2.1 This matter is referred to a Timetable Panel ("the Panel") for determination in accordance with Condition D5 of the Network Code

2.2 This Dispute arises from a decision of Network Rail in respect of Network Rail variations made pursuant to Condition D3.5 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 decision sought from the panel in respect of legal entitlement.

4 SUBJECT MATTER OF DISPUTE

4.1 This dispute arises from the Late Notice Restrictions of Use between Stoke Gifford No 2/ Caldicot and Leckwith Loop North Jn from 0200 on Saturday 19th October to 0420 on Monday 21st October 2019.

Possession Reference P2019/2680990

4.2 Copied and annexed to this Reference are:

- Appendix A: DB Cargo (UK) Ltd response to 157-W30-WA19 (original) [Part]
- Appendix B: Re-Issued request 157-W30-WA19

- Appendix C: DB Cargo (UK) Ltd response to 157-W30-WA19 (subsequent re-issue) [Part]
- Appendix D: Decision document for Re-Issued request 157-WA30-WA19 [Part]
- Appendix E: Works planned within the restriction of use.

5 DETAILED EXPLANATION OF THE DISPUTE

- 5.1 Network Rail, on Thursday 29th August 2019 sent out a meeting invitation for the following day, Friday 30th August to discuss further access required to for Electrification on Wales route. It should be noted that I was on leave on those 2 days and no other DB Cargo invitees were included on the distribution list. An 'out of office' response would have been sent. A follow-up meeting was held on Wednesday 4th September when I expressed DB Cargo's dismay at the request of another request for disruptive access on the South Wales Main Line. This should be viewed in the context of the original plan was that similar all line Restrictions of use in weeks 18 (0100 Saturday 27th to 0515 Monday 29th July 2019 (P2019/2556319)) and 25 (0120 Saturday 14th to 0450 Monday 16th September (P2019/2560805) plus 14-hour blocks with similar limits in 7 additional weekends should have delivered an Electrified Railway between London and Cardiff. That these restrictions of use did not deliver this outcome and the work type changed to be for construction; and in the case of Week 25 the limits extended from the CPPP (originally Gaer Jn to Leckwith Loop North Jn) gave us cause for concern with the likelihood of further disruptive access being required. Subsequently another restriction of use was proposed for a blockade in weeks 39 and 40 (2330 Tuesday 24th to 0400 Tuesday 31st December 2019 (P2019/2617006) adjacent to, but not fully under cover of the Newport S&C blockade (P2019/2529959).
- 5.2 At that 4th September 2019 follow up meeting I stated DB Cargo's requirement to have route throughout the Restriction of use, except for the Sunday 14 hour all line restriction of use previously agreed; between Leckwith Loop North Jn and Caldicot with access to both the East and West ends of Llanwern steelworks. Our principal (but not only) customers TATA steel and Puma energy require a smooth supply chain and the prospect of interrupting that supply chain causes them concern. In the case of TATA Steel, they require a constant cycling of wagons at Margam (empties in and loaded out) as if this supply dries up they have to cease Steel production at great cost.

PUMA Energy require to service their terminals at Westerleigh and Theale with product, mostly heating oil that supplies domestic and business customers over a wide area. As the weather gets colder the requirement for product is correspondingly greater and restrictions of use cause greater issues at the end of October (week 30) as opposed to end of July (week 18) and the middle of September (week 25). The week following this restriction of use requires the overnight Westerleigh service to divert via the Vale of Glamorgan requiring trains to be downloaded (by 5 wagons) so placing further restrictions on the ability to replenish stocks.

- 5.3 The proposal was received at 1306 on Thursday 5th September with a 5 working day response period and DB Cargo's response was sent at 1045 on Friday 6th September restating that we required a route as shown in 5.2 above [see appendix A]. Network Rail issued the Decision document at 1046 on Thursday 12th September and subsequently withdrew it at 1528 the same afternoon; I believe because the original proposal did not comply with Condition D3.4.4 (a). The Proposal was re-issued at 1538 the same afternoon again with a 5 working day response [See appendix B] and DB Cargo's response subsequently sent at 0901 on Friday 13th September restating our requirement for a through route [See Appendix C].

The final Decision was issued at 1203 on Friday 20th September, 4 weeks prior to the restriction of use being taken.

- 5.4 The Decision document itself gives the reasons for it being required as 'to facilitate further work in connection with the Great Western Electrification project' which is exceptionally vague, especially as the request states that the Restriction of use is specifically for the 'commissioning of OHE, the testing of OLE to Newport and construction to Cardiff West Jn' [See Appendix B]. Given that there had already been 2 additional 50-hour restrictions of use for construction it might be expected that the decision should show a bit more detail to enable operators to understand that need for this restriction of use. I requested of Network Rail that they provide a list of the activities that were taking place within this restriction of use and which was subsequently provided and shown in Appendix E. The long list of activities gives concern that further restrictions of use may be required given that work specifically for Electrification on this list should have been completed prior to week 18.

- 5.5 I have also sought from Network Rail an understanding of their use of the decision criteria and the weighting given the considerations as shown in Condition D4.6.2; namely '(f) the commercial interest of .../... any Timetable Participant that Network Rail is aware' and (j) enabling operators of trains to use their assets efficiently. Network Rail have not provided this information to date. It is noted that Condition D4.6 doesn't require Network Rail to publish its conclusion in circumstances such as this but I contend that it is desirable; without this information it is impossible to understand what the overarching imperative in issuing this Decision is? My contention is that Network Rail's to desire to get the project completed at any cost to meet an 'internal' deadline go against the requirement of DB Cargo's commercial interests given the financial and reputational damage this Decision serves on us and our customers and that interest has not been given enough weight in the Decision Criteria. We do not feel that is reasonable for DB Cargo and our customers to be affected so substantially to allow Network Rail to recover the work they have previously failed to deliver.
- 5.6 Although Condition D5 does specifically allow Network Rail to propose Restrictions of Use at less than 12 weeks-notice and to prescribe the timescales for the elements within that process I would argue that by issuing a Decision for a Restriction of use that has such a major impact on ourselves and our customers goes beyond what should reasonably be expected by operators. It should also be noted that the Decision gives no guidance as to when operators should bid changes to train planning; I would expect this to be stated to ensure that those changes required to be made to train paths to try and mitigate the restriction of use can indeed be accommodated.
- 5.7 Although the period between the hearing and the Restriction of Use is extremely short which is, in part, due to the lateness of the original request and the need to re-propose but also by the availability of parties on both sides as well as committee to convene a hearing. DB Cargo does not, however feel the short timescales should be a factor in the final decision. The Determination for TTP1521 states that 'I am mindful of the potential danger of creating a precedent incentivising Network Rail... to believe it can safely fail to perform its contractual obligations simply by waiting until a sufficiently late stage in the Timetabling process'.
- 5.8 It should be noted that we have received a request (165-W40-WA19) for 2 further 12 hour all line restrictions of use for Week 40 (Gaer Jn to Leckwith Loop North Jn from 1800 to 0600

Tuesday/Wednesday 31st December 2019 / 1st January 2020 and Wednesday/Thursday 1st January/2nd January 2020). Neither of these new proposals take any account of the agreed access for freight within the Newport S&C Restriction of use (P2019/2529959) which re-enforces my contention that Network Rail overriding objective is to deliver Electrification without any thought to DB Cargo's (and others) commercial interests.

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6 DECISION SOUGHT FROM THE PANEL

6.1 The Panel is asked to determine:

- (a) That the disruption and cost to both DB Cargo and our customers has not been weighted sufficiently by Network Rail's application of the decision criteria as shown in 5.5 and Network Rail has not considered the damage to our business, both financial and reputational in the headlong rush to complete the Electrification works.
- (b) That this Restriction of use be removed or amended to allow access between Leckwith Loop North Jn and Caldicot with access to Llanwrn and both East and West ends as specified in the reasoning for declining the original proposal as shown in Appendices A and C.

Kellyann

As discussed on yesterday's conference this request is declined by DB Cargo as we cannot accept any additional all lines block on the SWML.

We require a route from Margam to Caldicot including Llanwern outside of the 14 hours already agreed.

Graham

Graham White

Access Manager South



DB Cargo (UK) Limited, Lakeside Business Park, Carolina Way, Doncaster, DN4 5PN

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Mobile: [REDACTED]

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From: Jones Kellyann <[REDACTED]> **On Behalf Of** Engineering Access Planning - Wales Route

Sent: 05 September 2019 13:06

To: Clark Tim <[REDACTED]>; Freight - MK <[REDACTED]>; James Rory <[REDACTED]>; James Thomas (MK) <[REDACTED]>; Arrand Jamie <[REDACTED]>; MK Seasonal <[REDACTED]>; MK Test Trains <[REDACTED]>; MK-STP-WESTERN <[REDACTED]>; Schedule4Compensation <[REDACTED]>; Special Trains Mailbox <[REDACTED]>; Webb Briony <[REDACTED]>; Alison Rowsell <[REDACTED]>; Chris Owen <[REDACTED]>;
EXTL: Kirk Rob <[REDACTED]>; Scott Turner <[REDACTED]><[REDACTED]>; EXTL: Engineering Access Team <[REDACTED]>; Josh Watkins <[REDACTED]>; A Raisbeck <[REDACTED]>; A Sheldon <[REDACTED]>; EXTL: Grainger Adam <[REDACTED]>; S Chandler <[REDACTED]>; Amanda Stevens <[REDACTED]>; Graham White <[REDACTED]>; DRS <[REDACTED]>; Stuart Dean <[REDACTED]>; Andrew Bramman <[REDACTED]>; Chris Chadwick <[REDACTED]>; David Smith <[REDACTED]>; John Sadler <[REDACTED]>; EXTL: Lunham Mark <[REDACTED]>; EXTL: Barrett s <[REDACTED]>; Adam Barber <[REDACTED]>; Ben Godfrey-Day <[REDACTED]>; GWR Strategy <[REDACTED]>; Justin Kerr-Peterson <[REDACTED]>; Paul Dixon