

1 DETAILS OF PARTIES

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

- (a) *Direct Rail Services Ltd (DRS) whose registered office is at – Regents Court, Baron Way, Carlisle, Cumbria, CA6 4SJ.*
- (b) Network Rail Infrastructure Limited whose Registered Office is at 1 Eversholt Street, London NW1 2DN (NR).

1.2 *Third Parties to this dispute may include Transport for Wales, Great Western Railway, Cross Country Trains, GB Railfreight, Freightliner (Heavy Haul and Intermodal).*

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 & D5.1.2 (a), of the *Network Code*.

The Claimant needs to make explicitly clear what provisions of its contract entitle, or direct, it to bring its dispute before a Timetabling Panel.

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 On Friday 20th September, DRS notified a dispute with Network Rail in relation to their late notice decision document 157-W30-WA19 which was published as a late notice possession decision on Thursday 19th September.. The dispute was brought under Condition of the network code as applicable at the time and the ADC Secretary registered it as TTP1573. In notifying Network Rail of it's response to the late notice possession request. DRS indicated the requirements for its services in the hope these

would be considered and resolve issues without a Timetable panel hearing to be required. The possession was first requested on Thursday 5th September and was declined by DRS unless options to pass the service through were agreed, on Thursday 12th September this decision was sent out, ignoring the requests from DRS for the possession to be amended to pass our services but was then consequentially withdrawn on that same day and re-requested again on Thursday 12th September. DRS responded in the same way on Friday 13th September, declining it unless arrangements were made to pass the Daventry/Wentloog traffic through. This was then decided out on Friday 20th September, with DRS then notifying Network Rail of this dispute on Friday 20th September and with ADC on Tuesday 24th September.

- 4.2 It is DRS's belief that Network Rail has reached a decision without adequate consultation and has incorrectly applied the decision criteria (if at all) which is set out in condition D3.4.4 (b).
- 4.3 The proposed possession, reference P2019/2680990, for planning week 30, involves a 50 hour block of all lines between Stoke Gifford Jn/Calidcot and Newtown Jn (east end of Cardiff station), preventing any access to/from the terminal we require at Wentloog and crucially any possible diversionary routes for our traffic between Daventry/Wentloog to take.

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

- 5.1 D3.4.4 (b) requires Network Rail to provide details of how it has come to its decision to justify its access in this extremely late notice decision. Some details have been provided of this, in regards to amount of registration items/'EMC testing but this was not provided on the decision document. Only one option for this possession has ever been suggested and despite its unsuitability to DRS and undoubtedly after the decision was already made. It is apparent that Network Rail have not applied the decision criteria as set out in Network Code D4.6.1. correctly at the point in which its decision was made.
- 5.2 As mentioned earlier, DRS has not been served with a full justification of this late notice access in terms of the decision criteria, thereby justifying our position in disputing this.

- 5.3 As a result, DRS continues to face a extremely late notice possession, which gives no alternative routes for the Daventry/Wentloog traffic to run on and leaves the customer (Stobart/Tesco) having to come up with road transport to move the traffic between Daventry and Wentloog which is both expensive and hugely disruptive to them and not something Stobart/Tesco will be able of physically resource at this late stage. Even if they could, a cost of £26,520 to road the traffic from Daventry to Wentloog and back would be incurred.
- 5.4 In respect of this late notice decision. DRS are unable to serve the requirements of it's customer in the lead up to one of it's highest demand periods of the year (stock piling for Black Friday and lead up to Christmas shopping period). This possession being on at this time of year really does present an unfeasible option to the customer. Our customer reasonably expects a full quantum of services to run between Daventry/Wentloog during October/November and December.
- 5.5 As mentioned in 4.3, no diversionary routes are available around this possession due to all lines being blocked between Stoke Gifford No 1 Jn/Caldicot and Newtown Jn, the alternative route via the WCML/Basford Hall/Shrewsbury/Hereford is cut off by this as it joins on at Maindee West Jn and that is essentially in the middle of this possession, the other alternative route via Bristol Parkway/the Severn Tunnel is also cut off due to this possession blocking all lines in the Severn Tunnel Junction area.
- 5.6 The late notice of this request at just 5 weeks from the intended possession start time also prevents us from looking at alternative terminals for this service to operate to. An option for the customer is Portbury Docks in Bristol but this late notification did not give DRS anywhere near enough time to train it's drivers on this route/come up with a contract with the relevant port authority or agree a DRS approved safe method of working at the terminal site. DRS would have pursued this option, had this possession been informed to us within the normal planning timesacles.
- 5.7 Also, with regards to this, it will impact on terminal operations at Daventry. The terminal there is extremely short on space and requires the Wagon set

which would work the Wentloog set to be stabled in the Tesco terminal at Daventry which has caused major issues for the operator of the site at Daventry before when the Wentloog service has been unable to run due to possessions agreed at the EAS stage (wagon set stabled in the Rugby area instead of Daventry to free up room).

6 DECISION SOUGHT FROM THE PANEL

6.1 *DRS (the claimant) is requesting that the panel determine*

(a) That under condition of the network code, D3.4.4 (b) Network Rail failed to consult adequately throughout the process. Only providing details of work required to be done once the decision document was sent/justification was needed.

(b) That under condition D3.4.4 (b) Network Rail has not applied the decision criteria for this late notice possession reasonably and has not adequately justified its reasons for needing such late notice disruptive access.

(c) Under condition of the network code, D3.4.4 (b) that this 50 hour possession is withdrawn and re-planned into a more suitable week, or utilising overnight at weekends or mid-week night access (which is far less disruptive to all operators). With appropriate level of involvement from affected parties within the rail industry, so that a proper plan can be delivered in accordance with due process, contractual obligation and commercial sensibility.

7 APPENDICES

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

- 7.1 DRS's notice of dispute on late notice possession 2680990 (attached in e-mail).
- 7.2 Reference letter from ADC (attached in e-mail).
- 7.3 Maps showing, limits of this possession and lack of ability to divert around that this then causes (attached in e-mail).
- 7.4 Possession requests (attached in e-mail).
- 7.5 Possession decisions (attached in e-mail).

8 SIGNATURE

For and on behalf of Direct Rail Services Limited

Signed

Alex Vickers

Position

Train Planner