

TP1630

Network Rail Infrastructure Limited

Sole Reference Document

1 DETAILS OF PARTIES

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

- (a) West Midlands Trains Limited, a company registered in England Under number 09860466 having its registered office at 2nd Floor St Andrews House, 18-20 St Andrew Street, London, United Kingdom, EC4A 3AG ("WMT") ("the Claimant");
- (b) Network Rail Infrastructure Limited whose Registered Office is at 1 Eversholt Street, London NW1 2DN ("Network Rail") ("the Defendant").

2 CONTENTS OF THIS DOCUMENT

This Response to the Claimant's Sole Reference includes:-

- (a) Confirmation, or qualification, that the subject matter of the dispute is as set out by the Claimant in its Sole Reference, in the form of a summary schedule cross-referenced to the issues raised by the Claimant in the Sole Reference, identifying which the Defendant agrees with and which it disagrees with.
- (b) A detailed explanation of the Defendant's arguments in support of its position on those issues where it disagrees with the Claimant's Sole Reference, including references to documents or contractual provisions not dealt with in the Claimant's Sole Reference.
- (c) Any further related issues not raised by the Claimant but which the Defendant considers fall to be determined as part of the dispute;
- (d) The decisions of principle sought from the Panel in respect of:
 - (i) legal entitlement, and
 - (ii) remedies;
- (e) Appendices and other supporting material.

3 SUBJECT MATTER OF DISPUTE

3.1 The nature of the dispute in Section 4 of West Midlands Trains' Sole Reference Document relates to the impact of actions of Network Rail during the revision of the December 2021 Timetable Planning Rules.

The dispute arises over how Network Rail has acted with regard to Network Code Condition D2.2 between D64 and the publication of the final Rules at D44 in accordance with the duties and powers set out in Condition D4.1.

4 EXPLANATION FROM THE DEFENDANT'S PERSPECTIVE OF EACH ISSUE IN DISPUTE

4.1 Issues where the Defendant accepts the Claimant's case

4.1.1 Network Rail accepts that the dispute is in relation to the Rules (Timetable Planning Rules) for the North West and Central Region (December 2021).

4.1.2 Network Rail accepts that the dispute raised relates to the proposed increase in station dwell times to 1 minute for the following stations on both the up and down lines:

- Canley, Tile Hill, Berkswell, Marston Green, Lea Hall, Stetchford and Adderley Park.

4.1.3 Network Rail accepts that for the above listed locations, a 'Standard Value' of a minimum dwell time of 45 seconds which is shown as alternate 1 minute/ 30 second dwells was in place for Class 350 locomotives.

4.1.4 Network Rail agrees that it has followed the relevant timelines specified within Network Code Part D and met these deadlines, in particular those detailed under Condition D2.2 and that a timetable impact study was undertaken as requested and agreed upon.

4.1.5 Network Rail accepts that a forum was held on 20th January 2020 at which Network Rail provided the outcome of the timetable impact study and that WMT notified its lack of support for the proposed extended dwell times.

4.1.6 Network Rail agrees that it published the Rules (Version 2) on 7th February 2020 in accordance with Condition D2.2.5.

4.1.7 Network Rail agrees that WMT issued a Notice of Dispute in relation to this matter on 13th February 2020 in accordance with Condition D2.2.8(b).

4.2 Issues where the Defendant qualifies or refutes the Claimant's Case

4.2.1 Whilst it is accepted that the output of the timetable impact study was shared with the industry on 17th January 2020, Network Rail draw reference to the timeline contained within Appendix A which details the meetings, calls and work undertaken in an open and collaborative fashion to reach this stage. (WMT SRD Para 4.1 Page 2).

- 4.2.2 Network Rail accepts that WMT provided its sample of manual timing data on 20th January 2020 but contend that the sample size was limited in both size and relevance. Whilst Network Rail always seeks to act reasonably and deal with the information presented to it, Condition D2.2.4 stipulates that between D59 and by D54 Timetable Participants may make representations in relation to objections and that Network Rail shall consult regarding these objections. WMT did not provide its data sample until D47. Given that Network Rail is obligated to consider such submissions, respond to them and publish the final Rules at D44, this only left Network Rail with three weeks to do so. (WMT SRD Para 4.3 Page 2 – at the bottom of the page).
- 4.2.3 WMT advises in its SRD that Network Rail has not justified the increase in dwell times on the seven stations in dispute. Network Rail disagrees with this. Network Rail has carried out three Industry Observation sessions (one of which WMT attended) and then used Quartz data to show that Class 350 locomotives do not regularly achieve the 45 second dwell time that Network Rail has changed to 1 minute within Version 2 of the December 2021 Rules at these locations. Quartz is a software tool developed by Amey Consulting to analyse the performance of stations across the network. Quartz uses TRUST and TD data to provide train delay information related to dwells, starts, arrivals and departures. Information related to delays per period, day, headcode and platform is displayed in dashboards and smart graphics which make it easy to analyse the performance of stations. The delay heatmaps demonstrate the performance of the station in terms of meeting the planned dwell/start time for each platform. This information supports the identification of poor performance, is accessible to all of the industry and the WMT performance teams have been using the data and information to aid in creating performance initiatives, projects and workstreams. The data is also used as part of the WMT Right Time performance meetings. The Quartz data used in the attached charts (Appendix J) has been selected from average running days when trains were in path and is from December 2018 to October 2019. This large sample size allows us to have the best possible data for the dwell. This data has then been verified by the Industry Observations for accuracy. The one location that Quartz could not gather data for is Tile Hill in the Up direction. Here though the Industry Observations show an Average Median Dwell of 49 seconds over 25 occasions. (Appendix J) (WMT SRD Para 4.2 Page 3 & Para 5.6).
- 4.2.4 The data shows that at no station does the 350 locomotive, using the large sample size of the Quartz data, achieve a median average dwell of 45 seconds or less. In all cases the median time is higher. This means that on average the services will not achieve the 45 second dwell and if timed as such will lose time in the corridor. The average median dwell time over all seven stations is 51 seconds in the Up and 50 seconds in the Down. This is 23% over the 45 second dwell in the Up and 22.5% over in the Down. In order for the average 45 second dwell to be achievable, robust and perform well over the seven stations, this value has to be consistently achievable which the data shows is not happening. (Appendix J) (WMT SRD Para 4.2 Page 3 & Para 5.6).
- 4.2.5 WMT has asserted that Network Rail has “neither...made a balanced decision and exercised the Decision Criteria fairly”. Network Rail refutes this assertion and submits it has complied with the Network Code Conditions D2.2.6 and D4.1 respectively. Network Rail is fully aware of the Objective and

Considerations as set out in Condition D4.6 and takes its obligations very seriously. The structure of the decision-making process within Network Rail is geared around ensuring that the Considerations are given due weight. Attached at Appendix B is a Decision Criteria Table evidencing the weighting applied by Network Rail to all of the considerations listed within Condition D4.6.2 and applied any of those which were deemed to be relevant to this matter based on the information that was made available at the time. Network Rail submits that it is under no obligation to provide such a document contemporaneously unless specifically requested by an operator, which it was not. Network Rail submits that its rationale behind the decisions taken was clearly communicated at the various forums, meetings and calls throughout this process and as detailed within the timeline and documents provided within the Appendices. (Appendix B) (WMT SRD Para 4.2 Page 3).

- 4.2.6 Network Rail agrees that the Coventry corridor timetable impact study was produced by Network Rail on 17th January 2020 and that this contained four options demonstrating that extended dwell times of one minute at the stations in dispute could be implemented whilst still accommodating the relevant quantum rights of WMT and all other timetable participants. (Appendix F) (WMT SRD Para 5.26).

Issue 1

- 4.2.7 Network Rail has reviewed and extended the dwell times in the Coventry corridor based on performance data. This corridor was selected for review as the data in May/June 2019 showed that trains running between Northampton / Birmingham New St lost time in this area. PPM for the Coventry corridor services went from 81.06% in Period 1 19/20 to 67.95% in period 3 19/20. This drop caused a performance review to take place. Network Rail have not reviewed 45 second dwells at other locations on the North West & Central route currently as they do not have the same performance concerns as this location. On investigation, it was found that the dwell times were not robust. It is also the case that the practice of alternate 30 second/ one min dwells means that trains - providing that they do meet the intended 45 second dwell - will be slightly out of path before regaining time at a following station. This low-level sub-threshold delay does affect other services. In the December 2019 timetable all services between 09:00 and 12:00 in the Down direction are out of path within the Coventry corridor. The start of the chain reaction is either the 2H's or 1Y's (Train headcodes) operated by WMT. The median lateness of Avanti and WMT services is shown graphically in Appendix C. This also shows that WMT services present on-time between 0500-0859 but lose on average 1.3 min by Birmingham International, this in turn affects and delays the following Avanti services. (Appendix C) (WMT SRD Para 5.3).

- 4.2.8 As system constraints prevent us, as an industry, accurately planning to a 45 second value, in the vast majority of cases the values in TPR's are rounded to a ½ min value. The compromise 45 second rule as written can lead to scenarios where trains are not given adequate time, even when correctly applied. This is demonstrated within the Coventry corridor where stops are spread amongst various different service groups with different stopping patterns. It is not always true that having alternative half and whole minute dwells would even out the dwell times over two or more successive stations to 45 seconds. An example headcode that does this in the current timetable is 2Y69EK (Appendix K) which calls at Canley, Tile Hill, and Berkswell towards Birmingham during the daytime (09:00-16:00); the

average median dwell for these stations combined is 146 seconds. Applying the alternate half and one-minute dwells and the newly agreed reduced 30 second dwell at Hampton-in-Arden would logically mean only one of these stations would require a 1-minute dwell giving a total dwell time of 120 seconds, nearly 30 seconds short of the median average dwell between Coventry and Birmingham International. (Appendix K) (WMT SRD 5.3)

- 4.2.9 Network Rail does not agree with WMT that the main cause of delay on the Coventry corridor is the 'input delay' from services entering this corridor out of path. WMT has not raised this as an issue at any of the previous meetings with Network Rail regarding the proposed changes to dwell times within the Coventry corridor. Similarly, this was not mentioned within the WMT response to Draft Rules (Version 1). To date, WMT has not provided Network Rail with any data or evidence to support the assertion that input delay is the main cause of poor performance through the Coventry corridor. (WMT SRD Para 5.5).
- 4.2.10 On the basis of this new assertion from WMT within its SRD, Network Rail has investigated and compiled data in this respect which is attached as Appendix C. The data that has been utilised by Network Rail shows that WMT services lose time through the Coventry corridor, irrespective of whether those services enter on time. The charts show the data from the 25th percentile to the 75th percentile and then the median time lost as the number. (Appendix C) (WMT SRD Para 5.5).
- 4.2.11 Network Rail refutes the numbers provided within the WMT SRD submission at Paragraph 5.6 and would refer to Appendix J and the data contained within as this is the data which Network Rail has relied on during this revision. (Appendix J) (WMT SRD Para 5.6 and 5.7)
- 4.2.12 Network Rail accepts that a review of SRT values on the Coventry corridor is required. At the Coventry working group meeting on 14th November 2019 in Baskerville House it was decided by Network Rail that due to the volume of work involved in obtaining and reviewing SRT data in advance of D40 for the December 2020 NWTT it was not possible to complete in the time available. However, given that data for dwell times had been obtained and reviewed it was also decided that these TPR changes would be progressed, as consulted in V0 of the 2021 TPRs. Network Rail considers this approach, as agreed with all affected Operators, similar to WMT's train plan amendments, as an incremental change to improve performance and is looking forward to working collaboratively with Operators to review SRTs for future timetable changes. (WMT SRD Para 5.8).
- 4.2.13 Whilst Network Rail understands the position taken by WMT in relation to paragraphs 5.9 and 5.10 of their SRD, WMT has provided no verifiable data to support the assertions that it makes there. Network Rail's decisions are made based on industry data and our stance has been clear in that longer dwell times will provide for resilience within the timetable and allow these dwell times to be more consistently met. (WMT SRD Para 5.9 and 5.10).
- 4.2.14 Within its SRD, WMT references an agreement that has been reached with RMT regarding a revised dispatch process. This has not been raised with Network Rail prior to its receipt of this document. Network Rail submits that whilst this may be a future mitigation measure, no details, explanation/data or dates regarding its implementation have been provided to us. It would not be correct in Network Rail's

view to continue to sustain poor performance and stymie TPR change on the expectation that a future intervention may deliver an uplift in performance that is yet to be quantified. (WMT SRD Para 5.11 and Para 5.12)

- 4.2.15 WMT had previously raised an alternative 'revised operational activity' which related to green lines being painted on the platforms themselves. This was raised at the Central TPR Forum held on 30th October 2019, at the subsequent Coventry Working Group meeting on 14th November 2019 and at the 20th January Coventry timetable impact study output meeting but WMT have been unable to confirm when the trial started or provide comparative data of the before and after dwell time performance (Appendix L). Network Rail did not consider the proposal further as WMT had been unable to substantiate that it had delivered any measurable benefit. (Appendix L) (WMT SRD Para 5.12).
- 4.2.16 Network Rail accepts that WMT's May 2020 timetable was planned with amendments that were to seek an incremental uplift in performance but given that this timetable has not yet started and given the nature of the advanced timescales of the TPR process, Network Rail took the decision in July 2019 through the Central route TPR Forum that a TPR review of the Coventry corridor area was required. This was a result of poor performance in the area after the implementation of WMT's May 2019 timetable. Network Rail submits that it has worked with WMT, and all Operators, in identifying whether the current dwell time values in the TPRs for the Coventry corridor were fit for purpose and reflected the capacity of the network. Joint observation days involving Network Rail and Operators took place on 28th August 2019 and 5th and 6th November 2019. The results of these joint observation days, along with the industry wide available Quartz data, were presented through the Central route TPR forums. Based on the information available to it at the time Network Rail took the decision to propose the increases to station dwell times on the Coventry corridor. (Appendix J) (WMT SRD Para 5.14).

Issue 2

- 4.2.17 Network Rail agrees with the WMT assertion that a holistic approach is to be taken in relation to network outputs but would qualify this by submitting that Network Rail has correctly applied the considerations stipulated by Conditions D4.1 and D4.6 in the attached Appendix B and via the execution of the timetable impact study. The clear reasoning and rationale for is explained in this appendix. (Appendix B) (WMT SRD Para 5.15).
- 4.2.18 Network Rail notes that within its SRD, WMT asserts that the timetable options presented within the timetable impact study all come with 'disbenefits'. At no stage of the consultation process has WMT raised any specific concerns regarding commercial issues, nor indeed any other Network Code Consideration under Condition D4.6.2. (WMT SRD Para 5.16)
- 4.2.19 Through the Central route TPR Forum on 4th September 2019 (Appendix D) Network Rail made it clear to Operators that a timetable impact study of the May 20 NWTT against the new value TPRs proposed in V0 of the 2021 TPRs would be carried out. A remit for the study was presented to Operators on 10th December 2019 at the Central route TPR Forum (Appendix E) at West Midlands Trains offices in Birmingham. Network Rail made it clear that this should be a collaborative approach and that Operators

were welcome to come to Network Rail's office in Milton Keynes to review progress of and input to the study. Network Rail clarified the timescales of the study, with a completion date of 17th January 2020 which would be followed up with a meeting on 20th January 2020. The objective of the Capacity Study was to understand what the impact of changes to the TPRs in the Coventry Corridor have on the train plan and whether all schedules can still be accommodated in the timetable and what flexing is required. (Appendix D & E) (WMT SRD Para 5.16).

4.2.20 A teleconference call with Network Rail planners and Operators took place at 14:00 on 19th December 2019 where progress on the study was discussed. Network Rail explained its approach to the study and again invited Operators to come to Network Rail's office in Milton Keynes to collaborate with it on the study. Kevin Waplington from WMT and Alex Grimes from Avanti WC visited Milton Keynes on 9th January 2020 where they spent time with Edward Smith and Julian Noble (Network Rail) and discussed some of the results from the study. Two timetabling options were reviewed. Noting that there were some increases to journey times; further options were looked at in the week commencing 13th January 2020 prior to sharing the completed study on 17th January 2020 (Appendix F). Throughout the process of delivering the Capacity Study, Network Rail acted openly and transparently and ensured that Operators were aware of the request to collaborate and input their thoughts during its delivery. (Appendix F) (WMD SRD Para 5.16).

4.3 Issues not addressed by the Claimant that the Defendant considers should be taken into account as material to the determination.

4.3.1 In reality, an enormous amount of information is exchanged and explanations regarding The Rules provided outside of the formal requirements of Part D of the Network Code. This is evidenced through the supplied timeline forming Appendix A. Network Rail informed WMT that it intended to undertake a review of the dwell times for WMT's services on the Coventry corridor at the Central TPR Forum on the 4th September 2019 (Appendix D). On 20th September 2019 (D-64) Network Rail published Version 0 of the Timetable Planning Rules and began the formal consultation of proposed rules changes including 1-minute dwells for Class 350 EMU at all intermediate stations along the Coventry corridor excepting Birmingham International (1-minute dwell for EMU already specified at this location) (Appendix G). WMT chose not to respond during the initial consultation period. (Appendix A, D & G)

4.3.2 The 'Draft' Rules (Version 1) were published on 25th October 2019 (D-59) and repeated the proposal contained at D-64, namely 1-minute dwells for Class 350 EMU at all intermediate stations along the Coventry corridor excepting Birmingham International. (Appendix H)

4.3.3 After receiving WMT's Version 1 response, Network Rail reviewed the data for the intermediate stations and agreed that the dwell times at Hampton-in-Arden in both directions could be reduced to 30 seconds and this has been reflected in Version 2 of the TPRs. Both parties have also worked collaboratively to remove both the dwell dispute at Long Buckby and a Junction Margin issue at Milton Keynes Central from this dispute in advance of this hearing.

4.3.4 Every TPR value is intended to reflect the capability of the infrastructure accurately and as such Network Rail considers that accuracy is the starting point for any revision. In Network Rail's view, accuracy underpins almost all of the Considerations within the Code, (at least (a), (c), (d), (e), (g) and (j) (and less directly (f) as well) and certainly the Objective. Network Rail is somewhat reliant on operators to explain why a revision will have an impact on performance, or why it will have an impact upon them. When this information is provided, Network Rail is well placed to assess and weigh these considerations appropriately, which it cannot do if operators provide only assertions and general narrative. Where supporting information is not provided by operators, then all Network Rail can reasonably do is place more weight and importance on the evidence it does have before it. (Appendix B).

4.4 Why the arguments raised in 4.1 to 4.3 taken together favour the position of the Defendant

4.4.1 Network Rail submits that it has investigated and changed the dwells at the seven stations in the Coventry corridor based on a sudden performance deterioration in this area after the implementation of WMT's May 2019 New Working Timetable. On investigation it was found using industry recognised data that at none of the stations in the dispute did the 350 locomotive meet its average median dwell of 45 seconds. It is on the basis of this evidence from a very large industry recognised data set that Network Rail made this change. This change was explained throughout the process in the various meetings and correspondence and the effect of the change investigated before it was made in a timetable impact study.

4.4.2 Network Rail submits that its conduct has been in line with the requirements of the Network Code and that it has subsequently breached neither WMT's Track Access Agreement, nor the Network Code.

4.4.3 It is noted that whilst WMT have submitted that it disagrees with the decision taken by Network Rail in relation to making changes to the TPRs that are questioned within this dispute, that it has not provided any viable alternative suggestions or solutions to improve performance. In the same vein, WMT has merely alleged that Network Rail has not applied the Network Code correctly nor communicated its justification for disputing our decision regarding the TPRs. It is submitted that the above paper and referenced Appendices demonstrate that Network Rail has correctly applied the Network Code and communicated our rationale for the decision.

4.4.4 Network Rail would also like to draw attention to the Timetable Panel Determination designation TTP1064 in which it is noted within Paragraph 6.9 that "...for an appeal to be successful the TOC/FOC must have engaged with Network Rail constructively throughout. Any blanket dismissal of proposals from NR or any unwillingness to explain the TOC/FOC's reasons for disagreeing with such proposals is unlikely to succeed in persuading the Panel that a decision should be overturned".

5 DECISION SOUGHT FROM THE PANEL

5.1 Network Rail asks that the Panel determine that it has adhered to Network Code Condition D2.2.2 and has acted in accordance with the duties and powers set out in Condition D4.1.

5.2 Network Rail asks that the Panel determine that Network Rail did not display disregard for Part D but instead worked with WMT in a pragmatic and reasonable way to undertake revisions to the Timetable Planning Rules identified as being required.

5.3 Network Rail asks that the Panel determine that the final version of the Timetable Planning Rules as published at D44 in relation to the December 2021 Timetable is to remain in force.

6 SIGNATURE

For and on behalf of
Network Rail Infrastructure Limited



Signed

Print Name
John Thurgood

Position
Timetable Production Manager

7 APPENDICES

- A. Timeline of Events
- B. Decision Criteria Table
- C. Data Demonstrating Time Loss within Coventry Corridor
- D. 4th September 2019 TPR Forum Minutes
- E. 10th December 2019 TPR Forum Minutes
- F. Capacity Study Report
- G. Version 0 TPRs
- H. Version 1 TPRs
- I. Version 2 TPRs
- J. Quartz/ Network Rail/ WMT Timing Data
- K. Single Train Report 45 Second Dwell
- L. Email from WMT