

TTP195

**SUBMISSION BY ENGLISH, WELSH AND SCOTTISH RAILWAY LIMITED TO THE
TIMETABLING PANEL (TTP195)**

**DISRUPTIVE POSSESSION: Extension of the existing Christmas possession of an all
line block at Rugby for an additional 24 hours.**

1. DETAILS OF PARTIES TO THE DISPUTE

Network Rail Infrastructure Limited	English Welsh and Scottish Railway Ltd Lakeside Business Park Carolina Way Doncaster South Yorkshire DN4 5PN Contact: Nick Gibbons National Planning Manager Tel: 0870 440 5129 Fax: 0870 440 8020 Mobile: 07801 905877
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2 EWS RIGHT TO BRING THIS REFERENCE

- 2.1 This matter is referred to a Timetabling Panel for determination in accordance with Condition D5.1 of the Network Code and pursuant to section 3.5.4 of the National Rules of the Plan (see Appendix H).

English Welsh & Scottish Railway Limited ('EWS') is in dispute with Network Rail over the short notice advice and imposition of an extension to a pre-planned disruptive possession taking place at Rugby over Christmas/New Year 2007/08. The pre-planned possession, along with its extension, is listed below.

LNW (S) Draft WON Week 40 item 4, amended to read:

**PPS Ref: P2007/933798
Week 40 Monday 24th December 2007 to Tuesday 1st January 2008**

**At/Between: Rugby South Jn and Trent Valley Jn
Lines: All BLOCKED**

and

**At/Between: Hanslope Jn and Rugby South Jn (via Weedon)
Lines: Down and Up Main BLOCKED**

and

**At/Between: Rugby Trent Valley Jn and Brandon
Lines: Down and Up Coventry BLOCKED**

and

**At/Between: Rugby Trent Valley Jn and Shilton
Lines: All BLOCKED**

Times: 2330 Mon 24/12 to 0520 Tue 1/1

and

**At/Between: Hanslope Jn and Rugby South Jn (via Northampton)
Lines: All BLOCKED**

Times: 2330 Mon 24/12 to 0300 Fri 28/12

and

At/Between: Althorpe Park and Rugby South Jn

Lines: Down and Up Northampton BLOCKED
Times: 0300 Fri 28/12 to 0140 Sun 30/12
and
At/Between: Hanslope Jn and Rugby South Jn (via Northampton)
Lines: All BLOCKED
Times: 0140 Sun 30/12 to 0915 Sun 30/12
and
At/Between: Althorpe Park and Rugby South Jn
Lines: Down and Up Northampton BLOCKED
Times: 0915 Sun 30/12 to 0300 Mon 31/12
and
At/Between: Daventry South Jn and Rugby South Jn
Lines: Down and Up Northampton BLOCKED
Times: 0300 Mon 31/12 to 0520 Tue 1/1
Work: Remodelling works, signal and OLE commissioning

Traffic Remarks: 2330 MON 24/12 - 0600 THU 27/12 CHRISTMAS SHUTDOWN.
2330 MON 24/12 - 0300 FRI 28/12 AND 0140 SUN - 0915 SUN 30/12 NO ACCESS
NORTHAMPTON STATION, NORTHAMPTON RIVER SIDINGS, KINGS HEATH
DEPOT, NORTHAMPTON CASTLE YARD. 2330 MON 24/12 - 0300 MON 31/12 NO
ACCESS DAVENTRY IRFT. 0300 FRI 28/12 – 0520 TUE 1/1 TRAINS TO/FROM
THE TO START/TERMINATE AT NORTHAMPTON AND TRAINS TO/FROM THE
WEST MIDLANDS AND THE NORTH WEST TO START/TERMINATE COVENTRY
OR BIRMINGHAM INTERNATIONAL, RAIL REPLACEMENT ROAD SERVICE TO
OPERATE. 0300 MON 31/12 TO 0520 TUE 1/1 ACCESS DIRFT FROM THE
NORTHAMPTON DIRECTION ONLY.

3 CONTENTS OF THE REFERENCE

The proposals for the extension were issued in an e-mail from Network Rail dated 12 December 2007 (see Appendix A). EWS responded in an e-mail dated 13 December 2007 (see Appendix B) questioning the short response timescale allowed by Network Rail. This prompted a further e-mail from Network Rail dated 14 December 2007 (see Appendix C) indicating that Network Rail would allow the required 10 days response period contained in section 3.4.1 of the National Rules of the Plan, but would nevertheless be proceeding with the proposed extension in any event once that response period had expired. This was subsequently confirmed in an e-mail from Network Rail dated 28 December 2007 (see Appendix F) despite EWS advising its objections to the proposed extension in an e-mail dated 20 December 2007 (see Appendix E). EWS referred the matter to the Secretary of the Access Disputes Committee in e-mails dated 14 and 28 December 2007 (see Appendices D and G).

4 SUBJECT MATTER OF DISPUTE

- 4.1 This dispute is in relation to possession proposals made by Network Rail for the extension of a pre-planned disruptive 'all-line' possession at Rugby published in version 3 of the 2008 Rules of the Route and taking place during the Christmas/New Year 2007/08 period (Weeks 39 and 40). The pre-planned possession already agreed by EWS was due to commence 2330 Monday 24 December 2007 and finish at 0300 Monday 31 December 2007. Network Rail's proposal would extend the possession by 26 hours until 0520 Tuesday 1 January 2008.

4.3.1 Copied and annexed to this reference are:

- Appendix A: An e-mail dated 12 December 2007 from the Network Rail to affected Train Operators advising of its proposal to extend the pre-planned possession at Rugby over the Christmas/New Year 2007/08 period.
- Appendix B: An e-mail response dated 13 December 2007 from EWS to Network Rail setting out its reasons for declining the 2-day response period to the proposal.
- Appendix C: An e-mail dated 14 December 2007 from Network Rail to affected Train Operators advising its revision to the formal 10-day response period as well as indicating that it would be proceeding with the extension once that timescale had expired.
- Appendix D: An e-mail dated 14 December 2007 from EWS to the Access Disputes Committee Secretary detailing its objection to the accelerated timescales for the possession proposal.
- Appendix E: An e-mail dated 20 December 2007 from EWS to Network Rail objecting to the proposed extension to the possession on the grounds that it would significantly affect the businesses of EWS and its customers
- Appendix F: An e-mail dated 28 December 2007 from Network Rail to affected Train Operators advising of its decision to proceed with the proposed extension to the possession at Rugby.
- Appendix G: An e-mail dated 28 December 2007 from EWS to the Access Disputes Committee Secretary referring Network Rail's decision to proceed with the proposed extension to the Access Disputes Panel.
- Appendix H: Section 3 of the National Rules of the Plan for the 2008 Timetable
- Appendix I: Timetable Determination reference TTP102
- Appendix J ORR's determination document of the appeals against the Panel's determination TTP102

5 SUMMARY OF DISPUTE

- 5.1 This dispute is in relation to possession proposals originally advised by Network Rail on 12 December 2007 (subsequently confirmed on 28 December 2007) extending a

pre-planned all-line possession at Rugby by approx 26 hours. Network Rail's original proposals (as advised to affected Train Operators on 12 December 2007) allowed consultees only a 2-day response period. Given the disruptive effect the proposed extension would have on its business, EWS insisted on being allowed the normal 10-day response period as laid down in section 3.4.1 of the National Rules of the Plan. This would allow more time for EWS to consult its customers over the proposals and consider any alternative arrangements that would not be possible to undertake within Network Rail's reduced 2-day response timescale.

- 5.2 Network Rail advised on 14 December 2007 that it would now allow the full 10-day consultation period and, therefore, requested comments from consultees by Friday 28 December 2007. However, Network Rail also stated at the same time *"by this letter we informally give you advance warning that once the 10 working days have elapsed we will be formally notifying you of our decision to go ahead with the extension of the blockade to 0520 Tuesday 1st January 2008"* (Appendix C). Therefore, in the view of EWS, Network Rail in making this statement had effectively already decided to proceed with the proposed extension before it had received responses from consultees. EWS submits that, in advance of responses from consultees, Network Rail cannot be in a position to take account of the full range of Decision Criteria in Condition D6 of the Network Code and, therefore, meet the requirements of sections 3.5.1 and 3.5.2 of the National Rules of the Plan. In effect, EWS considered that Network Rail's e-mail dated 14 December 2007 was signifying its intention to impose the proposed extension irrespective of any comments or objections received from consultees.
- 5.3. After analysing the effect on its businesses and after consulting its customers who had by that time already planned to operate services during the period covered by the proposed extension, EWS responded to Network Rail on 20 December 2007 stating that it could not accept the proposed extension due to the disruptive effect this would have on its business and its customers' business.
- 5.4. Despite EWS's representations, Network Rail decided to proceed with the proposed extension as it had indicated that it would in its earlier e-mail dated 14 December 2007.
- 5.5. EWS then referred the matter for determination to the relevant ADRR Panel in accordance with Condition D5.1 of the Network Code and pursuant to section 3.5.4 of the National Rules of the Plan, notwithstanding that EWS notes that that section refers to a non-existent condition of the code (i.e. Condition D2.4.6).

- 6.1.1 It should be noted that the possession, as originally proposed by Network Rail and, although agreed by EWS, was still extremely disruptive to EWS and its customers whose trains would either be significantly delayed or, in some cases, unable to operate at all. Despite this, given the advanced notice of the possession, EWS was able to work with its customers to enable the possession to take place. EWS and its customers understand for the reasonable need for the railway to be shut, sometimes as in this case for extended periods, so that the railway can be maintained, renewed or improved.
- 6.1.2 However, for Network Rail to request an extension to this possession less than 3 weeks before it was due to commence and expect EWS and its customers to put up with yet more severe disruption is not reasonable. As already mentioned above, the original pre-planned possession already had severe impacts on EWS and its customers and they were counting upon the railway being reopened on 31 December 2007 so that their trains could recommence as planned. From the statement made by Network Rail in its 14 December 2007 and referred to above, it was clear that consultation was only in effect a smokescreen as Network Rail had already decided that the proposed extension would go ahead in any event.
- 6.1.2 EWS submits that the imposition of the possession extension by Network Rail not only disrupts EWS and its customers but also contravenes the laid down contractual processes set out in both section 3 of the National Rules of the Plan and Part D of the Network Code. Before making its decision, Network Rail is obliged under section 3 of the National Rules of the Plan to properly consult all affected Train Operators, consider responses received and take account of the Decision Criteria set out in Condition D6 of the Network Code. In this case, Network Rail had already made its decision before consulting affected Train Operators and this, EWS submits, is contrary to the contractual processes referred to above and if countenanced would permit Network Rail to continue to impose possessions across its network despite the effects on Train Operators and their customers.
- 6.1.3 EWS would also like to highlight certain conclusions of a previous determination of the Timetabling Panel (TTP102) and the associated appeal decision of the ORR (see Appendices I and J) which also concerned the imposition of a possession by Network Rail outside of the laid down contractual processes.

- In TTP102 the Panel considered that:

'Section 3.1.3 of PARTP did not directly empower Network Rail to take specific action'
(TTP determination paragraph 18)

'It [section 3.1.3] does not create any right, for Network Rail or the Train Operator, to circumvent the need to reach agreement through a process of consultation or to impose one point of view' (TTP determination paragraph 19)

- From the ORR's appeal decision, ORR concluded that:

'The Panel failed to take proper account of its own findings that Network Rail was not entitled to impose the possessions and had acted unreasonably.' (ORR appeal decision paragraph 10 (b) (i))

- and went on to say that:

'.....Further, the Panel does not appear to have considered whether Network Rail took due account of EWS or FHH business concerns. Section 3.1.3, which operators so as only to accelerate the timescales involved in the consultation process, does not remove the requirement for Network Rail to take all these considerations into account' (ORR appeal document paragraph 25)

It is the contention of EWS that Network Rail has not taken account of these determinations in making its decision to impose the proposed extension.

7 FURTHER ISSUES

7.1. The explanation for the request for additional access was 'as a result of issues with

- *the late approval of Overhead Line design,*
- *adverse weather conditions preventing crane work in recent weekends,*
- *failure of infrastructure at Rugby North Jn.*

The project at Rugby is a 'multi-million pound' project and there are a number of industry forums and working groups where Network Rail and Train Operators can discuss various aspects of the project. EWS would have expected such fundamental issues as those mentioned above to be raised at those forums, albeit informally allowing itself and other Train Operators to understand the exact issues being faced by Network Rail. For proposals such as this to come 'out of the blue' does not show Network Rail specifically, or the railway industry generally in a good light.

8 DECISION SOUGHT FROM THE PANEL

- 8.1 The Panel is requested to determine that Network Rail, in imposing the proposed extension of the pre-planned possession at Rugby, did so unilaterally and contrary to process set out in section 3 of the National Rules of the Plan and Part D of the Network Code and, therefore, acted without legal entitlement.

9 Signatures

Signed

N. J. Gibbons

Print Name: *N. J. GIBBONS*

Position: *NATIONAL PLANNING MANAGER, LWS RAILWAY LTD*

Date: *14/02/08*