

TTP2002 - Freightliner Limited and Freightliner Heavy Haul Ltd Sole Reference Document

1 DETAILS OF PARTIES

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

Freightliner Limited, (Company number 03118392) whose Registered Office is at The Lewis Building, 35 Bull Street, Birmingham, B4 6EQ

Freightliner Heavy Haul Limited (Company number 3831229), whose Registered Office is at The Lewis Building, 35 Bull Street, Birmingham, B4 6EQ

Collectively referred to as ("Freightliner") or ("the Claimant");

and;

Network Rail Infrastructure Limited, whose Registered Office is at 1 Eversholt Street, London NW1 2DN ("Network Rail") or ("the Defendant").

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 D5.1 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 is a dispute relating to Network Rail's Decision to proceed with cyclical engineering access on route NW9005 between Chinley North Junction and Buxton, as published in Section 5 of the 2023 Engineering Access Statement ('EAS') Version 2 (The Final Rules).

4.2 NW9005 is a key route for rail freight traffic in the North of England. It serves as the only rail access to the Limestone Quarries at Tunstead and Peak Forest, and is the main route of access to both Hindlow and Dowlow Quarries situated south of Buxton (although these are located on a separate line of route). The nature of pathing heavy aggregates trains on the wider network amongst other faster traffic, restrictions in the opening hours of receiving terminals and the need for product to feed construction sites on the same day results in more movements taking place overnight on NW9005 than during daytime hours.

4.3 Network Rail published Version 1 (The Draft Rules) of the 2023 EAS on 22nd October 2021 in accordance with Network Code Condition D2.2.3. This contained a proposal to take a Restriction of Use (RoU) between Chinley North Junction and Buxton between 00.05 and 05.00 Tuesday-Friday on a 6-weekly cyclical basis. (See Appendix 1)

4.4 Freightliner responded to Network Rail's proposal on 26th November 2021 in accordance with Network Code Condition D2.2.4, and made representations to this proposal stating that they were unable to support cyclical possessions on this route due to the volume of freight traffic this would impact. (See Appendix 2)

4.5 Between D-54 and D-44, Network Rail made no contact with Freightliner regarding the RoU that had been proposed. As such Freightliner believed the RoU proposed in the Draft Rules would be removed before publication of the Final Rules.

4.6 Network Rail published Version 2 (The Final Rules) of the 2023 EAS on 4th February 2022 in accordance with Network Code Condition D2.2.5. The RoU on NW9005 that

had been included in The Draft Rules was included and had no amendments shown.
(See Appendix 3)

4.7 Network Rail provided no response to Freightliner between D-54 and D-44 in relation to this RoU, the operator response spreadsheet issued at D-44 showed no comments in response to Freightliner's representations from Version 1. (See Appendix 4)

4.8 Freightliner raised a Notice of Dispute relating to the Decisions contained within the Final Rules on 25th February 2022 in accordance with Network Code Condition D2.2.8.
(See Appendix 5)

4.9 Freightliner have had no further contact from Network Rail looking to resolve this dispute regarding the RoU on NW9005 since the Notice of Dispute was raised.

4.10 Freightliner cannot accept this RoU as the result of it going ahead would be the loss of ability to run trains to or from Tunstead Quarry during the time the RoU is in place. Retiming the services at alternative times is not practical due to pathing on the wider network and terminal time both at the Quarry and at receiving terminals.

4.11 While customer orders change each week, the inability to run these trains would equate to an expected loss of around 20,000 tons of volume from Tunstead Quarry in each week the RoU was taken.

4.12 Across the 9 cyclical instances of this RoU taking place, this would equate to Freightliner being unable to move approximately 180,000 tons of aggregate for the customer. This aggregate is used to support the construction industry across the UK and the loss of this volume would have a significant impact on construction projects, including major construction projects of national importance such as HS2.

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

5.1 Freightliner are supportive of Network Rail improving the capability of the railway and removing defects which may present a barrier to being able to run trains in the future or present safety concerns. However, any RoU to support this need to be taken in a way that supports 'The Objective' (As per Network Code Condition D4.6.1) – ensuring

the safe carriage of passengers and goods in the most efficient and economical manner in the overall interest of current and prospective users and providers of railway services.

- 5.2 To that end, Network Rail is required to consider the representations and objections made to it by Timetable Participants when making a Decision in the Final Rules, as per Network Code Condition D2.2.5, and:
- 5.3 Network Rail, when preparing the Final Rules is required to conduct itself in accordance with the duties and powers set out within Network Code Condition D4.1, and provide Timetable Participants with its reasons for making the revisions to the Rules.
- 5.4 Network Rail has provided no evidence that it has upheld the duties required of it as outlined in paragraphs 5.2 and 5.3, and provided no response in the operator response sheet for this RoU. As such, Freightliner do not believe that Network Rail have considered the full impact of the RoU when making their decision to revise the Rules, and as such have not acted in accordance with the Network Code.
- 5.5 Notwithstanding Network Rail's failure to conduct itself in line with the Network Code, as outlined in paragraphs 5.2-5.4, Freightliner disagree with Network Rail issuing the Decision to proceed with this RoU for the following reasons:
- 5.6 It is unclear to Freightliner what the reason for these additional RoUs is. This is, of course, a direct result of Network Rail having failed to provide any information to Freightliner in advance of the Draft Rules, or between the publication of the Draft Rules and Final Rules to explain the work they intend to carry out in the RoU or any benefit this would bring.
- 5.7 As a result of the traffic flows on NW9005, and the impractical nature of overnight mid-week RoU, Timetable Participants have always agreed to Network Rail a holding a weekly Standard Possession Opportunity (as published in Section 4 or the Engineering Access Statement) between 23.30 Saturday and 12.45 Sunday. During this time no trains can be planned to run in the Working Timetable, and as such trains are planned around this window, minimising the impact on Timetable Participants.

Network Rail have continued to take this Standard Possession Opportunity in the 2023 Final Rules (See Appendix 6)

5.8 This Standard Possession Opportunity provides a significant window to perform both heavy maintenance activities and routine inspections on a weekly basis, in an efficient manner as significant volumes of work can be carried out within a single possession.

5.9 Freightliner note that this Standard Possession Opportunity is a far larger and more regular opportunity for a RoU than would be available to Network Rail on many far busier routes, and that this has provided sufficient time for maintenance activities to take place on this route in the past. It is therefore unclear as to what activities Network Rail would be able to perform in the RoU subject to this dispute, that cannot be completed within the Standard Possession Opportunity.

5.10 Network Rail have failed to show any evidence of application of the Decision Criteria in reaching the Decision to revise the Rules. This is contrary to the requirement laid out in Network Code Condition D4.1, that 'Network Rail shall make all decisions by application of the Decision Criteria in the manner set out in Condition D4.6.'

5.11 Had Network Rail applied the Decision Criteria set out in Network Code Condition D4.6.2, Freightliner believe it would have reached the following outcomes:

(a) maintaining, developing and improving the capability of the Network;

Without knowledge of the work Network Rail would intend to carry out within these RoU, it is not possible to comment on whether progressing with the revised Final Rules would have a positive impact on the capability of the Network. However, in taking the RoU, Network Rail would be removing a significant part of the Network capability on an ongoing basis, as train services would not be able to operate over key infrastructure. It is also not possible to comment on whether the same improvements could be delivered within Standard Possession Opportunities, which would deliver the same benefits without any negative impact.

(b) that the spread of services reflects demand;

Freightliner currently operate trains from Tunstead Quarry to multiple sites across the UK.

Many of these locations are located in urban areas and have strict planning constraints on the times trains can be discharged. Freightliner does not believe Network Capacity exists to be able to operate all services currently running at the times impacted by this RoU , however even in the unlikely event this could be found, trains would then be unable to discharge due to missing their terminal slots and would require alternative loading slots at the quarry end, which is again not practical. As such, there would be no option but to cancel these services. Demand for trains from Tunstead Quarry is currently increasing, and there is no chance that Freightliner would be able to meet existing, let alone increased demand with the loss of approximately 20,000 tons of product per week.

(c) maintaining and improving train service performance;

Without knowledge of the work Network Rail would intend to carry out within these RoU, it is not possible to comment on whether progressing with the revised Final Rules would have a beneficial impact on train service performance. Similarly, it is not possible to understand whether this same benefit could be realised by carrying out the work in the existing Standard Possession Opportunity. Freightliner do not believe it would be possible to retime services to avoid the RoU, and even if this could be achieved the impact on terminals would make a revised plan unworkable - as such there would be no option but to cancel overnight services. This would lead to significant performance degradation within the terminal at Tunstead Quarry during the day, as there is insufficient stabling available for cancelled services, and as such there would be significant congestion experienced leading to late departures and delayed arrivals.

(d) that journey times are as short as reasonably possible;

Timetable constraints mean that it will be almost impossible for aggregates trains to run to their destination if this RoU is taken, and that terminal workings would not be achievable, so it would be impossible for trains to make their journey at all. If a path could be found at a different time it would lead to significant increase in journey time due to having to recess at frequent intervals to allow faster trains past, and then have to wait for unloading windows to open at the receiving terminal. Alternatively, faster

trains could be slowed down to follow retimed aggregates trains but this would likely be unacceptable to other Timetable Participants and stakeholders, and obviously increase journey times for numerous other services. Network Rail have provided no capacity analysis work to support their Decision and as such they are unable to understand the full impact these changes would have on journey time.

(e) maintaining and improving an integrated system of transport for passengers and goods;

Closing the only route to/from two of the UK's largest quarries which rely on rail to move the bulk of their output will result in the cancellation of multiple trains. As such the railway will be unable to offer a system of transport for these goods, resulting in a reduction in the volume of freight moved by rail and a loss in production. This loss of volume would likely jeopardise the delivery of major construction projects across the country.. Alternatively, if use was made of existing Standard Possession Opportunities, this traffic could all be operated as today.

(f) the commercial interests of Network Rail (apart from the terms of any maintenance contract entered into or proposed by Network Rail) or any Timetable Participant of which Network Rail is aware;

Freightliner have a contract with Tarmac, the operator of Tunstead Quarry to move construction materials from the Peak District into urban centres. Network Rail's Decision to revise the Final Rules would mean that for one week in six Freightliner would be unable to operate services to/from this site overnight. While precise customer requirements change each week, this would equate to a loss of approximately 20,000 tons of aggregate moved every 6 weeks, or 180,000 tons per year. Additionally, it would result in Freightliner being unable to deliver additional 'campaign' traffic in these weeks, which would equate to a further loss in many of the weeks. The loss of these volumes would mean that Freightliner would not be able to deliver for its customer, undoubtedly a significant commercial impact.

(g) the content of any relevant Long Term Plan and any relevant Development Timetable produced by an Event Steering Group;

Not Relevant

(h) that, as far as possible, International Paths included in the New Working Timetable at D-48 are not subsequently changed;

No International Paths would be impacted by the RoU included in the Final Rules.

(i) mitigating the effect on the environment;

NW9005 and the quarries it serves are located within the Peak District National Park, and as such the area is environmentally sensitive. Any reduction in the volume of aggregate moved by rail would increase pressure for additional road transportation for long distance flows. Typically, rail freight offers a significant environmental benefit over road transport (with 76% fewer tonnes of CO2 per tonne moved than road, even with diesel traction) and as such implementing the revised Final Rules would have a very detrimental environmental impact, were any of the volumes moved by rail to transfer to road haulage.

(j) enabling operators of trains to utilise their assets efficiently;

Taking the RoU published in the revised Final Rules would mean that Freightliner services between Tunstead Quarry and other areas of the UK would be unable to run overnight one week in six. Freightliner would be unable to deploy these assets elsewhere on a cyclical basis and as such locomotives, rolling stock and train crew that would usually be used on the circuits running overnight would not be utilised. This would be extremely inefficient for Freightliner.

(k) avoiding changes, as far as possible, to a Strategic Train Slot other than changes which are consistent with the intended purpose of the Strategic Capacity to which the Strategic Train Slot relates; and

Not Relevant

(l) no International Freight Train Slot included in section A of an International Freight Capacity Notice shall be changed.

Not Relevant

5.12 Freightliner believe that, had Network Rail conducted itself in line with the requirements laid out within the Network Code, and applied the Decision Criteria as outlined in paragraph 5.11 (for which there is no evidence of this occurring), it would not have reached the Decision to revise the Final Rules.

6 DECISION SOUGHT FROM THE PANEL

6.1 Freightliner asks that the Panel should confirm that in reaching the Decision to revise the Final Rules, Network Rail has not conducted itself in accordance with the process described in Network Code Condition D2.2.

6.2 Freightliner asks that the Panel should confirm that, further to Paragraph 6.1, Network Rail have not provided any evidence that they have applied the Decision Criteria outlined in D4.6.2 correctly (or at all), thereby failing to properly consider the interests of Timetable Participants, and that, as a result, the Decision to publish the Final Rules has been reached without proper consideration of the impact.

6.3 Freightliner asks that the Panel should confirm that Network Rail have not provided sufficient (or indeed any) evidence to Timetable Participants as to why Standard Possession Opportunities cannot be used for maintenance activities on NW9005.

6.4 Taking into consideration paragraphs 6.1-6.3, Freightliner asks the panel to confirm that Network Rail should withdraw its Decision to revise the Final Rules in relation to the RoU on NW9005, and remove this RoU from the Final Rules.

7 APPENDICES

The Claimant confirms that it has complied with Access Dispute Resolution Rule H21, and that the following attachments are provided with this document:

-PDF Document (TTP 2002 Appendices) containing Appendix 1-6

8 SIGNATURE

For and on behalf of Freightliner Limited and Freightliner Heavy Haul Limited

Signed

A handwritten signature in black ink, appearing to read 'Chris Matthews', written over a horizontal line.

Print Name

Chris Matthews

Position

Timetable Strategy and Rail Industry Manager