

# TTP2042 - 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 publish late notice changes to the Western and Wales Train Planning Rules (TPRs) for the 2023 Principle Timetable, specifically the Train Planning Rules for lines of route: GW731, NW3005 and NW3007. (See Appendix 1)

4.2 While Freightliner do not presently operate any commercial freight traffic over the above routes, Freightliner's Track Access Contract permits operation anywhere on the Network. These routes support a significant number of existing freight flows, and there is potential for more traffic in the future. The late notice changes impact a number of freight terminals and as such Decisions affecting capacity on these routes are of significant interest to Freightliner.

4.3 Concerns were raised relating to the quality of the TPRs on the line of route between Shrewsbury and Chester (GW731 and NW3005) and the route from Wrexham to Bidston (NW3007) by GBRf during 2021 – although there do not appear to be any supporting minutes, the Western and Wales TPR actions and agenda spreadsheet shows that this was discussed at the TPR forum which took place on 3<sup>rd</sup> September 2021. It was agreed that a working group needed to be set up to discuss the detail surrounding the nuances of the signalling in this area to support a future TPR change. (See Appendix 2)

4.4 Network Rail set up an initial meeting to discuss these changes on 5<sup>th</sup> January 2022, which was attended by representatives from Network Rail, Freightliner, GBRf and Transport for Wales (TfW). Although no formal minutes were presented following the meeting, it was agreed by all participants that significant updates were required to the Planning Geography, Sectional Running Times (SRTs), Headways and Junction Margins to accurately reflect the infrastructure on the ground. As a result of the emerging picture that significant capacity constraints existed that were not currently taken into account, Freightliner, GBRf and TfW all requested that Network Rail complete a timetable impact assessment (Capacity Study) in line with the Guiding Principles laid out in Section 1.2 of National TPR, so that the industry could understand the impact on services, before implementing any changes.

4.5 A follow up meeting was held on 24<sup>th</sup> January at which changes to the Planning Geography, Headways and Junction Margins were worked through, with operators and Network Rail working together to identify issues and suggest where new values were required. During the course of this meeting, Network Rail suggested they wished to publish the changes in the Version 2 TPR document. Freightliner raised concern at the practicality of these timescales, given this gave Network Rail around 6 working days to confirm some fundamental details around operations, complete significant amounts of assurance work, review all Sectional Running Times (SRTs) and complete splits and/or disaggregation of existing inbuilt allowances to accommodate new planning geography and complete a timetable impact assessment.

4.6 Version 2 of the 2023 Train Planning Rules was published on 4<sup>th</sup> February 2022 and did not include any of the changes that are subject to this dispute.

4.7 A further follow up meeting was held on 8<sup>th</sup> February, again working through the various changes required. A common feature of all these meetings was the significant number of queries over how infrastructure operated – it was agreed that a trip to the relevant signal boxes was essential to gain a full understanding of any restrictions in place.

4.8 A date was pencilled in for 9<sup>th</sup> March to visit these signal boxes. The date was chosen to align with another TPR meeting being held in the North West, therefore permitting operators to combine the two items. Unfortunately this meeting was cancelled and as a result the signal box visit was postponed.

4.9 Network Rail then advised that a visit to these signal boxes would take place on 29<sup>th</sup> March. Operators were only advised of this on the 22<sup>nd</sup> March, and the date chosen conflicted with another TPR meeting taking place, which required Freightliner attendance and had already been committed to. Given the short notice, it was not possible for operators to join this visit and a request was made for Network Rail to re-arrange the visit at a time that was workable for all parties. (See Appendix 3)

4.10 Network Rail issued some notes relating to the signal box visits on 6<sup>th</sup> April 2022 (appendix 4). However it was not obvious from these notes what had been amended from previous versions and what was new content, as no formatting or

version control was used, and sporadic items had been highlighted that did not refer to anything in particular.

4.11 Freightliner responded to these notes on 10<sup>th</sup> April 2022 requesting details of what had been updated since the last issue (see Appendix 5) to which no response was received.

4.12 Meanwhile, on 8<sup>th</sup> April 2022, Network Rail issued a consultation on Western and Wales TPRs Version 2.2, including the changes that had been worked through until this date. This came as a complete surprise to Freightliner, given that this was still a very much incomplete proposal. To compound issues, Network Rail incorrectly issued Version 2.2 as a complete document, showing all changes included in Version 2, 2.1 and 2.2 marked up. This made it extremely difficult to identify the exact changes that had been made. Freightliner assume this consultation was carried out pursuant to Condition D2.2.7 of the Network Code, although the consultation contained no reference to this. A deadline of 22<sup>nd</sup> April 2022 was given for operators to respond to this consultation. (See Appendix 6)

4.13 Condition D2.2.7 is intended to permit Network Rail to make changes in order to 'optimise' the working timetable. Freightliner interpret this as implementing small scale changes, and not whole line of route reviews, which have a significant impact on the construction of the working timetable. In Freightliner's opinion, Network Rail are not acting reasonably implementing such significant change under Condition D2.2.7.

4.14 Freightliner responded to this consultation on 11<sup>th</sup> April, objecting to the changes included due to the incomplete nature of the proposal, and also requesting that a rationalised document showing the changes subject to consultation in Version 2.2 was shared, rather than all changes in Versions 2, 2.1 and 2.2. (See Appendix 7)

4.15 During the course of the consultation, Network Rail shared some further notes made as part of their signal box visit on 20<sup>th</sup> April 2022. While these were useful reference documents, they did not supply sufficient detail to confirm or validate how margins had been calculated.

4.16 Network Rail issued a Decision document on 11<sup>th</sup> May 2022, stating that they were publishing the changes. This email also contained a list of SRT's which had not previously been consulted with operators. (see Appendix 8) Although this email stated that 'We have discussed this and believe we should keep the changes made in V2.2' No evidence was provided as to what those discussions were or how the Decision had been reached.

4.17 Freightliner raised a Notice of Dispute in relation to this Decision on 13<sup>th</sup> May. (See Appendix 9)

4.18 It should be noted that the Decision to publish the changes included in Version 2.2 was issued a considerable time after the Priority Date for the 2023 Principle Timetable, and validation work was already considerably progressed at this point. As such Freightliner believe that these changes could endanger the quality and validation of the Working Timetable in this area.

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

5.1 Freightliner are supportive of changes to the TPR values to accurately reflect the capability of the Network, ensuring timetables perform to a high standard while also making best use of the infrastructure available. Freightliner work collaboratively with Network Rail throughout the year to achieve this and will continue to do so in the future.

5.2 In the case of the Decision subject to this dispute, Freightliner believe this collaborative working has broken down and are dissatisfied with the way Network Rail has conducted itself with regards to:

- (i) The procedure followed in developing the values proposed, leading to what Freightliner believe is an incomplete proposal.
- (ii) The failure to follow the process outlined in Condition D4 of the Network Code when issuing a Decision.
- (iii) The failure to consult SRT values with operators, instead issuing an immediate Decision

With regards to concern (i):

5.3 The National TPR document outlines the guiding principles and the procedure that should be followed when making TPR changes. This is contained within sections 1.2 and 1.3 of the document (See Appendix 10).

5.4 National TPR paragraph 1.2.3 states *'The impact of a TPR value change must be considered by all parties concerned and if deemed necessary, a timetable impact assessment undertaken.'* As Freightliner, GBRf and TfW all requested this was undertaken in a meeting, and it has not been done, Freightliner believe Network Rail have failed to follow this process.

5.5 National TPR paragraph 1.2.7 states *'Changes to individual TPRs will be supported by evidence showing how the values were developed. Sources of evidence are to be agreed by the affected parties.'* Freightliner have not seen evidence provided by Network Rail as to how some of the values proposed have been reached, other than they were discussed at signal box visits that operators were unable to attend. As such Freightliner do not have confidence that the values are correctly calculated or evidenced.

5.6 The overall proposal that formed the Decision subject to this dispute contains significant evidence it is not complete, and that Network Rail does not have the evidence required to implement the changes. Freightliner believe this Decision has been rushed out by Network Rail without the quality assurance that should be applied to any changes to the TPR values. This can be seen (but is not limited to) in the following examples:

- (a) NW3007 Planning Geography – notes alongside Shotwick - How does the ground frame work here?
- (b) NW3007 Planning Geography – notes alongside Dee Marsh Reception Sidings – *To ask DB Cargo – what are these called? How are services planned?*
- (c) Junction Margins for Geography amended to be included in NW3005 rather than GW731 shown under GW731 entry in Junction Margins.

5.7 For Network Rail to make the decision to go ahead with changes when such key details are missing or incorrect is not acceptable to Freightliner, given the impact this could have on both network capacity and performance across a much wider area, given the interactions of trains impacted by these changes.

With regards to concern (ii):

5.8 Network Rail issued a Decision to proceed with publishing the changes included in Version 2.2 despite having received objections from Freightliner, as well as other operators.

5.9 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 D2.2.6, and:

5.10 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.

5.11 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 detail in the Decision email of how it reached the Decision, or applied the Decision Criteria outlined in D4.6.2, other than that '[Network Rail] *have discussed this and believe we should keep the changes made in V2.2.*' As such, Freightliner do not believe that Network Rail have considered the full impact of the TPR changes when making their decision to revise the Rules, and as such have not acted in accordance with the Network Code.

5.12 Further to paragraph 5.11, Freightliner believe that even if Network Rail had applied the Decision Criteria in accordance with the Network Code, it would not have been able to understand or assess the impact in a balanced manner as it had not completed the requested Timetable Impact Assessment, and could not, therefore, understand the impact of the changes being made, nor whether it could accommodate all existing and future train service aspirations.

With regards to concern (iii):

5.13 Network Rail included a document titled SRT Consultation with its Decision document. This was not subject to consultation prior to this email, and as such operators have not been given the opportunity to review the values being consulted.

5.14 Network Code condition D2.2.7 stipulates that where Network Rail wishes to make amendments to the rules between D-44 and D-26, it must first consult with all timetable participants.

5.15 Network Rail has therefore failed to comply with condition D2.2.7, and as such been unable to consider consultation responses in line with D4.1 as expected of it.

5.16 Notwithstanding paragraphs 5.13 – 5.15, the SRT proposal document is also incomplete, with numerous Network Links that require SRT values to allow construction of a compliant timetable missing.

## **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, or National TPR Section 1.2 and 1.3.

6.2 Freightliner asks that the Panel should confirm that Network Rail have not provided sufficient evidence to Timetable Participants as to how values issued in this Decision have been calculated.

6.3 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, thereby failing to properly consider the objections and 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.

6.4 Freightliner request that the panel should direct Network Rail to withdraw the Decision to implement the changes contained within Version 2.2. Freightliner believe that it is within the powers of the Panel as per Condition D5.3.1 (a) to direct this.



6.5 Freightliner asks the panel to direct Network Rail that sufficient evidence must be presented to operators, along with a timetable impact study, before the changes included in Version 2.2 are re-proposed. Again, Freightliner believe that it is within the powers of the Panel as per Condition D5.3.1 (a) to direct this.

## 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 2042 Appendices) containing Appendix 1, and 3-10
- Excel Document (TTP 2042 Appendix 2)

## 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