

1 DETAILS OF PARTIES

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

(a) GB Railfreight Limited (Company No. 03118392) whose Registered Office is at 55 Old Broad Street London EC2M 1RX ("GBRf") ("the Claimant"); and

(b) Network Rail Infrastructure Limited whose Registered Office is at 1 Eversholt Street, London NW1 2DN ("NR" ("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 regarding NR's decision regarding late changes to the Timetable Planning Rules ("TPRs") relating to the Shrewsbury to Wrexham and Bidston lines in respect of the December 2022 timetable, the processes involved in reaching that decision and the timescales involved. The lines of route involved are coded GW731, NW3005 and NW3007.

4.2 On 27 August 2021, GBRf first questioned the accuracy of the TPRs for route code NW3007 (Wrexham Central to Bidston) following contact from NR regarding an enhanced level of service that Transport for Wales ("TfW") had requested in the December 2021 timetable.

This initially indicated that the TPRs might be inaccurate due to the constraints of the signalling system in the area (Appendix 1). This was raised at the TPR Forum on 3 September 2021 (minutes of this meeting appear not to have been made) and further aspects of the situation by correspondence on 17 September 2021 (Appendix 2).

4.3 Version 1.0 of the 2023 TPRs was issued on 22 October 2021 and no changes to the relevant lines of route were proposed. The issue was raised again at the TPR Forum on 24 November 2021 and commented upon in GBRf's response to Version 1.0 on 26 November 2021 (Appendix 3, p.30 refers). A Teams meeting to discuss the matter was arranged for 20 December 2021 by NR but this could not be attended due to the belated May 2022 timetable offer being processed during that week, and was rescheduled for 5 January 2022. Minutes are not available for this meeting but it was concluded that significant changes were required to the planning geography, and headways in particular, in order to accurately reflect the capabilities of the lines. Given the scale of the proposed change, and indeed TfW's service aspirations, a timetable impact study was requested (although recognising this could not be undertaken until the TPR review was complete).

4.4 A follow-up meeting was held on 24 January 2022, by which time it was clear that any change could not be included in Version 2.0 of the 2023 TPRs, due to its impending publication date (on 4 February 2022) and the extent of the remaining work to be undertaken: site visits as necessary, calculation of SRTs, junction margins, allowances and the specifics of the freight working at Penyffordd Cement Sidings and Dee Marsh Sidings. A draft of the proposed changes to planning geography and headways was circulated by NR on 26 January 2022 (Appendix 4).

4.5 Version 2.0 of the 2023 TPRs was issued on 4 February 2022 and no changes to the relevant lines of route were proposed. Another follow-up meeting was held on 8 February 2022.

4.6 A visit to the signal boxes was arranged for 9 March 2022, to coincide with another TPR meeting in the north-west. Unfortunately this was cancelled due to the cancellation of the TPR meeting and no affirmative response from the Local Operations Manager responsible for the area. The visit was rescheduled for 29 March 2022 (with a week's notice from NR) but unfortunately that date was already taken for another TPR forum and it was requested that we should try again after Easter. NR went ahead with the visit with only NR staff in attendance.

Notes of the visit were issued on 20 April (Appendix 5, photographs of the signal box panels from the visit are Appendices 5a, 5b and 5c).

4.7 Meanwhile Version 3.0 of the 2023 TPRs (i.e. the preliminary proposal for the May 2023 timetable) was issued 1 April 2022 with no proposed changes for the relevant lines.

4.8 An updated working document (Appendix 6) was sent by NR on 6 April 2022 to show the latest position in regard to the TPR review. This however had no indication of what had changed since the previous version circulated on 26 January 2022 in terms of new or amended content, and neither was there any request to respond to the document or its contents.

4.9 Two days later on 8 April 2022, a “consultation” of Version 2.2 of the 2023 TPRs was issued (Version 2.1 having been issued on 28 March 2022 to make some corrections to the Version 2.0 document) which contained the changes in dispute, although many other changes were highlighted due to an issue with the formatting. GBRf replied later the same day to the extent that it could not accept the proposal due to it being incomplete (missing accompanying SRTs, lack of assurance as to the content, workings at Dee Marsh Jn not yet investigated) and the timing of the proposal (too late in the process for application in the December 2022 working timetable) (Appendix 7).

4.10 A “decision” email notifying the implementation of Version 2.2 was issued on 11 May 2022, which was subsequently put into dispute. The “decision” also included a file labelled “SRT consultation form Wrexham - Bidston” which appeared to contain the SRTs omitted from the “consultation” of 8 April 2022.

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

5.1 GBRf instigated the need for a TPR review of the lines concerned following correspondence relating to the December 2021 timetable proposal from TfW to increase its service to broadly two trains per hour. The rationale of doing so was because the difficulty of planning freight trains between the existing hourly service was already known to GBRf, and that the long block sections, particularly between Wrexham and Dee Marsh Jn would mean that the line occupancy would be pushed up close, or even above, its maximum. This was also apparent from the correspondence from NR, which led to a look at the signalling plans for the area and comparing that against what was published in the TPRs. It was clear that there were

deficiencies in both directions and this could have an impact on the overall timetable being proposed and its performance should it be implemented on the basis of the existing TPRs.

5.2 It proved to be the case that NR did not offer additional paths to TfW in the December 2021 or May 2022 timetables for a variety of reasons, presumably including uncertainty about the TPRs. However it was some months later before NR commenced engagement regarding a review of the TPRs, by which time the preliminary proposal (Version 1.0) for the 2023 TPRs had already been issued (22 October 2021) and the publication date of its decision document (Version 2.0) was fast approaching (4 February 2022).

5.3 It is GBRf's understanding of the Network Code that further change after the issue of Version 2.0 is only permitted under Condition D2.2.7. This mechanism is understood to be for small-scale change to assist in the validation of the relevant timetable, or to "optimise" as that condition puts it.

5.4 Version 2.2, as issued on 8 April 2022, i.e. over two months after Version 2.0, included very considerable change, was not "consulted" pursuant to Condition D2.2.7, or indeed any specific part of the Network Code. 8 April was some five weeks after the Priority Date for the December 2022 timetable and only one week in advance of the revised timescales for timetable submission that the industry is still working to (and not necessarily by consent). GBRf therefore considers it unreasonable for such significant change to have been proposed so late in the process, regardless of whether or not that change was complete or adequate.

5.5 However in this instance, the proposal was incomplete. When making changes to the timing points, revised SRTs are required as a matter of course. This process had not been started to GBRf's knowledge and indeed a document was only supplied with the "decision" document. Ordinarily, determining revised SRTs would be a collaborative process with NR making an initial proposal, followed by TOC and FOC refinement. The document supplied contains 804 lines of detail that need to be checked (and this process is necessarily time-consuming); ordinarily GBRf would insist on correction of any existing errors in SRT values, particularly on routes such as these that have not been reviewed for many years. This is in order not to perpetuate any inaccuracies in SRTs built up over time or where underlying circumstances have changed.

5.6 In most TPR reviews it is necessary to add, revise or remove SRT adjustments to reflect slower converging or diverging routes: this cannot be done until the SRTs have been agreed and there is a clear necessity for such allowances in the environs of Wrexham General

and Croes Newydd North Fork. Revised and new junction margins have been included in the proposal but not evidenced to a standard that GBRf would expect: the 6 April 2022 document indicates that many are estimates rather than calculations and are in need of refinement. The 8 April 2022 document also includes questions indicating further investigation is necessary: while some of this might be words that should have been removed, in respect of Dee Marsh Jn no work has yet been undertaken on the margins necessary for access/egress to the sidings. This is particularly important as it likely has significant implications on the headway of the line, not to mention the time interval between successive arrivals or departures, between an arrival and a departure or vice-versa, or the minimum run-round allowance. This is largely due to there being only one reception line and all departures and arrivals having to propel in or out of this line.

5.7 National TPRs clearly state the requirements for proposing TPR change, as highlighted in the Hearing Chair's Directions letter of 19 May 2022. GBRf does not believe that the requirements have been met, specifically:

1. As per National TPR 1.2.3 an impact assessment has not been undertaken as requested. GBRf believes this cannot be undertaken until the TPR change proposal has reached its conclusion and we are not yet at that point;
2. National TPR 1.2.7 requires supporting evidence and such sources to be agreed. GBRf believes this is only partially the case in relation to supporting evidence (NR's visit to signal boxes and discussion with signallers, although the quality of that is questionable) and no specific agreement has been reached as yet between affected parties as to how any of the changes should be derived; and
3. National TPR 1.3 has various requirements and it would be fair to say that there is little compliance with any of the requirements; this naturally fits with the work-in-progress status of the review that GBRf believes was the position until the issue of NR's "decision". In particular, the supporting evidence has not been agreed between parties, and the requirement to consult in accordance with the Network Code has not been achieved as GBRf believes there is no mechanism for a proposal of this nature to be consulted in the timescales involved. Additionally, the revised SRTs have not actually been consulted at all. Further inspection of the document reveals that there are at least six Network Links not covered by the SRT proposal.

5.8 Given the status and progress of the TPR review for these lines, GBRf believes NR is not acting reasonably in wishing to implement significant change at a late stage in the process of developing the December 2022 timetable: there is a risk that without agreement between the parties and in the absence of an assurance process to check that all relevant factors have been considered there will be significant performance issues should an enhanced passenger service attempt to run.

5.9 GBRf is of the view that agreement will eventually be reached: from its perspective the changes to planning geography are not contentious nor are the headways. We are at the stage that the junction margins need further review, additional site visits are required to fully understand the working at Penyffordd and Dee Marsh and some considerable work it required to reach agreement on SRTs. GBRf would therefore consider it appropriate to finish the required work and implement it at a later date: whether that should be for the May 2023 timetable (for which time is rapidly running out) or a subsequent timetable is open to debate.

6 DECISION SOUTH FROM THE PANEL

6.1 GBRf is of the opinion that the contents of Version 2.2 should be withdrawn, the TPR exercise completed and then reconsulted for the next available timetable change date at which it could be reasonably implemented. GBRf believes this would be within the powers of the Panel under Condition D5.3.1(a). Given the nature and the timing of Version 2.2, GBRf believes that exceptional circumstances do however apply, should it prove necessary to determine alternatively under Condition D5.3.1(c).

6.2 GBRf believes exceptional circumstances apply in that the proposal was made at a late stage outside of Part D timescales, is of considerable size and complexity, is not in a state of completion and is not in accordance with the stipulations of the National TPR provisions.

6.3 In reaching its determination, the Panel is asked to consider whether D2.2.7 could be applicable in these circumstances given the points mentioned in paragraph 6.2; in other words, could NR have been “acting reasonably” as required by D2.2.7? GBRf believes that it could not have been.

7 APPENDICES

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

Appendix 1: email to NR 27/08/2021

Appendix 2: email to NR 17/09/2021

Appendix 3: GBRf response to 2023 TPRs version 1.0 (page 30 only is relevant)

Appendix 4: North Wales review document supplied 26/01/2022

Appendix 5: notes of signal box visit supplied 20/04/2022 (plus three pictures)

Appendix 6: North Wales review document supplied 06/04/2022

Appendix 7: email to NR 08/04/2022

8 SIGNATURE

For and on behalf of GB Railfreight Limited

Signed

Print Name

J.K. Bird

Position

LTP Timetable Manager
