

TTP2079 – Directions issued on 13 Oct 22

1. Having been appointed as Hearing Chair, I have reviewed Great Western Railway's ('GWR') Notice of Dispute ('NoD') and subsequent exchanges between GWR, Network Rail ('NR') and the Secretary of the Access Disputes Committee. I do not pretend to have read all the documentation, as at the moment I am dealing only with principles which are or may be engaged in this Dispute.
2. Given this, I hope that these Directions will assist the Parties in preparing to participate in this Dispute, or to settle it between themselves.
3. While in principle it can be worth deciding preliminary matters which might dispose of an action at the earliest possible stage (and I set out my views as to whether a Hearing Chair has power to do so, including dismissing a claim, in TTP1719), it seems unlikely that this will be possible here. This is in part because I am treating NR's comments as falling short of a request to dismiss GWR's claim at this stage. Even if NR had made such a request, there would be a question as to whether it would be possible to reach a decision in sufficient time to meet the hearing date if I felt unable to dismiss GWR's claim at a preliminary hearing.
4. TTPs reach Determinations based solely on the legal rights of the Parties, which in virtually every case will involve an examination of the identification of the relevant Decision Criteria and their application. I am mindful of my Determination in TTP1064 (supported on appeal), that the Decision Criteria cannot be applied when introducing a new method of calculating TPRs without specific decisions (items) being disputed. At this stage, however, - and without hearing submissions on the point - my provisional view is that I am not immediately persuaded that GWR's Dispute falls into a similar category.
5. Without understanding the scale of NR's proposals in comparison with previous years (which I would not have expected to have seen so far), it is not possible to judge the strength of GWR's claim, but - again subject to hearing submissions - it might be possible to examine how possessions on such a scale might be susceptible to the application of the Decision Criteria without examining each decision itself.
6. I note that GWR states that it has made some detailed proposals to NR, but without having examined the detail, apart from Bristol West Junction it appears that GWR's case is that if there were to be an overall reduction in quantum then the judgment on which works should take priority properly rests with NR. If, and again subject to submissions, a TOC/FOC is entitled to raise a Dispute over the quantum of engineering access over any given period, then my provisional view is that would be artificial for that TOC/FOC to object to any selection amounting 25% (or however many) possessions to reduce the overall impact, as the TOC/FOC would not have the knowledge to understand the implications of raising individual objections on such an artificial basis.
7. At root the question can be interpreted as asking if a TOC/FOC has a remedy if there is a significant increase in the quantum of possessions, unless there are justified reasons for the quantum being increased to the extent that GWR claims.
8. Some Disputes do need to be determined by a TTP, but of course the great majority settle. However interesting some of these points might be to lawyers, this Dispute is one which might best be settled by further discussions between the Parties to reach a pragmatic outcome. A Determination not circulated until the Christmas period is unlikely to assist operational planning by NR and the TOCs/FOCs involved.

[Signed on the original]

Clive Fletcher-Wood

Hearing Chair TTP2079