

TTP2089 - 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 changes to the Anglia Train Planning Rules (TPR) for the 2023 Subsidiary Timetable, relating to changes on Line of Route EA1560.

4.2 Line of Route EA1560 runs between Ely North Junction and Peterborough, via March. It forms a key strategic link between East Anglia, the Midlands and the North of England, and carries a diverse range of both long distance and local passenger, intermodal and bulk freight traffic.

4.3 Signalling on EA1560 consists of a mix of multi-aspect colour light signalling, two aspect colour light signalling, and traditional 'Absolute Block' signalling with semaphore signals, where only one train is permitted in the section between two signal boxes

4.4 During 2020, it was identified that the existing Rules relating to this route, particularly in relation to the headway, published at a blanket 4 minutes, did not reflect the nature of the signalling systems in place, or the time taken for trains to pass each section. Network Rail agreed with the industry that a review of this line of route should be carried out to ensure the published capability aligned with the capability of the infrastructure. Following this discussion, in order to promote progress, Network Rail shared signalling plans of the route on 9th October 2020 (See Appendix 1)

4.5 Various discussions were held between operators and Network Rail to agree revised Planning Geography and Headways that accurately reflected the type of signalling in place. Freightliner, along with other operators, are generally in agreement with Network Rail that the changes to Planning Geography and Headways proposed reflect reality, and this does not form the basis of this dispute (which relates to the process used to implement them). As such, Freightliner do not believe detail of the discussions over the proposed changes to Planning Geography or Headway are relevant to this dispute.

4.6 Given the critical nature of the route, and the long distance train slots that would be impacted by any changes to the TPRs, Freightliner, amongst other impacted operators, made it very clear throughout discussions that Network Rail would need to

produce a Capacity Study/ Timetable Impact Assessment before any amendments were implemented. This would be vital in order to allow operators and Network Rail to understand the impact of these changes, in accordance with the Guiding Principles for Changing TPR's published in Section 1.2 of the National TPR document. (See Appendix 2)

4.7 Network Rail proposed the changes to Planning Geography and Headways that had been discussed in the Draft Rules for the 2022 Subsidiary Timetable (2022 Version 3) (See Appendix 3). In Freightliner's opinion, this was not a complete proposal, as it did not accurately show headways, nor were amendments to Sectional Running Times included.

4.8 Freightliner formally requested a Capacity Study was completed prior to implementation in response to this proposal in our 2022 Version 3 TPR response (See Appendix 4). Network Rail subsequently removed the proposal from the Final Rules (2022 Version 4) on the basis the impact of the changes was not understood, and the proposal was not complete.

4.9 Network Rail again made an incomplete proposal in the Draft Rules for the 2023 Principle Timetable (2023 Version 1). As with previous proposals, this was removed from the Final Rules (2023 Version 2) for the same reasons outlined in paragraph 4.8. Regretably, due to workload issues, Freightliner were unable to provide a detailed formal response to this document, but do not believe this is relevant to this Dispute.

4.10 On 22nd March 2022, in advance of the Anglia TPR Forum, Network Rail shared details of the modelling work that had been used to verify Headways and Sectional Running Times over route EA1560. This included some Junction Margins, which were subject to Quality Assurance by Network Rail. (See Appendix 5)

4.11 On 23rd March 2022, at the Anglia TPR forum, changes to the Headways and Sectional Running Times over route EA1560 were discussed. However the calculations behind new Junction Margins were not discussed in any detail, or included in the slide pack (See Appendix 6), presumably as these values had not been subject to Quality Assurance.

4.10 On 1st April 2022, Network Rail again proposed changes to the Planning Geography and Headway in the Draft Rules for the 2023 Subsidiary Timetable (2023 Version 3), with some changes from previous proposals. This was again an incomplete proposal including values shown as 'TBC'. Network Rail also proposed new Junction Margins in the March area at this point. (See Appendix 7)

4.11 Freightliner formally responded to Network Rail in our 2023 Version 3 response again stating that a Capacity Study must be completed prior to inclusion of any amendments in the Final Rules to ensure the impact of the changes could be understood. Freightliner also requested evidence of how the Junction Margins that had been proposed at March had been calculated, as the values being proposed appeared to be incorrect in a number of circumstances. (See Appendix 8)

4.12 As no further information had been provided since Version 3, immediately prior to the publication of the 2023 Subsidiary Timetable Final Rules (2023 Version 4), impacted operators questioned Network Rail over the lack of a Capacity Study. Various responses were received from Network Rail (See Appendix 9) after publication of the Final Rules, in which it became apparent that Network Rail were working on a future timetable exercise for a two hour period, and intended to continue timetabling work after the revisions to the Rules had been established. Given the nature of traffic on the route, and the lack of a 'standard hour', a Capacity Study covering 2 hours was of little to no use to operators.

4.13 On 15th July 2022, Network Rail published the Final Rules for the 2023 Subsidiary Timetable (2023 Version 4) and included the TPR changes that had been proposed in the Draft rules (2023 Version 3) on EA1560.

4.14 Freightliner responded to the publication of the Final Rules advising Network Rail that the Decision to include these Rules was unacceptable (See Appendix 10), and issued a Notice of Dispute (See Appendix 11) on 5th August 2022 in accordance with Network Code Condition D2.2.8.

4.15 The topic of these changes was discussed at the Anglia TPR forum which took place on the 25th August (See Appendix 12). At this meeting, Freightliner advised that they were prepared to give Network Rail additional time in the interests of resolving the outstanding issues without the need for a Hearing, while reiterating

that Network Rail had failed to follow its own processes for implementation of the changes. It was also agreed that further work was required on the Junction Margins published in the March area before these could be accepted.

4.16 Network Rail provided outputs of a Timetabling Exercise for weekdays on 26th August as had been advised in the TPR forum. This confirmed that 7 freight services could not be accommodated on weekdays with the TPR changes in place. No Capacity Study was provided for Saturdays or Sundays.

4.17 On 7th September, Freightliner were advised by the Secretary of the ADC that Network Rail had requested a Hearing be arranged should the issues subject to the Dispute not have been resolved. Given Network Rail had advised that there was no obvious timetabling solution available to resolve these missing trains, and there was no understanding of the impact the changes may have on a Saturday or Sunday, Freightliner accordingly advised that there would be a requirement for a Hearing.

4.18 Freightliner have subsequently worked collaboratively with Network Rail to find a timetable solution for one of these train slots operated by ourselves. However the impact on other train slots, or on weekends, is still not understood, which cannot be deemed as acceptable.

4.19 For clarity, while TTP2089 relates to a number of Disputes arising from publication of the Final Rules for the 2023 Subsidiary Timetable, this hearing and SRD only refer to elements of this Dispute that relate to changes to EA1560. Other aspects of this Dispute will be heard in a separate hearing, and be subject to a separate SRD, in line with the Hearing Chair's Directions.

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 Notwithstanding paragraph 5.1, it is vital that, when amending TPR values, the impact of such changes is fully understood by both Network Rail and Operators. To this end, Network Rail publish, in the National TPR document, clear and concise guidance on the procedure that should be followed when amending TPR's. Where requested by Operators, a Capacity Study must be produced by Network Rail to provide this understanding.

5.3 Understanding the full impact of any changes is essential to allow Network Rail to conduct itself in accordance with Part D of the Network Code. Without a full understanding, Network Rail cannot be deemed fully informed in order to apply the Decision Criteria contained within Condition D4.6.2.

5.4 This Dispute relates specifically to the following aspects of the amendments to the Rules for EA1560:

- (i) The Decision to proceed with amendments to the Headway on the whole length of route, while failing to comply with the published processes as outlined in the National TPR document and the Network Code, thereby progressing amendments without understanding their impact, and;
- (ii) The Decision to proceed with amendments to the Junction Margins in the March area, while failing to comply with the published processes as outlined in the National TPR document and the Network Code, therefore not providing operators with the relevant assurances that values have been correctly calculated.

5.5 The National TPR document outlines the guiding principles and the procedure that should be followed when making amendments to TPR values. This is contained within sections 1.2 and 1.3 of the document (See Appendix 2).

5.6 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.'* Freightliner, along with other impacted operators, requested this was undertaken, in order to consider the impact, and this was not done. As such, Freightliner assert that Network Rail have failed to follow this process.

5.7 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 the Junction Margins at March have been reached, other than the initial information shared in a spreadsheet, or quality assured, despite having requested this information in TPR Forums. Operators have proposed that a signal box visit should be conducted to verify the values being proposed, given the apparent errors in the Decision. This was supported by Network Rail at the Anglia TPR forum (See Appendix 10) but has not been arranged. Without evidence being provided, or observations having been arranged, Freightliner do not have any confidence that the values are correctly calculated or evidenced.

5.8 Further to paragraphs 5.6 and 5.7, Network Rail issued a Decision to proceed with publishing the amendments proposed in the Draft Rules (2023 Version 3) in the Final Rules (2023 Version 4) despite having received objections from Freightliner in response to the draft document, as well as other operators.

5.9 Network Rail is required to consider the representations and objections made by Timetable Participants, in accordance with Condition D4.1, when making a Decision in the Final Rules as per 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 Condition D4.1.1, having provided no response to Freightliner's Version 3 response confirming how it reached the Decision to proceed, or applied the Decision Criteria outlined in Condition D4.6.2. As such, Freightliner do not believe that Network Rail have considered the full impact of the TPR changes on operators 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 prior to issuing the Decision, and could not,

therefore, understand the impact of the changes being made, nor whether it could accommodate all existing and future train service aspirations.

5.13 Given Network Rail have been aware of the requirement to produce a Capacity study since discussions first began in October 2020, and this has formally been requested by Freightliner since our response to the Draft Rules for the 2022 Subsidiary Timetable (well over a year), Freightliner do not believe it reasonable that this key piece of work was not completed in the required timescales.

5.14 For Network Rail to make the Decision to proceed with changes when such key considerations have not been taken into account is not acceptable to Freightliner. Not only could the impact of these amendments spread across a significant area, impacting on multiple other operators (given the interactions of trains impacted by these changes), but there could also be an impact on operators Track Access Contracts, and the amendments could, unnecessarily, preclude additional services being run. This would clearly be in contravention of the 'Objective' as outlined in Condition D4.6.1.

6 DECISION SOUGHT FROM THE PANEL

6.1 Freightliner requests that the Panel should confirm that in reaching the Decision to include the amended TPR values in the Final Rules, Network Rail has not conducted itself in accordance with the process described in Network Code Part D, 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 in the March area included 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 TPR amendments on route EA1560 contained within the Final Rules for the 2023 Subsidiary Timetable (2023 Version 4), reinstating the values published for the Final Rules for the 2023 Principal Timetable (2023 Version 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 the Final Rules for the 2023 Subsidiary Timetable (2023 Version 4) and subject to this dispute 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 2089 Appendices) containing Appendices 1-12

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