

## **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 General Offices, Waterloo Station, London SE1 8SW ("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 decisions regarding version 2 of the Timetable Planning Rules ("TPRs") in respect of the December 2023 timetable and the processes involved in reaching those decisions and the timescales involved.

4.2 This section is split into various different subject matters due to the individual nature of each matter.

4.3 National TPRs: in version 1 of the 2024 National TPRs, Network Rail included, as is usual in this document, the timetable development dates for the 2024 timetable year (Appendix A, page 22 refers). This contained incorrect dates for Priority Date and the “Timetable Preparation Period”, to which GBRf responded (Appendix C, page 1 refers). Version 2 of the document (Appendix B, page 22 refers) was issued with dates corresponding to the “BTPF” timescales, which have yet to be approved by ORR, and contained those for the December 2023 timetable period only. Accordingly GBRf has disputed the revised timescales, particularly as the changes relate to a whole new (and unapproved) process rather than late or changed decisions on the part of NR.

4.4 North-West & Central TPRs – Crewe Basford Hall area planning geography changes: GBRf has not yet agreed the changes due to the lack of a revised capacity study being completed to inform the effect of the changes (and therefore whether or not they should proceed).

4.5 Kent TPRs – line SO140: revised headways were published by NR in the 2023 v3.0 TPRs. Despite ongoing dialogue, GBRf has still not had adequate demonstration that the revised numbers are accurate or appropriate.

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

5.1 With regard to the National TPR issue from paragraph 4.3 above, GBRf’s objection is that NR is continuing not to adhere to the timescales mandated by Part D as it is presently written.

5.2 Following Covid, when understandably the timetable production schedule was disrupted, no attempt has been made at recovering Part D timescales for any part of the timetable production process, apart from the TPRs themselves. Although it would have been perfectly feasible to revert to Part D timescales for the December 2022 and May 2023 timetables, NR has not done so, ostensibly as it has been pursuing the BTPF project to make significant amendments not only to timescales but to Part D itself. This has eventually culminated in the approval by CRC of PfC120 which changes the timetable production process, broadly speaking, to the timescales that NR has been pursuing over the last year. However, this process is not complete and still requires regulatory approval, with two key features that require resolution before ORR can approve. ORR has to be content with all aspects of PfC120, which GBRf

believes it currently is not. There are apparently two main issues that have yet to be resolved satisfactorily (to ORR's contentment), one of a necessary change to NR's License Conditions, which will require two consultations (one across the industry and one external), and secondly there is an aspect of law in the Access & Management Regulations that NR needs to convince ORR that is not an issue. In the light of this, GBRf does not consider that it is a foregone conclusion that Pfc120 will gain approval.

5.3 GBRf views it unacceptable that NR continues to follow timescales that it has no legal entitlement to implement, to the detriment of GBRf's business and reputation, stemming from considerable uncertainty as to what activity needs to be done when: when trying to plan its services with a relatively small team, this uncertainty has led to considerable additional workload, inability for certain planning activities to take place when the business need dictates, inability for GBRf staff to plan their workload with a degree of certainty that should be expected and an inability to inform end customers of what service they can expect from GBRf on any given date.

5.4 Version 1 of the National TPRs (Appendix A, page 22), issued on 21 October 2022, showed the timetable development dates for 2024, indicating, in line with expectation, a December 2023 timetable running from 08/12/2023 to 18/05/2024 and a May 2024 timetable running from 19/05/2024 to 14/12/2024. There is an error in these dates as the start date of the December 2023 timetable should in fact be 10/12/2023. Note that, by implication, this sets the start of the 2025 timetable year at 15/12/2024. The main issue here is that the Priority Dates quotes for both timetables is D-34 instead of D-40, and publishing of both timetables at D-23 instead of D-26. Other significant dates are similarly not in alignment with Part D. GBRf replied in its version 1 response (Appendix C, page 1 refers) that (and following on from comments on previous versions) that it is not acceptable to be outside Part D and version 2.0 must revert to the proper timescales, otherwise the dispute procedure would be invoked.

5.5 No discussion of this has taken place, other than NR insisting that it will not move from its proposals. NR issued version 2 of the National TPRs on 3 February 2023 (Appendix B, page 22 refers). The December 2023 timescales were unchanged, apart from correcting the start date of the timetable and extending the end date to 01/06/24. The timescales for the subsidiary timetable were removed. All of this, is of course, not permissible in Part D as it is currently written.

5.6 It should be noted that Condition D2.1.7 stipulates that NR should publish the relevant dates for a whole timetable year at D-73. For the year starting in December 2023, that should have taken place in July 2022. GBRf has no record of a D-73 publication at that time. NR did

issue a similar document on 27 January 2023 (Appendix D), again only containing dates relevant to December 2023 but not the rest of the timetable year. This document is labelled as version 1.5 and follows on from the previous issue (1.4, Appendix E) dated 25 October 2022 and which related to the December 2022 and May 2023 timetables only.

5.7 In practical terms, this means GBRf has had to produce its Priority Date submission at D-40 (in order to remain contractually compliant) without using a Prior Working Timetable, as this was not issued until 10 March 2023 (D-39 instead of D-45), which inevitably leads to quality issues. GBRf has also had to subsequently delete and re-create its December 2023 working database in order to reflect the revised end-date – this is no small issue due to planning system limitations and cost a day's additional work. We now face the problem that the December 2023 timetable will again be late (D-23 on 30 June 2023 instead of D-26 on 9 June 2023) which in turn reduces the processing time to start the process for the subsidiary timetable which should be submitted on 11 August 2023. The late production of the timetable in turn affects Informed Traveller timescales as the timetable will still be incomplete when work needs to start on it. In turn this leads to reworking of submissions to reflect later change.

5.8 It is now the case that we have no confirmed planning dates for the subsidiary 2024 timetable. GBRf needs to have reasonable certainty in order to conduct its business properly and finds it thoroughly unacceptable to be placed into this situation. GBRf can only assume the correct Part D timescales for this timetable should apply based on Part D as it is currently written.

5.9 Turning to NW&C TPRs version 2.0, a major change has been proposed to the planning principles around Crewe Basford Hall Yard and the "Independent" lines that avoid Crewe station. This is a piece of work that has had multi-operator input since its inception and is broadly satisfactory in terms of how the area should be planned in future. However, part of that process was to provide a capacity study to determine the effects of implementing the change, on the basis that some significant fall-out might result and affected operators would need some time to replan accordingly. The capacity study was produced, but it was identified (by another operator) to have some significant defects regarding how trains are routed through the area. NR has agreed to revisit the capacity study, but at the time of writing that had not been concluded. GBRf therefore believes the changes should be removed from the TPRs and deferred to a later timetable change date, as it is now too late reasonably to deal with any fall-out that might be identified.

5.10 With regard to the Kent TPRs, in version 3.0 of the 2023 TPRs, NR introduced changes to the planning headways on line SO140 (Otford Jn to Ashford via Maidstone East). Further changes were made in version 4.0 (Appendix F refers). Whilst recognising that there is circumstantial evidence of a deficiency in the planning headways, through all the discussion since, GBRf has not been presented with any substantive evidence that NR's alternative proposals are correct. From the outset, GBRf stated that any review would need to be parallel with a thorough check on the Sectional Running Times (SRTs) used by all trains, and in particular those for passenger services.

5.11 The nature of the line means that extended planning headways, in certain circumstances, are likely needed as there are stations only one or two signalling sections apart. However, without a thorough check on the accuracy of passenger SRTs it is impossible to determine what a correct planning headway should be and under what circumstances, and no amount of anecdotal evidence based on the current situation will point to a correct figure for the headway values. In these circumstances, if SRTs are unduly slack (or indeed too tight) then the headway value will be incorrect as well. Additionally, if intermediate dwell times are not stipulated (as a maximum) then the prevailing headway value will increase should additional time be incorporated into a schedule. This makes specifying numeric headway values difficult if not impossible. GBRf's view is that the previous headway values should remain until the exercise is undertaken correctly.

## **6 DECISION SOUTH FROM THE PANEL**

6.1 In respect of the National TPRs, GBRf requests that the Panel determines that NR has no legal entitlement to depart from the timescales laid down by Part D of the Network Code (as it is presently constituted) and must revert to the correct dates as soon as is reasonably practical; although there is a significant proposal for change in existence, NR does not have any legal entitlement to implement them until approval is given by ORR. GBRf also requests that the Panel determines that notice is given at D-73 for the (whole) 2025 timetable year on the correct date, unless ORR approves PfC120 before that date.

6.2 In respect of the NW&C TPRs, GBRf requests that the Panel determines that the Crewe Basford Hall change package is removed from the 2024 TPRs (and therefore the previous version is reinstated).

6.3 In respect of the Kent TPRs, GBRf requests that the Panel determines that the SO140 headways change is removed from the 2024 TPRs (and therefore the headways applicable up to 2023 TPRs, version 2.0 is reinstated).

## 7 APPENDICES

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

Appendix A: National TPRs 2024 v1.0

Appendix B: National TPRs 2024 v1.0

Appendix C: GBRf's response to v2.0 of the 2024 TPRs (cumulative on previous versions)

Appendix D: Calendar of Milestone Dates v1.5

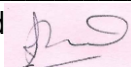
Appendix E: Calendar of Milestone Dates v1.4

Appendix F: Line SO140 headways

## 8 SIGNATURE

For and on behalf of GB Railfreight Limited

Signed



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Print Name

J.K. Bird

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Position

LTP Timetable Manager  
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3 April 2023