



Heathrow
Express

**Dispute Parties: Heathrow Express Operating Company
Limited and Heathrow Airport Limited**

Timetable Dispute: TTP2207

Claimant Submission to Timetabling Panel

26 April 2023

1 DETAILS OF PARTIES

- 1.1 The names and addresses of the parties to the reference are as follows:-
- (a) Heathrow Airport Limited (“**HAL**”) and Heathrow Express Operating Company Limited, whose Registered Offices are at The Compass Centre, Nelson Road, Hounslow, Middlesex, TW6 2GW (“**HEOC**”) (the “**Claimants**”); and
 - (b) Network Rail Infrastructure Limited, whose Registered Office is at 1 Eversholt Street, London NW1 2DN (“**Network Rail**” or “**NR**”) (the “**Defendant**”).
- 1.2 In respect of HEOC, please send all correspondence in relation to this matter to Jyoti Chander [redacted]; with a copy to Harsha Gautam [redacted].
- 1.3 Parties (other than as a Dispute Party) that may be concerned with this timetable dispute TTP2207 (the “**Dispute**”) are:
- (a) MTR Corporation (Crossrail) Limited, whose Registered Office is at Providence House, Providence Place, London, N1 0NT (“**MTR**”);
 - (b) First Greater Western Limited, whose Registered Office is at Milford House, 1 Milford House, Swindon, SN1 1HL (“**GWR**”);
 - (c) Freightliner Limited, whose Registered Office is 6th Floor The Lewis Building, 35 Bull Street, Birmingham, United Kingdom, B4 6EQ;
 - (d) Direct Rail Services Limited, whose Registered Office is Herdus House Ingwell Drive, Westlakes Science & Technology Park, Moor Row, Cumbria, CA24 3HU;
 - (e) DB Cargo Services Limited, whose Registered Office is Lakeside Business Park, Carolina Way, Doncaster, South Yorkshire, DN4 5PN;
 - (f) Locomotive Services Ltd, whose Registered Office is 6th Floor Capital Tower, 91 Waterloo Road, London, United Kingdom, SE1 8RT;
 - (g) GB Railfreight Limited, whose Registered Office is 55 Old Broad Street, London, EC2M 1RX;
 - (h) West Coast Railways Company Ltd, whose Registered Office is Off Jesson Way, Cragbank, Carnforth, Lancashire, LA5 9UR;
 - (i) Colas Rail Limited, whose Registered Office is 25 Victoria Street, London, England, SW1H 0EX;

(j) DC Rail Limited, whose Registered Office is 26 Leigh Road, Eastleigh, England, SO50 9DT; and/or

(k) Rail Operations UK Limited, whose Registered Office is Wyvern House, Railway Terrace, Derby, England, DE1 2RU.

2 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; and
- (d) Appendices and other supporting material.

3 THE CLAIMANTS' RIGHT TO BRING THIS REFERENCE

3.1 The HS2 Supplemental Agreement, which was entered into between (1) Network Rail, (2) HAL and (3) HEOC dated 21 December 2017 (the "**HS2 Supplemental Agreement**"), amends the track access agreement which was entered into between Network Rail and HAL dated 16 August 1993 (as amended) (the "**Track Access Agreement**") and sets out provisions relating to the exercise of certain rights and the compliance with specific obligations relating to the operation of the Heathrow Express service (the "**HEx Service**") and HS2 Works (as defined in the HS2 Supplemental Agreement).

3.2 The HS2 Supplemental Agreement:

- (a) incorporates certain provisions of the Network Rail Network Code (the "**Network Code**") including Part D (Timetable Change) which apply in circumstances connected to HS2 Works; and
- (b) stipulates that any dispute, which is not resolved within the time periods set out in Clause 7.1.3 of the HS2 Supplemental Agreement may be referred for resolution in accordance with the ADRR.

3.3 The Claimants consider that:

- (a) Network Rail's proposed works fall within the scope of the HS2 Supplemental Agreement (as explained in further detail in section 4 below); and

- (b) as stated in HEOC's Notice of Dispute dated 6th April 2023 (the "**Notice of Dispute**"), this Dispute is a Timetabling Dispute and as such, Part D of the Network Code and subsequently the ADRR apply.

3.4 The Claimants therefore refer this Dispute to a Timetabling Panel (the "**Panel**") for determination in accordance with Conditions D3.4, D4.6 and D5 of the Network Code and Clause 7.2 of the HS2 Supplemental Agreement.

4. SUBJECT MATTER OF DISPUTE

Summary of the Dispute:

- 4.1 This Dispute relates to Network Rail's proposed timetable offer which was received by GWR on behalf of the Claimants in respect of the two-track timetable for week 11, Sunday 11th June 2023, possession number 3462100 (the "**Offer**").
- 4.2 The Claimants' objections to the Offer can be summarised as follows:
 - (a) Possession number 3462100 forms part of the Engineering Access Statement for 2023 and such statement (which was previously agreed) did not specify that a reduction in service (from four trains per hour to two trains per hour) would be required on Sunday 11th June 2023;
 - (b) Network Rail subsequently sought to rely on the Engineering Access Statement for 2024 and the 2024 concept train plan (as opposed to those for 2023) to justify the reduction in service in relation to possession number 3462100 (which falls in 2023), which is not a satisfactory nor a compliant approach;
 - (c) The Claimants were not given the opportunity to provide any comments or participate in a consultation in relation to the Offer as Network Rail provided the Offer (which required the Claimants to reduce their service) after the date for timetable bids to be submitted; and
 - (d) The Claimants' position is that the Offer does not make effective use of the capacity available on the Network and it unfairly impacts the HEx Service compared to other train services / operators.
- 4.3 HEOC raised objections to the Offer during the capacity allocation period and has not been satisfied with the response received to date. Consequently, HEOC submitted the Notice of Dispute.

Contractual position:

- 4.4 The Claimants have the right to operate the HEx Service four times every hour in each direction pursuant to Paragraph 2.1 of Schedule 2 of the Track Access Agreement.
- 4.5 As specified in section 3.2(a) above, the HS2 Supplemental Agreement incorporates certain provisions of the Network Code into the Track Access Agreement in the context of HS2 Works, and on the basis that the proposed works relating to this Dispute concern:
- (a) a Restriction of Use;
 - (b) a change to the Engineering Access Statement; and
 - (c) a change to the Timetable Planning Rules,
- which take place during the Relevant Period (as defined in the HS2 Supplemental Agreement), Part D of the Network Code therefore applies to the proposed works.
- 4.6 Clause 2.4 of the HS2 Supplemental Agreement states that the agreement or determination of any Restriction of Use or any changes to the Engineering Access Statement or the Timetable Planning Rules, or any Network Change or the occurrence and consequences of any Disruptive Event, in accordance with Clause 2 of the HS2 Supplemental Agreement shall be binding notwithstanding any provision of the Track Access Agreement.
- 4.7 Clause 2.4 of the HS2 Supplemental Agreement does not give Network Rail the right to disregard the Claimants' contractual rights. Rather, this provision facilitates the mutual coexistence of the HEx Service alongside HS2 Works and ultimately, a fair balance of the Claimants' and Network Rail's commercial interests.
- 4.8 The Claimants do not consider that an agreement has been reached pursuant to Clause 2.4 of the HS2 Supplemental Agreement, nor that Network Rail has acted in accordance with its obligations under Clause 2 of the HS2 Supplemental Agreement and the relevant provisions of the Network Code, as required and specified in section 4.2 above.

Relevant correspondence:

4.9 There are four pieces of correspondence that are relevant to this Dispute. The Claimants set out below a description of the correspondence, copies of which are provided in the appendices to this reference.

- (a) 3rd February 2023 – 1st March 2023 - 2024 EAS Western Route - Version 2 - Decision Criteria for HS2 2TT, email chain issuing the Decision Criteria and advising that it will be applied for week 11 (“**Email 1**”).
- (b) 21st March 2023 - GWML Sunday 2 Track WTT Prints - sent by Network Rail attaching the latest versions of the WTT Prints associated with the Sunday 2 Track CTP published in the 2024 EAS v2 (note not sent to all Timetable Participants) (“**Email 2**”).
- (c) 30th March 2023 - 2024 EAS Western Route - Version 2 - Decision Criteria for HS2 2TT – Update – Network Rail’s response to HEOC’s objections and concerns (sent by Network Rail to all Timetable Participants) (“**Email 3**”).
- (d) 3rd April 2023 – Week 11 Informed Traveller Offer – sent by Network Rail stating that HEOC had a number of services in excess of the Capacity Study for Week 11 and the Decision Criteria that was issued by Network Rail EAP colleagues (“**Email 4**”).

Relevant Parts of the Network Code:

4.10 The Decision Criteria (set out in Condition D4.6 of the Network Code) apply in their entirety. Condition D4.6.2 is particularly relevant as it specifies the Considerations that Network Rail must take into account when deciding matters concerning Part D of the Network Code. Condition D4.6.3 sets out how Network Rail should apply those Considerations. The relevant Considerations in the context of this Dispute are set out below:

“In achieving the Objective, Network Rail shall apply any or all of the considerations in paragraphs (a)-(l) below (“the Considerations”) in accordance with Condition D4.6.3 below:

(a) maintaining, developing and improving the capability of the Network;

(b) that the spread of services reflects demand;

(c) maintaining and improving train service performance;

...

(f) the commercial interests of Network Rail (apart from the terms of any maintenance contract entered into or proposed by Network Rail) or any Timetable Participant of which Network Rail is aware;

...

(j) enabling operators of trains to utilise their assets efficiently;”

4.11 The Claimants’ position is that limiting the HEx Service to two trains per hour, rather than four trains per hour, means that HEOC is not able to utilise its assets efficiently, nor does it ensure that HEOC’s commercial interests are adequately considered. Further to this, the reduction in service negatively impacts the reputation of the HEx Service and has significant practical implications for passengers (from a journey time and reliability perspective, as well as other factors). The Claimants consider that making changes to an alternative train service (rather than the HEx Service) in order to carry out the proposed works would not have such a detrimental impact on passengers, and this has not been acknowledged by Network Rail to date.

4.12 Condition D5 of the Network Code applies and Condition D5.1.1 specifies that “*where an appeal is expressly authorised by this Part D, a Timetable Participant may refer a decision for determination by a Timetabling Panel in accordance with the ADRR.*” As explained in section 3 above, referring this Dispute to the Panel is the appropriate forum.

5. EXPLANATION OF EACH ISSUE IN DISPUTE AND THE CLAIMANTS’ ARGUMENTS TO SUPPORT THEIR CASE

5.1 The issues in dispute have been set out above. In summary, Network Rail has sought to carry out HS2 Works without adhering to the necessary procedure as specified in the Network Code and the HS2 Supplemental Agreement.

5.2 The Claimants acknowledge that Network Rail requires the proposed works to take place. However, the Claimants’ position is that:

- (a) carrying out the proposed works should not disproportionately disadvantage the HEx Service compared to other train services / operators on the Network;
- (b) Network Rail has not carried out a sufficient assessment of the capacity allocation across the Network to ensure that train operators are able to utilise their assets efficiently and passenger disruption is minimised in the context of the proposed works; and
- (c) Network Rail has failed to consider the Claimants' commercial interests as required in the context of the proposed works.

5.3 This Dispute has been brought by the Claimants in order to comply with the applicable procedural obligations in the Network Code and ensure that the appropriate corrections can be made formally by the Panel.

6. DECISION SOUGHT FROM THE PANEL

The Claimants request that the Panel determines that Network Rail has not acted in accordance with the relevant provisions of the Network Code, nor the HS2 Supplemental Agreement and therefore, the Offer should be withdrawn, and the Claimants have the right to operate a four-train service on Sunday 11th June 2023, in accordance with their contractual right to do so.

7. APPENDICES

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

SIGNATURE

For and on behalf of Heathrow Express Operating Company Limited

Signed _____

Print Name

JYOTI CHANDER

Position

Planning & Performance Manager

Appendices

Appendix 1

Email 1 – Email chain - 2024 EAS Western Route - Version 2 - Decision Criteria for
HS2 2TT

Appendix 2

Email 2 - GWML Sunday 2 Track WTT Prints

Appendix 3

Email 3 - Email chain - 2024 EAS Western Route - Version 2 - Decision Criteria for HS2 2TT, with responses to HEOC's objections and concerns.

Appendix 4

Email 4 - Week 11 Informed Traveller Offer

Appendix 5

HS2 Supplemental Agreement