

TTP2208

First Directions 04 July 2023

Terms used

“ADC” means The Access Disputes Committee

“HEOC” means Heathrow Express Operating Company Limited

“NWR” means Network Rail

For HEOC

1. To enable the panel to understand the exact nature of the dispute please produce a concise description of the dispute between the parties (HEOC and NWR). Describe in full,
 - (1) Exactly what possession HEOC understands NWR seeks and provide a full copy of the Decision Notice, as received by HEOC,
 - (2) Set out concisely why HEOC opposes it, and what, exactly, is in dispute.
 - (3) If it is alleged that any proposed possession NWR seeks is in breach of HEOC’s Track access agreement (TAA) then please confirm whether HEOC’s TAA, or HS2 Supplemental Agreement, have been amended since Determination of TTP2207 (and, if they have, produce a full copy).
 - (4) identify the relevant term(s) NWR is alleged to be in breach of
2. When you (Jyoti Chander, on behalf of HEOC) in your letter to ADC (dated 6/4/23) say “*HEOC declined the possession verbally during initial discussions and then also formally when the request was received*”.
 - (1) Please set-out what NWR said which led HEOC to decline the possession (“*declined the possession verbally*”).
 - (2) What exactly was proposed?
 - (3) By whom precisely was it proposed and
 - (4) What was said to decline the proposal?
 - (5) When did this happen?
 - (6) Where did it happen?
 - (7) Who was present?
3. In that letter (6/4/23) HEOC say “*this access is additional to what has already been described within the various access proposals for HS2*”
 - (1) If these “*access proposals for HS2*” are being relied upon by HEOC in this dispute please immediately produce those access proposals if they were in writing .
 - (2) If these “*access proposals for HS2*” are not being relied upon by HEOC then please immediately confirm that is the case .
 - (3) If these “*access proposals for HS2*” were verbal then please set out the words used, by whom they were used and when they were used.
4. HEOC say in their letter of 6/4/23 “*the capacity allocation that is also being prescribed for this possession is in breach of HEOC’s Track Access Agreement date 16th August 1993 between Heathrow Express Company and Network Rail*”.
 - (1) Please confirm that agreement has not changed since determination of TTP2207
 - (2) Identify what provisions the capacity allocation prescribed is allegedly in breach of?
 - (3) Be prepared, in your Sole Reference Document, to set out why that allegedly constitutes a breach in this case.
5. Please answer the ADC Secretary’s questions in her email of 12/4/23 at 10.32 sent to Tony Worgan (NWR) and Jyoti Chandler (HEOC) copied to Mark Sleet (NWR) and Darren Broderick (NWR)
 - (1) “*What is the issue in dispute?*”
 - (2) Is it the possession decision?

- (3) "Under which clause of the contract (either TAC or Network Code Part D) the reference was made;"
- (4) "and, if so, why is the possession in dispute"?
- (5) If HEOC agrees that no capacity allocation has been made at this stage, please confirm whether you would like the dispute to be withdrawn?

For NWR

6. To clarify the issue of whether the dispute has been properly raised and to help understand the extent and nature of the dispute please confirm that NWR accepts that the dispute has been properly raised.
7. NWR replied on 25/4/23 at 11.10 "Network Rail confirms that Jyoti's response answers the questions asked" Please identify the email from Jyoti being referred to by NWR and specifically address the question asked by the ADC secretary, namely whether NWR has withdrawn its objection in Tony Worgan's email of 12/4/23 at 0842: "having reviewed the contents of the Notice, we submit it does not appear to meet the criteria as set out in ADRR Chapter B Rule 3"
8. What does NWR understand to be the precise issue involved? What is NWR's understanding of what the dispute is about?
9. Please confirm when the timetable for week 36 is due to be bid, offered and uploaded into industry systems.

Please provide answers to the above questions **by 16:00 on Thursday 06 July 2023.**

Matthias Kelly KC
Hearing Chair
04 July 2023