

Hearing of TTP2306 - Directions 28 September 2023

I have given careful consideration to:

1. Network Rail's email dated 13 September 2023 17:28 (Chris Stacey) notifying various parties of capacity studies for Week 42 Relief Line HS2 possessions – which says “ These are considered to be final versions”;
2. HEOC's Notice of Dispute dated 19 September 2023;
3. Network Rail's email dated 25 September 2023 15:28 (Becky Radford) objecting to the matter being raised as a Timetable Dispute – broadly on the basis that the Capacity Allocation Statement is not a formal decision by Network Rail because it is indicative only and forms part of the consultation process under the Network Code. It also stated that the timetable was yet to be offered for any of the weeks in issue and that a consultation period would allow the parties to attempt to work through any issues with a view to reaching a final decision that would not need a dispute hearing. The email also noted that there may be differing opinions on this issue and that Network Rail would be grateful for guidance on it.
4. HEOC's response email dated 26 September 2023 16:46 (Paul Fowler) in which he complained:-
 - a. That having disputed the allocation of paths within the capacity study, there has been no subsequent response from Network Rail to address its concerns;
 - b. Having in previous weeks not bid to the capacity study having been offered paths back as per the capacity study with Network Rail stating that the paths rejected were not within said study;
 - c. There was potential for prejudice if a dispute could only be raised post offer because time was then limited time and intervening circumstances might have occurred (e.g. advertisement or ticket sales) and in support he relied upon observations made in the determinations in TTP2207 (Week 11) and TTP2243 (Week 29).

There is limited authority for the proposition that there is a provision within ADRR that a Hearing Chair is entitled or empowered to strike out a Notice of Dispute on a procedural ground, e.g. that there is no underlying decision capable of being in dispute or that such a notice is otherwise invalid for some reason. Rule B5 provides that in relation to a timetabling dispute, if either party raises any objection to the dispute proceeding under Chapter H, the Hearing Chair shall consider the best way to proceed.

I am not persuaded that Network Rail has set out a clear and forceful argument that a decision has not yet been made which is capable of being in dispute. Network Rail conceded that 'there may be differing opinions on this issue' and it sought guidance. Moreover, in its email dated 13 September 2023 it states that the parties are to regard the capacity study to be the 'final version'. This has the potential to undermine the observation by Network Rail in its email dated 26 September 2023 that further consultation would allow for an attempt to reach a final decision that would not need a dispute hearing.

I also bear in mind the potential prejudice that HEOC may suffer if the subsequent timetable offer more or less reflects the capacity study attached to the 13 September 2023 email and if a formal dispute about it can only be raised about it at that time.

I find that the issues raised by both parties contain arguable points which cannot properly be determined on the limited materials presently before me.

Thus I decide that if Network Rail wishes to maintain its stance that the Notice of Dispute should be struck out on the basis that no decision has yet been made that is capable of dispute within the meaning of ADRR and the Network Code, the application to that effect shall be determined as a preliminary issue at the commencement of the substantive hearing of TTP2306.

Hearing arrangements

Further to exchanges over the past few days, arrangements have therefore been made for a Timetabling Panel hearing to take place on **Wednesday 18 October 2023** convening **at 10:00** at the Committee's office in Mimet House, Praed Street, London. The Hearing Chair will be Mr. John Hewitt. Joining instructions will be advised in due course.

Regarding ADR Rule H21, the parties should provide the Panel with sole reference documents as described in Rule H21(b). The submission deadlines shall be that HEOC serves its documents by **16:00 on Wednesday 04 October 2023** and Network Rail shall then serve its response by **16:00 on Wednesday 11 October 2023**.

Templates for submissions can be found on the Committee's website. Please use the templates provided. Please note that the Secretary is on annual leave from 06 to 16 October inclusive, and Network Rail's submission (and any queries during this time) should also be copied to the ADC Office Administrator, who will be able to contact the Hearing Chair.

Upon receipt of your documents, they will be distributed to the Panel and published on the Committee's website (as required by Rule H56). Please note: we cannot accept .eml files as appendices. Please provide any email files in pdf format, with email addresses (but not names) redacted. This includes email signatures. The easiest way of achieving this is to place screenshots into a word document, and edit accordingly, or to copy and paste the email into a word document and convert to pdf.

HEOC

If HEOC proposes to contend that the Network Rail decision it relies upon was:

- A. Not made in good faith;
- B. Irrational or unreasonable;
- C. Capricious, and/or
- D. Inconsistent with the contractual purpose

It shall set out in its sole reference document the gist of its argument for doing so and shall identify the evidence it wishes to rely upon in support of them.

If HEOC contends that the Timetabling Panel should substitute an alternative decision in place of the challenged decision it shall, in its sole reference document, set out the decision it seeks together with the gist of the facts and matters relied upon that amount to 'exceptional circumstances' within the meaning of Network Code D5.3.1(c).

Network Rail

If Network Rail proposes to pursue its application that the Notice of Dispute should be dismissed on procedural grounds it shall set out in its sole reference document the gist of all facts and matters relied upon, together with any legal authorities it may wish to rely upon.

If Network Rail includes such matters in its sole reference document, HEOC shall by **16:00 on Monday 16 October 2023** file with the ADC and serve on the other parties a short statement of case in answer.

You are, of course, encouraged to continue discussions in the meantime with a view to settling matters without need for the Panel hearing.

John Hewitt
Hearing Chair TTP2306