

TTP2318

Directions issued on 3rd November 2023

1. I am grateful to GBRf for service of its Statement of Claim ('SoC'). In this short-notice TTP I have as yet had little time to review the considerable volume of material included in the SoC, but I hope that it might assist if I query now the Remedies which GBRf is seeking.
2. Paragraph 6.1(a) of the SoC describes a conclusion that the TTP might reach once it has considered both Parties' cases, but it does not provide a remedy for GBRf.
3. Given the limited time between now and the start date of the possession leading to this Dispute (Possession Number 3774226), I wonder whether there is sufficient time to give a general direction to Network Rail to re-work the planning by using its flexing rights, as suggested in paragraph 6.1(b).
4. I am not sure how a TTP could hold a Dispute open to judge whether due process had been fully exhausted, taking the Decision Criteria and the exercise of flexing rights as suggested in paragraph 6.1(c).
5. Is GBRf in essence asking the TTP to order Network Rail to cancel the possession unless sufficient paths can be offered to enable GBRf to fulfil its contractual obligations to Drax?
6. If this is a correct interpretation of the remedy which GBRf is seeking, then both Parties will need to be ready to explain whether they think that such a Determination would require the TTP to decide that exceptional circumstances had arisen, as the Decision which is being appealed is not the possession, but the offer to GBRf arising from that possession.
7. Will GBRf please confirm as soon as possible, and in any event by **1700 on Monday, 6th November 2023**, whether I have correctly understood the remedy which it is seeking. This will enable Network Rail to draft its SoC to deal with the remedy sought by GBRf.
8. Further Directions may follow once the Panel members have had further time to review GBRf's SoC.

[Signed on the original]

Clive Fletcher-Wood

Hearing Chair TTP2318