

## **1 DETAILS OF PARTIES**

- 1.1 The names and addresses of the parties to the reference are as follows:
- (a) GB Railfreight Limited (“GBRf”) whose Registered Office is at 3<sup>rd</sup> Floor, 55 Old Broad Street, London, EC2M 1RX; and
  - (b) Network Rail Infrastructure Limited (“NR”) whose Registered Office is at 1 Eversholt Street, London, NW1 2DN.
- 1.2 Third parties to this dispute may include Freightliner Group Ltd., DB Cargo (UK) Ltd., Trans Pennine Express, Northern Rail, East Midlands Railway and Cross Country Trains.

## **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 D3.5.3 of the Network Code. GB Railfreight is dissatisfied with the Week 40 Variation Offer Decision made by Network Rail (NR) on the 17<sup>th</sup> October 2023. GB Railfreight is specifically dissatisfied with the number of amended and rejected schedules for our diverted biomass flow between the Port of Liverpool and Drax Power Station.
- 2.2 These services are being diverted away from their normal routes across the Pennines (either the Calder Valley or Diggle routes) to run across the Hope Valley Line [Appendix 2.1].
- 2.3 The volume of services GB Railfreight has received as either rejected, or offered with unacceptable timings, will have an extremely significant impact on our customer (Drax Power Ltd.) during one of its highest demand periods and, therefore, also to the UK national energy supply.

## **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 dispute was brought under Condition 3.4.16 of the Network Code, applicable at the time, and the Secretary registered it as TTP2318 [Appendices 1.1 and 1.2]. Since registration, GB Railfreight has indicated its willingness to continue to work on a plan that accommodates the loss of trains and service rotations needed for critical biomass delivery. However, given the time proximity of the possession and its complexity, GB Railfreight became of the view that a dispute would just be unavoidable.
- 4.2 The possession in question was consulted during the normal 2023 Engineering Access Statement development which is the engineering publication in which Network Rail consults its engineering work intentions. The access itself still remains in a disputed status by GB Railfreight owing to the major concerns GB Railfreight has (and has always stated) regarding capacity on the diversionary route via the Hope Valley route. Considering the amount of time and effort GB Railfreight has given to supporting the development of these plans, it is disappointing the result of all this effort has come to nothing.
- 4.3 On 27th October 2023 GB Railfreight raised a dispute with NR in relation to its decision regarding the Week 40 Variation Offer, specifically for its biomass services which had been bid to be diverted away from Possession No: 3774226 [Appendix 5.2, blocking our normal route across the Pennines. The possession starts at 00:15 on 30<sup>th</sup> December 2023 and finishes at 04:30 on 2<sup>nd</sup> January 2024.
- 4.4 The possession means that we have to divert x16 loaded biomass services and x15 empty trains via the Hope Valley route [Appendices 3.1 and 4.1], and deliver 36,000 tonnes of fuel to Drax Power Station during its winter high-burn period, without fail. Our Customer at Drax Power Station Ltd has advised the criticality of operating a full service during this time [Appendix 6.4].

- 4.5 GB Railfreight's diversionary bids were made in conjunction with a timetable study that had been produced ahead of the possession to help operators support the proposed access requirement. The study itself is a 60 page document [Appendix 5.3], Section 6 makes reference to the changes to Freight, Section 7.4 of this document makes reference to the requirement of retiming to other services, but capacity is available, this is essentially saying that Network Rail should apply flexing rights.
- 4.6 The final diversionary offers that GB Railfreight then received, with many outright rejections and some heavily amended schedules, would only deliver 4,800 tonnes of biomass to Drax (equating to x2 rotations in total). The impact of this reduced delivery would put significant pressure on Drax Power station in not generating maximum power output and would also cause GB Railfreight to suffer significant revenue losses. [Appendices 3.2 and 4.2].
- 4.7 The purpose of a timetable study is to give confidence to operators for running the required number of services during the time of disruption. It also supports Network Rail's Informed Traveller timetabling team (Freight MK), as significant disruption to services means heavier workloads. A properly carried out capacity study should help alleviate that workload by giving direction in how to alter the complete timetable.
- 4.8 GB Railfreight were keen to bid compliant with the capacity study, but was unable to do so due to a technical issue. It appears to GB Railfreight that the Network Rail Informed Traveller team did not have sight of this document. GB Railfreight finally attained the schedules from the Capacity Study on the 17<sup>th</sup> October 2023 long after our bid on the 25<sup>th</sup> August 2023 and supplied these to Freight MK on the 18<sup>th</sup> October. This in the belief the study was workable with other operators for the duration of the disruption and with the use of flexing rights. It is now very clear the timetable study was not fit for purpose. GB Railfreight believes there should be an "industry amended train plan" to support industry access decisions. This would mean consulting with operators on diversionary routes to free up capacity to accommodate diverted traffic.
- 4.9 It is worth pointing out, now, that this piece of work taking place is part of a long-term project delivering the Trans Pennine Route Upgrade (TRU). [Appendix 5.1] show the

number of these instances and, in some cases, there are blockade proposals that will force many freight diversions via the Hope Valley route for a number of weeks.

- 4.10 All over the country, there are significant blocks that put our services at risk, and we require workable supporting timetable studies that can be bid against and, more importantly, that can be offered without any issues. GB Railfreight has little or no confidence that Network Rail will achieve workable amended timetable study plans in future without the compliance of other operators not directly impacted by the disruption.
- 4.11 It is GB Railfreight's belief that Network Rail has reached a decision for a disruptive possession without adequate consultation, as required by Condition D3.4.4 (a), D3.4.8 and D3.4.12. This argument is made owing to the poor quality of the supporting timetable study, which needs to be considered as consultation documentation.
- 4.12 Following our bid submission, GB Railfreight received the amended timetable offer containing x13 services that had been either rejected due to a lack of capacity or conflicting possessions on the diversionary route, or else GB Railfreight had been offered unworkable paths, in so far as an inbound service to Drax Power Station did not adequately tie in with its returning outbound path.
- 4.13 Between submitting our bid and receiving the offer, there had been little or no communication from the planning team in Milton Keynes. GB Railfreight was asked for suggestions fairly late on in the process (just two days before the offer), without having a great deal of detail regarding the constraints at play.
- 4.14 GB Railfreight advised Network Rail to flex passenger trains, namely "to apply your flexing rights" to create the required capacity [Appendix 3.2] and, therefore, deliver the Objective.
- 4.15 Condition 4.6.1 of the Network Code clearly states "*Where Network Rail is required to decide any matter in this Part D, its objective shall be to share capacity on the Network for the safe carriage of passengers and goods in the most efficient and economical manner in the overall interest of current and prospective users and providers of railway services ("the Objective").*"

- 4.16 In many cases, it is impossible to divert a significant number of trains onto another route without having to re-time other trains. That is why, GB Railfreight believes, Network Rail has its power of flexing rights but it often chooses not to use these rights.
- 4.17 GB Railfreight would have appreciated more dialogue much sooner, and as the issues became apparent, given the circumstances around the affected services in question and their importance. GB Railfreight appreciates the challenges the diversions would present which is why it was keen to bid compliantly with the capacity study, but as the aforementioned in 4.8, we were unable to do so. Ideally, at best, there might just have been a few “tweaks” to the GB Railfreight-bid schedules, on validation, when Network Rail received the amended schedules on the 18<sup>th</sup> October.
- 4.18 In fact, the original capacity study that was presented to Network Rail appeared to be a non-timed bid of 31 trains that required complete validation. That comment aside, GB Railfreight believes there is still a requirement for Network Rail to apply its flexing right on other operators, directly or indirectly impacted by the amendments, in order to achieve the Objective. The issues that have unfolded in this case highlight the criticality of a well-produced and valid timetable study.
- 4.19 Following this Notification of Dispute, GB Railfreight has supplied additional information regarding train workings and has also sent one of its planners to assist with the planning and validation of outstanding services in an attempt to come up with a workable plan for Drax Power Ltd [Appendices 3.3 and 6.3]. After the meeting between Network Rail and GB Railfreight on the 2<sup>nd</sup> November 2023, our planner advised that we are unable to plan some services as there was a reluctance to amend passenger services as “passenger operators would not be happy about these changes”. Frankly speaking, this is an example of blatant non-use of flexing rights as per D4.4.1(a). It is clear from the offer and subsequent work undertaken jointly that there was a complete lack of use of the decision criteria D4.4.1(c) to prioritise services during validation. The lack of use of both 4.4.1(a) and 4.4.1(c) means that the full biomass plan has not been able to be delivered.
- 4.20 To this very day, GB Railfreight has not received any notification on how the Network Code and Decision Criteria have been evaluated and applied to any of the conflicts that are present in our amended or rejected offers. GB Railfreight can only assume that

Network Rail has not made any consideration to the Decision Criteria, yet alone applied it as set out in Network Code Condition D3.4.4 (b), which is a serious issue.

- 4.21 Taking the above into account, it isn't clear how GB Railfreight can determine whether or not the reasons for rejecting our services, or the reasons for not amending other operator services, have been determined and enacted fairly and properly.
- 4.22 Biomass, itself, is a controlled material that requires to be moved from dock to power station for burning in a relatively short time. Not being able to move 31,200 tonnes of biomass, over the period in question, will put big constraints at the holding facility on the docks and eventually cause issues when the next vessel arrives to re load the stock facility.

The loss of the required biomass tonnage, in the peak-demand period, will mean we are unable to make up the lost tonnage as there is insufficient capacity on the rail network to accommodate even more freight services.

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

- 5.1 Network Code Condition D3.4.8 requires Network Rail to consult with affected Timetable Participants (directly and indirectly) and that any decision that is reached is done so in accordance with the Decision Criteria within Condition D4.6.
- 5.2 The decision demonstrates that Network Rail have not fully utilised Network Code D4.41(a) or 4.41(c) and continue to not to do so following our joint attempt to attain a full biomass train plan. The current timetable decision made by NR has an enormous impact on GB Railfreight's daily operation. GB Railfreight identified sixteen loaded and fifteen empty daily biomass flows that would be affected by the possession [Appendix 4.1].
- 5.3 Whilst it cannot be proven, either way, that Network Rail actually applied the Decision Criteria *at the time of its decision-making*, GB Railfreight feels strongly that its services have been completely overlooked and discounted during the validation of the full amended train plan, such were the number of rejections and altered timings. GB

Railfreight feels that its services have been insufficiently considered when the amended plan was put together and validated.

- 5.4 The accompanying timetable study not only failed GB Railfreight but it also failed to support the possession Decision from Network Rail on 03/02/2023. In GB Railfreight's view, the study (a timetabling document) is not an industry-wide timetable study in that other operators' services, with which GB Railfreight interacts on the diversionary route across the Hope Valley, through Sheffield and Doncaster, are not properly referenced. Had it been the case that an industry study were produced with all affected parties (directly and indirectly).
- 5.5 GB Railfreight is also consensually cancelling other services to assist Network Rail in the development of a train plan to accommodate the works and our vital biomass energy services, strategic to the UK-wide energy supply. The flows identified within the bid [Appendix 4.1] are critical to GB Railfreight's operation and anything other than ability to operate each of them throughout the proposed engineering access, with existing loco and wagon resource, is unacceptable.
- 5.6 Throughout the initial consultation, GB Railfreight was assured by Network Rail that a full timetable study would accompany any decision made in relation to the access sought to offer confidence that all its services could be accommodated. GB Railfreight clearly indicated that any its acceptance of the possession would be dependant upon this detail being supplied [Appendix 6.2].
- 5.7 At the time of submission of this Sole Reference Document, 15:00 on Friday 3<sup>rd</sup> November 2023, GBRf have a total X3 loaded services requiring further validation work, a shortfall of 7,200 tonnes of biomass [Appendix 5.4]. This is following efforts made by GB Railfreight and Network Rail on the 1<sup>st</sup> November.
- 5.8 Network Rail's decision was completely in disregard to Network Code and the Decision criteria and at no point has any demonstration of its use been produced throughout the Informed Traveller Variation process.
- 5.9 It should be noted that GB Railfreight would incur significant cost, were this possession to go ahead with services currently rejected or amended as presently shown. Whilst some of the associated cost of these diversions, should they run, would be recoverable via Schedule 4 of the Track Access Contract, this mechanism is highly unlikely to cover

all of the costs to delivering this plan, especially at such short notice. Note this would not include any downstream claims from GB Railfreight's customer for the costs of replacement road haulage, should this even be possible for such a large amount of bulk lightweight biomass product.

**5.10** GB Railfreight is firmly of the view that NR has not arrived at the correct conclusion in reaching its decision. GB Railfreight is supportive of NR in its requirements to deliver the enhancements it is committed to deliver, however these enhancements should not be at the expense of our customers and our business due to non-compliance or application of the Network Code.

## **6 DECISION SOUGHT FROM THE PANEL**

6.1 The Claimant is requesting that the Panel determines that:

(a) Under Condition D3.4.4 (b), Network Rail has not applied the Decision Criteria when making capacity decisions on conflicting services. In making its decisions, Network Rail has therefore inaccurately evaluated the impact that its decision would have on GB Railfreight (and its end) customer affected by the amended plan and our business; the decision reached does not offer a reasonable compromise given the tangible alternatives that are available and the proximity of the proposed access.

(b) Network Rail be instructed to use its flexing rights wherever it needs to in order to achieve the objective.

(c) Network Rail does not implement the possession until due process has been fully exhausted, taking into account full application of the decision criteria and use of flexing rights.



## 7 **APPENDICES**

### **1 - Dispute Notices**

- 1.1 GBRf's Notice of Dispute in regard to the Week 40 Variation Decision (3 pages).
- 1.2 Reference letter from ADC in regard to the Week 40 Variation Decision (2 pages).
- 1.3 Reference letter from ADC in regard to the Week 40 Possession 3774226.

### **2 - Maps**

- 2.1 Area map showing the core route of normal running, the blocked routes and the diversionary route.

### **3 - Emails**

- 3.1 GBRf week 40 Variation Bid.
- 3.2 Network Rail Variation Offer.
- 3.3 Biomass workings response.
- 3.4 Email to Network Rail with capacity study prints.

### **4 – Week 40 Variation Bid and Offer Documents**

- 4.1 Week 40 Bid to Network Rail on the 25<sup>th</sup> August 2023 (4 pages).
- 4.2 Week 40 Offer from Network Rail on 20<sup>th</sup> October 2023 (4 pages).

### **5 – Network Rail Documents**

- 5.1 Future Trans Pennine Route Upgrade (TRU) disruptive blocks (3 pages).
- 5.2 Possession details.
- 5.3 Timetable study details (8 pages)
- 5.4 Summary of remaining services to be planned (4 pages).

## **6 – GBRf Documents**

- 6.1 Forecast of services required during the period of the possession.
- 6.2 Engineering Access Statement responses to this possession Version 1, 2, 3, 4.
- 6.3 Biomass Workings.
- 6.4 Letter from Drax power station.

## **8 SIGNATURE**

For and on behalf of GB Railfreight Limited

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Signed

Darren Pell  
Engineering Access Manager