

## TTPs2318 and 2320

### Third Directions (although these are the first Directions in TTP2320) issued on 8<sup>th</sup> November 2023

1. I am grateful to FL for producing its SRD today. These Directions are also issued in response to the e-mail of 1532 today from Network Rail, for which I am also grateful. I think it clearer to maintain the numbering of Directions from TTP2318.
2. It was always recognised that the possessions in these two Disputes are geographically separate, but it was felt that there were sufficient common issues to make it more effective for the Disputes to be heard together. These are, in brief, the claims that NR has failed to consult as required by Part D, and that NR has failed to apply the relevant Decision Criteria appropriately.
3. The issue of NR's willingness to use the flexing powers available to it has been raised in both Disputes, although I note that in the case of TTP2320 NR says that it did try to flex passenger services, but that for the freight 'services' (in the plural) to work NR would have to reject 3 – 5 passenger services. (E-mail of 1147 on 18 Oct 23 in Appendix 2 to FL's SoC). The Panel will wish to examine this issue, both as a matter of NR's policy towards flexing passenger services in circumstances such as this, and the details in this case, as 'rejecting' passenger services does not fall within my understanding of flexing rights.
4. Both Parties must be prepared to explain at the hearing how many freight services were the subject of this e-mail and NR's approach to the broader policy questions referred to above.
5. In short-notice Disputes such as these I do not expect to receive highly polished submissions; what is required is documents setting out the arguments of the Parties in clear terms, to which the Panel will apply its expertise.
6. If it will assist NR, I will be prepared to receive its SoC in respect of TTP2318 by tomorrow's deadline, but to permit its SoC in TTP2320 to be submitted by 1200 on Mon 13 Nov.
7. I can assure NR that if by the time of the hearing I think it is being disadvantaged in the presentation of its case, I will have no hesitation in exercising my powers to sever the two TTPs, setting a separate timetable for TTP2320. But if both can be dealt together fairly, then I think it sensible to do so, so long as the Parties understand that fairness will take priority over expediency.
8. At the hearing, as I do not think that there is now sufficient time beforehand, the Panel will wish to explore FL's proposed remedies. NR's Decision can presumably only be withdrawn (6.1) if there is a practical solution to the problem. 6.2 covers both a D5.3.1(a) direction to NR and the Panel reaching its own decision, which it can only do if exceptional circumstances apply. 6.3 echoes the first part of 6.2. Any general direction on policy (6.4) would depend on the Panel's conclusions on NR's policy on flexing rights.
9. I think it worth highlighting these questions now to assist the Parties to prepare for the hearing.

*[Signed on the original]*

Clive Fletcher-Wood

Hearing Chair, TTPs 2318 and 2320