

TTP2320 - Freightliner Limited Sole Reference Document

1 DETAILS OF PARTIES

1.1 The names and addresses of the parties to the reference are as follows:-

Freightliner Limited, (Company number 03118392) whose Registered Office is at The Lewis Building, 35 Bull Street, Birmingham, B4 6EQ

Hereon referred to as ("Freightliner") or ("the Claimant");

and;

Network Rail Infrastructure Limited, whose Registered Office is at 1 Eversholt Street, London NW1 2DN ("Network Rail") or ("the Defendant").

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 D5.1 of the Network Code.

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 is a dispute relating to Network Rail's Decision to reject one Freightliner train slot – 4O50 [SO] – in the formal offer for week 40 (Specifically 30th December 2022).

4.2 4O50 is impacted by possession P2023/3766319 – this Restriction of Use closes the Relief Lines on the Great Western Main Line between Twyford West Jn and Reading station. Freightliner accepted this possession in the Engineering Access

Statement and CPPP, noting the Traffic Remarks 'Trains to run over Main Lines'.

4.3 There was no notification in the CPPP that Network Rail required operators to submit access proposals for revised schedules, in accordance with Network Code Condition D3.4.10, and as such Freightliner expected any necessary amendments as a result of this Restriction of Use to be performed by Network Rail (as is typically the case in this situation and has previously been agreed with Network Rail). (See Appendix 1 – CPPP extract)

4.4 A capacity study was presented to Freightliner by Network Rail less than a week before the T-18 submission date for service variations, by which point Freightliner had prepared all material to send to Network Rail. Freightliner had not previously been aware this capacity study was being produced, and had any amendments been made to reflect it this would have resulted in Freightliner failing to meet contractual deadlines for bidding to Network Rail. Regardless of this, the contents of this capacity study were rejected by Freightliner as not being appropriate or taking account of Freightliner's reasonable traffic requirements. (See Appendix 2 – email exchange). As such Freightliner believe this capacity study should be discounted from this dispute.

4.5 During work to validate the train service amendments around this Restriction of Use, Network Rail contacted Freightliner on 18th October to advise that they were having difficulty accommodating all train slots, and asking if any could be routed alternatively or cancelled. Freightliner responded to this advising of schedules that could be diverted via alternative routes, and those where no other routing was available. 4O50 [SO] was advised as being unable to divert due to container gauging restrictions. (See Appendix 3 – email exchange)

4.6 4O50 was subsequently rejected on 20th October by Network Rail (revised date to replace the contractual TW-14) as part of the initial offer made.

4.7 Freightliner responded in offer response on 27th October (revised date to replace the contractual TW-13) to confirm the following regarding 4O50 [SO]: 'Train required to run, based on Traffic remarks on TW22, run ML from Tywford West, back to WTT at Kennett Bridge Jn - W10 train no diversionary route.'

4.8 Network Rail provided the formal offer for week 40 on 3rd November (revised date to replace the contractual TW-12), in which 4O50 [SO] remained rejected, providing the comments 'as previously mentioned in the train note, there is no compliant path at all for this train to run. Even working with the passenger teams to find a path, I am unable to find one, as I am unable to flex the passenger services'.

4.9 Extracts from the relevant offer response documentation are included in Appendix 4.

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

5.1 Freightliner do not believe Network Rail has conducted itself in accordance with Part D of the Network Code in reaching its decisions on capacity allocation in this situation, as no evidence has been provided to explain its considerations, as required by Condition D3.4.11.

5.2 Network Rail appear to have reached a Decision that they should not amend passenger train slots in order to include amended freight schedules. Freightliner believe Network Rail must utilise its flexing right in order to make best use of Network Capacity when this is reduced due to a Restriction of Use.

5.3 Had Network Rail applied the Decision Criteria pursuant to D4.6.2, Freightliner believe that they would have found in favour of accomodating the Freightliner train slot rather than a passenger train slot. This is primarily down to there being no alternative routing available for 4O50 [SO], meaning both this service and it's onward working would not be able to run, whereas a passenger schedule as part of an intense frequency route, could have been retimed or, worst case, terminated modestly short (Maidenhead vice Reading) to create capacity.

5.4 Due to time constraints in submitting this SRD, it has not been possible to submit a full assessment of how Freightliner believe the Decision Criteria should have been applied.

6 DECISION SOUGHT FROM THE PANEL

6.1 Freightliner requests that the Panel should confirm that in reaching the Decision to Reject this access proposal, Network Rail has not conducted itself in accordance with Part D of the Network Code, and as such this Decision should be retracted.

6.2 Freightliner requests that the Panel should instruct Network Rail to reconsider it's Decision by applying the Decision Criteria, or reach a Decision in the hearing on how the Decision Criteria should be applied.

6.3 Freightliner requests that, should the Panel find that Network Rail has not reached it's Decision correctly, it instructs Network Rail to consider alternative options to Freightliner, to the extent of it's powers under the ADRR Rules.

6.4 Freightliner requests that the Panel should confirm that, when dealing with amendments for a Restriction of Use, Network Rail must apply it's flexing right to all services in order to accommodate train slots, and that passenger services should be amended as part of this.

7 APPENDICES

The Claimant confirms that it has complied with Access Dispute Resolution Rule H21, and that the following attachments are provided with this document:

-Word Document (TTP 2320 Appendices) containing Appendices 1-4

8 SIGNATURE

For and on behalf of Freightliner Limited and Freightliner Heavy Haul Limited

Signed

Print Name

Chris Matthews

Position

Timetable Strategy and Rail Industry Manager