

TTP2453 TTP2454 TTP2455 TTP2456

Final Direction and Rule H18(c) note, issued 28 June 2024

1. I am grateful to the Parties for the service of their documents.

Direction

2. Given that there appears to be an issue as to what might constitute a ‘dispute’, it would be helpful to have at the hearing the documents, or emails, issued by NR that GWR asserts amounts to a decision which it wishes to dispute.

3. On the basis of the information provided so far, I understand those documents to be:

TTP2453 - the *Sunday 2 Track Position 15 May 2024*, issued by NR on Thursday 16 May 2024;

TTP2454 - the *Week 25 Ladbroke Grove Acton West ML block capacity study*, issued by NR on 21 May 2024;

TTP2455 - the *Week 29 Ladbroke Grove Acton West ML block and Reading platforming capacity study*, issued by NR on 29 May 2024; and

TTP2456 - the *Week 31 HS2 and Dolphin Jn capacity study*, issued by NR on 06 June 2024.

4. Please can **GWR** bring six printed copies of each of these to the hearing.

ADR Rule H18(c)

5. I have considered the Sole Reference Documents submitted by each of the Parties. I have not identified any issues of law raised by either Party.
6. GWR seeks to appeal four decisions which it asserts were made by NR within the context of the Network Code Part D.
7. Part D is part of a contractual framework which binds both Parties. It is a matter of fact and the proper construction of Part D as to whether or not those decisions are ‘decisions’ within the meaning of Part D, and if so, whether or not they were made in conformity with the provisions of Part D.
8. GWR has asserted that a timetable of 16tph compliant with the Timetable Planning Rules has been published and validated, so that NR cannot reduce the number of tph below 16tph for RoUs without changing the Timetable Planning Rules. It says a facility exists to enable such a change but that NR has not made use of it. In those circumstances it says

NR's decision to place a 'cap' of 14.5tph through two-track RoU possessions is illegal and wrong.

9. GWR also asserts that the Decision Criteria and Objective concerning the allocation to it of a maximum of 6.5tph for the RoUs in issue is wrong.
10. NR refutes that the 'cap' cited by GWR on the quantum of trains within the timetable is contrary to the Network Code and that it is 'illegal'. NR asserts that a proposal on a capacity allocation of 14.5tph when a two-track timetable is in place is justifiable and a reasonable position based on the evidence that was before it at the time it was arrived at.
11. NR asserts that for present purposes the only 'decisions' made within the context of Part D is to take the possessions which result in a two-track timetable being required.
12. NR asserts that the issue of the RoUs are indicative only and not binding, and as such do not amount to 'decisions' within the meaning of Part D. It states that the RoUs form part of an on-going consultation process up to and including the date on which NR offers to Timetable Participants. Thus it appears that NR asserts that when it offers a timetable back to a Timetable Participant; that offer amounts to a 'decision' for the purposes of Part D.
13. As mentioned above these issues concern matters of fact and the correction interpretation of Part D.
14. Insofar as any formal 'decisions' within the meaning of Part D have been made, the Parties are reminded that NR was obliged to have regard to all relevant and material facts and matters known (or which it ought to have known) to it at the time the each decision was made. NR was under a duty to exercise its discretion in good faith, rationally and not capriciously. The discretion vested in NR must also have been exercised consistently with its contractual purpose.
15. Noting the close similarity of the issues raised in the determination in TTP2207 dated 24 May 2023 and the determination in TTP2243, TTP2244, TTP2245, TTP2260 and (elements of) TTP2251 dated 23 August 2023, both of which preceded the issues now raised in the present notices of dispute, the Parties are requested to focus on any new and material facts, data and information which has become available (or which ought to have become available) to NR at the time when the presently disputed decisions were made.

John Hewitt
Hearing Chair
28 June 2024