

TTP2453, TTP2454, TTP2455 and TTP2426 (as well as TPR2466 potentially)

Sole Reference by a Claimant (in this case, First Greater Western Limited (“Great Western Railway”, “GWR”)) to a Timetabling Panel in accordance with the provisions of Chapter H of the ADR Rules effective from 1 August 2010 (and as subsequently amended)

1. DETAILS OF PARTIES

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

(a) First Greater Western Limited whose Registered Office is at Milford House, 1, Milford Street, Swindon. SN1 1HL (“Great Western Railway”, “GWR”) (“the Claimant”); and

(b) Network Rail Infrastructure Limited whose Registered Office is at Waterloo General Office, London SE1 8SW (“Network Rail”) (“the Defendant”).

1.2 GWR believes any train or freight operating company operating in the sphere of influence of GWR especially those operating anywhere between Paddington and Slough may be affected by the outcome of this dispute. This is likely to include Heathrow Express Operating Company, MTR Corporation Crossrail and any freight company reaching Southall, Hanwell, West Drayton, Acton or Paddington on Sundays. It may also affect those providing services between London and Reading via Early, London and Windsor via Clapham Junction, or between London and the West of England via Salisbury (i.e. South Western Railway); and between London and Oxford via Bicester (i.e. Chiltern Railway). It might affect any train operator providing services between Reading or Didcot Parkway and Oxford (i.e. 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 accordance with Condition 5.1.1 of Part D of the Network Code, viz:

“5 Appeals

“5.1 Appeal in accordance with the ADRR

“5.1.1 Where an appeal is expressly authorised by this Part D, a Timetable Participant may refer a decision for determination by a Timetabling Panel in accordance with the ADRR.”

The appeal is expressly authorised through Condition D2.2.8 of Part D of the Network Code, viz:

“2.2.8 Subject to Condition D2.2.9 below, any Timetable Participant dissatisfied with any decision of Network Rail in respect of those Rules (including any decision to revise those Rules pursuant to Condition D2.2.7) is entitled to appeal against any part of it. Any such appeal shall be conducted in accordance with Condition D5 and must be made by a Timetable Participant: “(a) in respect of any decision to revise the Rules pursuant to Condition D2.2.7, within five Working Days of receipt of Network Rail’s decision; “(b) otherwise within fifteen Working Days of receipt of Network Rail’s decision.”

(Condition 2.2.9 provides a caveat to 2.2.8 where a Possessions Strategy Notice is relevant, viz:

“2.2.9 No appeal may be brought pursuant to Condition D2.2.8 in respect of any part of the Rules which conforms with any Possessions Strategy Notice which has: (a) not been appealed in the timeframe for appeal set out in Condition D6.4.1; or (b) has been appealed but has been finally determined by a Timetabling Panel or the Office of Rail Regulation.”

There is no Possessions Strategy Notice relevant to this case so Condition 2.2.9 does not influence Condition 2.2.8 in this case.)

3. CONTENTS OF REFERENCE

The 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 Chair 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 regarding the planned use and allocation of capacity during a number of similar restrictions of use. It is highly important both for the occasions concerned; and as a potential precedent setting determination for a number of similar possessions anticipated until 2030 to enable the building of the new Great Western Main Line station at Old Oak Common (to act as interchange with the Elizabeth Line at the southern terminus of HS2) and for the progressing of other essential schemes going forward. The issue has only arisen since May 2023 due to the presence of through Elizabeth Line services generating a market for local trips, and is intended to show the way forward for providing smooth, effective and attractive train services for customers during such possessions whatever the

driver of the possession. Network Rail has made decisions regarding (a) a cap on the number of services permitted through the RoU and (b) the relevant Capacity Studies. GWR disputes both these decisions.

1.1 4.2 This dispute arises over the interpretation of:

(i) Conditions D3.4.3 to D3.4.5 (which set out the method for developing the EAS post its publication at Version 2 or 4) viz:

“3.4.3 Network Rail shall include in the Rules a procedure to enable amendment of the Rules, following their finalisation in accordance with Condition D2.2. This amending power is without prejudice to the amending power referred to in Condition D2.2.7, and is to be utilised in order to facilitate changes which Network Rail considers necessary to take Restrictions of Use.

“3.4.4 The procedure referred to in Condition D3.4.3:

(a) must require that no amendment to the Rules may be made unless Network Rail has consulted with all Timetable Participants likely to be affected by the amendment;

(b) must require that all decisions of Network Rail be made by application of the Decision Criteria in accordance with Condition D4.6;

(c) may authorise changes to the procedure.

“3.4.5 All amendments to the Rules made pursuant to the procedure referred to in Condition D3.4.3 shall be subject to the appeal procedures in Condition D5 as if they were made pursuant to a procedure set out in this Part D.”

and in particular because Network Rail’s decisions must (according to D3.4.4 (b) (shown above) be made by application of the Decision Criteria, (ii) Conditions D4.6.1 to D4.6.4 (which set out how decisions concerning the development of the EAS must be made), viz:

“4.6 The Decision Criteria

“4.6.1 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”).

“4.6.2 In achieving the Objective, Network Rail shall apply any or all of the considerations in paragraphs (a)-(l) below (“the Considerations”) in accordance with Condition D4.6.3 below:

“(a) maintaining, developing and improving the capability of the Network;

“(b) that the spread of services reflects demand;

“(c) maintaining and improving train service performance;

“(d) that journey times are as short as reasonably possible;

“(e) maintaining and improving an integrated system of transport for passengers and goods;

“(f) the commercial interests of Network Rail (apart from the terms of any maintenance contract entered into or proposed by Network Rail) or any Timetable Participant of which Network Rail is aware;

“(g) the content of any relevant Long Term Plan and any relevant Development Timetable produced by an Event Steering Group;

“(h) that, as far as possible, International Paths included in the New Working Timetable at D-48 are not subsequently changed;

“(i) mitigating the effect on the environment;

“(j) enabling operators of trains to utilise their assets efficiently;

“(k) avoiding changes, as far as possible, to a Strategic Train Slot other than changes which are consistent with the intended purpose of the Strategic Path to which the Strategic Train Slot relates; and

“(l) no International Freight Train Slot included in section A of an International Freight Capacity Notice shall be changed.

“4.6.3 When applying the Considerations, Network Rail must consider which of them is or are relevant to the particular circumstances and apply those it has identified as relevant so as to reach a decision which is fair and is not unduly discriminatory as between any individual affected Timetable Participants or as between any individual affected Timetable Participants and Network Rail. Where, in light of the particular circumstances, Network Rail considers that application of two or more of the relevant Considerations will lead to a conflicting result then it must decide which of them is or are the most important in the circumstances and when applying it or them, do so with appropriate weight

“4.6.4 The Objective and the Considerations together form the Decision Criteria.”

4.3 The Sunday two track possessions (“RoU”) which are in dispute here are very close to London, the key area of the Network essential to GWR operations and viability.

There have always been two track timetables planned in areas between London and Didcot where normally four tracks (mains and reliefs) are available for traffic. This is the design. There is always therefore a need to slow services (to be timed at worse case speeds (i.e. relief line maximum speed rather than main line maximum speed) and potentially to follow slower services which may be calling at more stations). With only two tracks being available out of four normally available there is bound to be a reduction in the number of trains that can be accommodated. The Timetable Planning Rules are designed to cater for all timetabling situations and Sectional Running Times for trains are published to cater for these two track situations, along with junction and crossover timing allowances and headways. The Timetable Planning Rules are designed to deliver a robust timetable. The allowances are not raw allowances such as actual signal stopping distances translated into headway times but instead incorporate an allowance to ensure reliability. There is facility for a limit to be placed on activity such as minimum turnrounds for incoming trains at terminus stations before they can be planned to go out again. These have contingency time added in case incoming trains are late. This is all catered for in the Timetable Planning Rules which are published by Network Rail through application of the Decision Criteria and Objective whilst reviewing consultation with train and freight operators. A timetable for 16 trains per hour compliant with the Timetable Planning Rules is available and has been published and validated by Network Rail. GWR does not believe that Network Rail can reduce the

number below 16 for these RoUs without changing the Timetable Planning Rules. A facility exists to enable this but Network Rail has not made use of this.

There has previously been agreement over the number of trains over the two track section at any time and of the destinations and origins of those trains. It is believed that the driver of this change is a desire to take account of additional train services operated by Elizabeth Line when four tracks are available.

Sundays has always been the busiest day of the week for long distance journeys with every train having to be in traffic bringing customers home (predominantly in London) for work or education the following day.

This dispute has two elements:

1: the decision to cap the number of trains through the possession; and

2: the decision to allocate a maximum of 6.5 trains per hour to GWR.

GWR has strong and unwavering concern that this outcome will severely damage GWR customer journeys, industry revenue and GWR and industry reputation. It believes the outcome is wrong in accordance with the contractual needs of the Network Code, a document signed up to by Network Rail, and are unfounded and unnecessary.

Regarding dispute one GWR believes Network Rail is seeking to enhance the chance of high performing railway through the reduction in the number of trains operated. This trick can be performed anywhere and it is only the track access contract with its firm right to services that prevents it happening more often. Once a Restriction of Use is in place firm right falls away, and there is no financial reward to Network Rail for carrying more trains on its Network. It is known that the Western Route especially is under pressure from the Office of Rail and Road to improve train service performance, and that an increased renewals and maintenance package is in place in the London area as a result.

Regarding dispute two, much evidence has been provided to Network Rail from GWR (in time to influence this decision) to show that the number of services allocated to GWR is insufficient to move the business on offer and is required to be retained for the good of both GWR's and the industry's finances and viability. Intercity passengers require the prospect of finding a seat or they will not travel, and if not delivered regularly (as this will be) will not travel again. The location is such that every profitable route of GWR's is affected. If it comes to competition between operators (and it needn't if the overall cap is as per the Timetable Planning Rules) then a logical objective application of the decision criteria safeguards profitable long distance flows requiring a seat and sacrifices local flows at stations which until a few years ago had no Sunday service on the railway but adequate alternatives such as bus or tube.

4.4 Appendix 1 shows how a greater number of services than Network Rail's figure can be accommodated within the Timetable Planning Rules;

Appendix 2 shows the minimum number of intercity services required in each direction over each hour of the day on Sunday to meet market demand and retain it; and

Appendix 3 shows the average fare per passenger on each of the GWR intercity flows on the days (Sundays) the train loadings information (shown in Appendix 2) was taken.

All these documents are already in Network Rail's possession and have been in time to affect any action on Timetable Planning Rules or decision on split in accordance with the Decision Criteria and Objective.

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

5.0 GWR knows that the overall cap on services is contra to the Network Code's requirements for the development of the Timetable Planning Rules. No proposal for change has been made. Instead Network Rail has imposed a restriction without contractual foundation;

5.2 GWR does not believe that the decisions taken by Network Rail have been taken in accordance (a) for the overall cap on services with the Conditions concerning development of the Timetable Planning Rules, and (b) for the cap on GWR services on logical and objective application of the Decision Criteria (including its Objective).

5.32 The Decision Criteria has a number of factors which bear different weightings depending on the circumstances of the case in question but which in all cases must lead to a solution meeting the objective which "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")".

5.4 It is clear that in order to retain custom, customers and prospective customers need to be happy on the vast majority of times. That means reputation has to be right (for prospective custom) and delivery has to be right (for retention of existing custom). Passengers can stomach the odd hiccup such as that on 11th June when severe weather materially disrupted services with flooding and precautionary speed restrictions affecting traffic. This affected all modes of transport and those not travelling. Indeed the prospect of severe weather over the weekend dampened demand for long distance travel that day.

5.5 Taking things from the market perspective it is clear an attractive timetable operated robustly is required. To meet "the objective" (the Decision Criteria Objective) the maximum profit has to be gained from the day's plan, along with the maximum gain from any long lasting effects of the day's plan. When this plan is anticipated to be advertised on a large number of occasions over a number of years it needs to be and remain attractive. It has to be robust such that only major incidents are felt by the user. No-one is going to implement a plan it believes to be unsafe.

5.6 It has long been the practice with two track railways to keep train numbers low when demand is low and to increase this (when extra trains are required to move customers comfortably).

5.7 GWR believes its plan for a greater number of services overall (one more per hour than Network Rail's decision) is robust such that reputation will not be damaged. It believes that its need for additional GWR services in certain hours and directions is essential to maintain and grow custom to the industry's benefit.

5.8 Each element of the Decision Criteria is to be thought through according to the importance to the issue in dispute. In the following the lettering of the Criteria used in the Network Code is used:

- (a) the need for enhancement and renewal (not an issue);
- (b) the need to spread demand (essential to meet demand for GWR services in a way that retains and encourages custom for the financial and reputational benefit of the industry);
- (c) train performance (GWR's proposal is robust in both actuality and contractually; it aids performance in reducing potential overcrowding; it puts more trains and crews in traffic which allows greater contingency if anything goes wrong);
- (d) Journey times (generalised journey time is key to custom. GWR's additional GWR services through to country destination (and vice versa) are essential to meet this prime requirement of the market);
- (e) integrated transport (more people will travel with GWR's plan, interchanging with TfL, local road services, private car, and airports);
- (f) commercial interests (this is the crux. Viability requires sufficient attractive product for market need);
- (g) consistency with strategic planning and ESGs (both these are based on growth which will be dented by Network Rail's decision);
- (h) international paths (inert);
- (i) environment (more passengers on rail aids the environment);
- (j) efficient use of toc assets (train in revenue earning service attracting custom aids their true efficiency);
- (k) strategic train slot (inert); and
- (l) international freight train slot (inert)

5.9 In conclusion these criteria are designed to aid thought over particular issues. It is essential for the future of the industry that the building of Old Oak Common ("OOC") station and of other renewals and enhancement schemes is as seamless as possible in the market's eyes so as to aid long term viability.

6. DECISION SOUGHT FROM THE CHAIR

6.1 The Claimant sets out the outcome it is seeking from the Panel's determination, differentiating between

- (a) the matters of principle; and
- (b) specific conclusions deriving from those matters of principle.

6.2 Principle

A determination is sought that Network Rail's cap on overall numbers is illegal; and that application by Network Rail of the Decision Criteria and Objective concerning the number of GWR services is wrong; and

6.3 Specific Conclusion

A determination is sought that Network Rail withdraw its decisions and be required to rework this issue in light of discussions today at the Hearing; and

It is GWR's belief that exceptional circumstances do not apply.

6.4 No financial remedy is sought.

6.5 No other decision is sought from the Hearing Chair.

7. APPENDICES

The Claimant confirms that it has complied with Access Dispute Resolution Rule H21

Appendix 1 shows how a greater number of services than Network Rail's figure can be accommodated within the Timetable Planning Rules robustly;

Appendix 2 shows the minimum number of intercity services required in each direction over each hour of the day to meet market demand and retain it; and

Appendix 3 shows the average fare per passenger on each of the GWR intercity flows on the days (Sundays) the train loadings information (shown in Appendix 2) was taken;

8. SIGNATURE

For and on behalf of First Greater Western Limited

Signed
Robert Holder

Robert Holder
Network Access Manager
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