

**Second Directions – issued on 18 July 2024**

1. The Hearing Chair is grateful to FL (adopting abbreviations already used) for service of its SRD.
2. He notes that the only remedy sought by FL is that NR should rescind its Decision to remove the disputed Train Slots from the WTT.
3. While a Hearing Chair cannot draft a Party's case for it, I am conscious of the duty placed on a TTP, that it should, *'where appropriate, take the initiative in ascertaining the facts and law relating to the dispute'*, (H14(c)), while also discharging its duty under H14(b) to, *'endeavour to reach, fair, rapid and inexpensive determinations of disputes...'*.
4. I interpret these duties as requiring me to ensure that at the start of a hearing each Party, and the Panel, share an understanding of what the Claimant is seeking, and that any Determination reached by the Panel will be capable of implementation, and will be of practical use to the Parties and the industry more widely.
5. At this stage I do not know what arguments NR will be advancing, but on the assumption that FL is correct in its claim that the physical state of the infrastructure between Huddersfield and Stalybridge will not currently permit the operation of W8 wagons, contrary to information published by NR, then I must query where mere rescission of the Notice will leave FL and NR.
6. This would be a relevant question in any circumstances, but more especially so as I am advised that from next month NR has allocated some or all of the disputed Train Slots to Direct Rail Services ('DRS'), who presumably intend to operate trains of a smaller gauge than W8 and whose trains can therefore comply with the current gauging restrictions.
7. **Therefore I direct** that FL should, as soon as possible and in any event no later than **1600 on Monday, 22 July**, confirm whether it would be in a position to operate trains in the disputed slots immediately if NR's Notice were to be rescinded.
8. If so, please confirm that these services would operate for as long as necessary with rolling stock that would comply with the current gauging restrictions.
9. Further, FL is to confirm whether it has lost the original customer for whom it was intending to operate the W8 gauge trains.
10. While recognising that FL is not responsible for the infrastructure, does it have any estimate as to when W8 gauge is likely to be restored between Huddersfield and Stalybridge?
11. Is FL entitled to issue a Performance Order under its Track Access Agreement ('TAA')? If so, has it done so?
12. At the hearing I would welcome an explanation of what led FL to carry out its own check on the gauging of this route.

13. At risk of duplicating what NR was already intending to do, I anticipate that in its SRD it will explain:

- how a route advertised as capable of use by W8 gauge trains ceased to be available for such trains;
- when this happened and how;
- when NR became aware of it;
- what steps NR has taken to remedy the situation, including any Network Change proposals that it has made;
- how relevant this issue might be to NR's obligations under its Network Licence and its Track Access Agreement with FL;
- whether its current intention is to restore W8 gauge on this route;
- and how long it will take to do so, whether or not it is NR's current intention to do so.

*[Signed on the original]*

Clive Fletcher-Wood

Hearing Chair TTP2468