

# TTP2468 - Freightliner Limited and Freightliner Heavy Haul Ltd Sole Reference Document

## 1 DETAILS OF PARTIES

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

Freightliner Heavy Haul Limited (Company number 3831229), whose Registered Office is at The Lewis Building, 35 Bull Street, Birmingham, B4 6EQ

Collectively 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 dispute relates to Network Rail's Decision to issue a Failure to Use (FTU) Notice against six Freightliner schedules which was issued on 13<sup>th</sup> June 2024 (See Appendix 1). For purposes of clarity, those six schedules reflect two flows, 4M75 York Yard South to Trafford Park FLT and 4E70 Trafford Park FLT to Tees Dock.
- 4.2 Network Rail had previously issued a FTU Notice against the same schedules on 19<sup>th</sup> March 2024. Freightliner disagreed with this Notice and registered a dispute accordingly (TTP2420). Having considered the evidence provided by Freightliner, Network Rail recinded the FTU Notice and TTP2420 was withdrawn.
- 4.3 The two schedules, 4M75 and 4E70, were included in the WTT by Freightliner in order to answer demand for the operation of W8 gauge intermodal traffic between the East Coast Ports and Manchester. This is a major corridor, but one on which rail struggles to compete with road hauliers for market share, and as such the economics of running this traffic are very fine. Having secured a customer contract to operate the trains, Freightliner undertook a gauging assessment of the route as part of due diligence activities before commencement of traffic.
- 4.4 Having completed this, Freightliner found a number of locations where the published gauge clearance was not present, and this precluded the traffic from running until remedial work had been undertaken by Network Rail. Upon discovery of this issue, Network Rail immediately withdrew permissions for the operation of W8 gauge traffic through amendments to the RT3973 clearance forms.
- 4.5 Network Rail subsequently sought to establish a Short Term Network Change to remove W8 Gauge capability from the route for an indeterminate amount of time. This was, unsurprisingly, objected to by Freightliner and other FOCs, and at the time of writing remains unresolved.
- 4.6 Freightliner have, as a result of this failure by Network Rail to maintain the published capability of the Network, been unable to operate the train services subject to the FTU Notice. Given this, Freightliner fail to understand why Network Rail, having agreed with this stance following the first FTU notice, now believe that they should remove these schedules from the WTT, and how this can be seen as 'acting reasonably'.

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

- 5.1 Freightliner makes no assertion that these trains have run in the last 13 weeks. Similarly, Freightliner agree that the train slots are not supported by Access Rights. As such, Freightliner are happy to concede that conditions (a) and (b) of Condition D8.5.1 have been met.
- 5.2 Freightliner does, however, dispute that Network Rail is acting reasonably (Condition D8.5.1 (c)) when making the Decision that these train slots should be removed from the WTT. Given Network Rail have removed the capability of the Network necessary to allow these trains to operate.
- 5.3 Freightliner contest that, had the infrastructure been available, it would have operated these train slots, and that the restriction imposed by Network Rail without agreement by Freightliner is directly responsible for the non-use. Given this, Freightliner assert that Network Rail has not acted reasonably in reaching this Decision.
- 5.4 Freightliner note the lack of clarity around the term 'acting reasonably' given there is no definition of what this means. This was also identified in Paragraph 8 of the Hearing Chair's First Directions.
- 5.5 Freightliner asserted, in the Notice of Dispute, that Network Rail 'must' apply the conditions of J4 in making their Decisions. Freightliner concede this was poor wording as there is no contractual linkage between the two mechanisms. However, Freightliner do believe there is a relevant link between D8.5 and J4, and that the specific criteria included in the latter can be used to inform decision making for the former.
- 5.6 Indeed, given the lack of clarity over what 'acting reasonably' entails in relation to D8.5.1, Freightliner believe the industry typically applies the parameters for Failure to Use contained within Condition J4 when validating D8.5. This is reinforced within the Notice subject to this dispute, in which Network Rail have used 13 weeks as the time for which the train slots have qualified for non-use. 13 weeks is the period at which a non-use is deemed to have occurred according to Condition J4.

5.7 Had these train slots been supported by Access Rights, the Failure to Use would have been processed pursuant to Condition J4. Were this the case, Freightliner believe the third party application would have been disregarded by Network Rail as the non-use would have been attributable to non-economic reasons beyond Freightliner's control.

5.8 Freightliner believe that, in order to act impartially, Network Rail should apply a consistent approach to applying the Failure to Use process, regardless of whether the train slot is supported by Access Rights or not. Given the lack of alternative guidance, Freightliner submit that the reasonable interpretation is therefore to apply the Conditions for non-use specified in Condition J4.

## **6 DECISION SOUGHT FROM THE PANEL**

6.1 That Network Rail has, in reaching the Decision to remove these train slots from the timetable, failed to act reasonably.

6.2 That Network Rail should rescind the Failure to Use Notice issued on 13<sup>th</sup> June.

## **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:

- Appendix 1: Failure to Use Notice issued by Network Rail on 13<sup>th</sup> June 2024.

## **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