



Heathrow
Express

**Dispute Parties: Heathrow Express Operating Company
Limited and Heathrow Airport Limited**

Timetable Dispute: TTP2470 & TTP2471

Claimant Submission to Timetabling Panel

17 July 2024

1 DETAILS OF PARTIES

- 1.1 The names and addresses of the parties to the reference are as follows:-
- (a) Heathrow Express Operating Company Limited, whose Registered Office is at The Compass Centre, Nelson Road, Hounslow, Middlesex, TW6 2GW ("**HEOC**") (the "**Claimants**"); and
 - (b) Network Rail Infrastructure Limited, whose Registered Office is at 1 Eversholt Street, London NW1 2DN ("**Network Rail**" or "**NR**") (the "**Defendant**").
- 1.2 In respect of HEOC, please send all correspondence in relation to this matter to Jyoti Chander Jyoti.Chander@heathrow.com 07808115972; with a copy to Harsha Gautam harsha.gautam@heathrow.com 07793217602.
- 1.3 Parties (other than as a Dispute Party) that may be concerned with these timetable disputes TTP2470 and TTP2471 (the "**Dispute**") are:
- (a) MTR Corporation (Crossrail) Limited, whose Registered Office is at Providence House, Providence Place, London, N1 0NT ("**MTR**");
 - (b) First Greater Western Limited, whose Registered Office is at Milford House, 1 Milford House, Swindon, SN1 1HL ("**GWR**");
 - (c) Freightliner Limited, whose Registered Office is 6th Floor, The Lewis Building, 35 Bull Street, Birmingham, United Kingdom, B4 6EQ;
 - (d) Direct Rail Services Limited, whose Registered Office is Herdus House Ingwell Drive, Westlakes Science & Technology Park, Moor Row, Cumbria, CA24 3HU;
 - (e) DB Cargo Services Limited, whose Registered Office is Lakeside Business Park, Carolina Way, Doncaster, South Yorkshire, DN4 5PN;
 - (f) Locomotive Services Ltd, whose Registered Office is 6th Floor Capital Tower, 91 Waterloo Road, London, United Kingdom, SE1 8RT;
 - (g) GB Railfreight Limited, whose Registered Office is 55 Old Broad Street, London, EC2M 1RX;
 - (h) West Coast Railways Company Ltd, whose Registered Office is Off Jesson Way, Cragbank, Carnforth, Lancashire, LA5 9UR;

- (i) Colas Rail Limited, whose Registered Office is 25 Victoria Street, London, England, SW1H 0EX;
- (j) DC Rail Limited, whose Registered Office is 26 Leigh Road, Eastleigh, England, SO50 9DT; and/or
- (k) Rail Operations UK Limited, whose Registered Office is Wyvern House, Railway Terrace, Derby, England, DE1 2RU.
- (l) Heathrow Airport Limited Rail (HAL Rail), whose Registered Office is at The Compass Centre, Nelson Road, Hounslow, Middlesex, TW6 2GW.

2 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; and
- (d) Appendices and other supporting material.

3 THE CLAIMANTS' RIGHT TO BRING THIS REFERENCE

3.1 The HS2 Supplemental Agreement, which was entered into between (1) Network Rail, (2) HAL and (3) HEOC dated 21 December 2017 (the "**HS2 Supplemental Agreement**"), amends the track access agreement which was entered into between Network Rail and HAL dated 16 August 1993 (as amended) (the "**Track Access Agreement**") and sets out provisions relating to the exercise of certain rights and the compliance with specific obligations relating to the operation of the Heathrow Express service (the "**HEx Service**") and HS2 Works (as defined in the HS2 Supplemental Agreement).

3.2 The HS2 Supplemental Agreement:

- (a) incorporates certain provisions of the Network Rail Network Code (the "**Network Code**") including Part D (Timetable Change) which apply in circumstances connected to HS2 Works; and
- (b) stipulates that any dispute, which is not resolved within the time periods set out in Clause 7.1.3 of the HS2 Supplemental Agreement may be referred for resolution in accordance with the ADRR.

- 3.3 The Claimants consider that:
- (a) Network Rail's proposed works fall within the scope of the HS2 Supplemental Agreement (as explained in further detail in section 4 below); and
 - (b) as stated in HEOC's Notice of Dispute dated 5th July and 12th July 2024 (the "**Notice of Dispute**"), this Dispute is a Timetabling Dispute and as such, Part D of the Network Code and subsequently the ADRR apply.
- 3.4 The Claimants therefore refer this Dispute to a Timetabling Panel (the "**Panel**") for determination in accordance with Conditions D3.4.8, D4.4 and D5 of the Network Code and Clause 7.2 of the HS2 Supplemental Agreement.

4. SUBJECT MATTER OF DISPUTE

Summary of the Dispute:

- 4.1 This Dispute relates to Network Rail's proposed timetable offer which was received by GWR on behalf of the Claimants in respect of the two-track timetable (the "**Offer**") for:
- Week 26, Sunday 22nd September 2024, possession number 3767989
 - Week 27, Sunday 29th September 2024, possession number 3766425
- 4.2 The Claimants' objections to the Offer can be summarised as follows:
- (a) NR finalised the capacity studies for the weeks at issue and these were received (marked as "final versions") by HEOC on the 15th and 16th May 2024 respectively. These were used as the basis of the TT offer (received on the 28 June 2024 and 5 July 2024 respectively) without consultation with HEOC, nor taking account of HEOC's responses to the capacity studies (both sent on the 16th May 2024).
 - (b) The Offer for both weeks requires HEOC to reduce from 4 trains per hour to 2 trains per hour, and for the two remaining services to depart 3 minutes earlier than their WTT departure times from Paddington. As HEx departure times have been contractually fixed for the last 26 years, a large proportion customers plan their journeys based on this predictability. By moving the departure time earlier, this increases the risk that they will miss their planned service and be forced to wait 30 minutes for the next service.

- (c) NR's general position is that objections cannot be made to the output of the capacity study, and that operators should wait until the formal offer is made. Inevitably, however, the formal offer, made 6 weeks later, reflects exactly the output of the capacity study, so restricting the time available to operators to make a meaningful counterproposal. This has been covered in previous determinations for TTP 1174, TTP 2318 and TTP 2320.
- (d) The departure time adjustment to HEOC services appears to have been proposed to accommodate the WTT pathways of other Operators. However, at no time have NR explained how they reached this decision, privileging the rights of one operator over another.
- (e) As requested in the directions received by email on the 15 July 2024, HEOC position is that the disputed decisions set out above are inconsistent with the contractual purpose as set out in the following section.

Contractual position:

- 4.3 The Claimants have the right to operate the HEx Service four times every hour at specified departure times in each direction pursuant to Paragraph 2.1 of Schedule 2 of the Track Access Agreement.
- 4.4 As specified in section 3.2(a) above, the HS2 Supplemental Agreement incorporates certain provisions of the Network Code into the Track Access Agreement in the context of HS2 Works, and on the basis that the proposed works relating to this Dispute concern:
 - (a) a Restriction of Use;
 - (b) a change to the Engineering Access Statement; and
 - (c) a change to the Timetable Planning Rules,which take place during the Relevant Period (as defined in the HS2 Supplemental Agreement), Part D of the Network Code therefore applies to the proposed works.
- 4.5 Clause 2.4 of the HS2 Supplemental Agreement states that the agreement or determination of any Restriction of Use or any changes to the Engineering Access Statement or the Timetable Planning Rules, or any Network Change or the occurrence and consequences of any Disruptive Event, in accordance with Clause 2 of the HS2 Supplemental Agreement shall be binding notwithstanding any provision of the Track Access Agreement.

- 4.6 Clause 2.4 of the HS2 Supplemental Agreement does not give Network Rail the right to disregard the Claimants' contractual rights. Rather, this provision facilitates the mutual coexistence of the HEx Service alongside HS2 Works and ultimately, a fair balance of the Claimants' and Network Rail's commercial interests.
- 4.7 The Claimants do not consider that an agreement has been reached pursuant to Clause 2.4 of the HS2 Supplemental Agreement, nor that Network Rail has acted in accordance with its obligations under Clause 2 of the HS2 Supplemental Agreement and the relevant provisions of the Network Code, as required and specified in section 4.2 above.

Relevant correspondence:

- 4.8 There are six pieces of correspondence that are relevant to this Dispute. The Claimants set out below a description of the correspondence, copies of which are provided in the appendices to this reference.
- (a) 16th May 2024 – email chain issuing the Capacity Study and HEOC response for week 26 Capacity Study (“**Appendix 1**”).
 - (b) 15th May 2024 – Week 26 Capacity Study (“**Appendix 2**”).
 - (c) 16th May 2024 – Week 27 Capacity Study (“**Appendix 3**”).
 - (d) 20th June 2024 – HEOC response to Week 32 HS2 Capacity Study, stating that as per previous studies, HEOC will not accept amended departure times earlier to WTT (“**Appendix 4**”).
 - (e) 6th July – 15th July 2024 Email chain of alternative compliant timetable made to Network Rail (“**Appendix 5**”).
 - (f) 20th September - 6th October 16th 2023 – Email chain of HEOC advising which weeks were accepted for amended timetable (weeks 36, 42, 44 and 46). (“**Appendix 6**”).

Relevant Parts of the Network Code:

- 4.9 Condition 3.4.4 a) 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;

- 4.10 Condition D 3.4.8, After TW-30 but by TW-26, Network Rail shall consult with each Timetable Participant affected (directly or indirectly) by the Restrictions of Use proposed pursuant to Condition D3.4.7 and shall seek to agree all Network Rail Variations to be made.
- 4.11 Condition D4.4 Decisions concerning Network Rail Variations Condition D 4.4.1 In making any decision in the course of implementing the procedures set out in Conditions D3.4 or D3.5, Network Rail: (a) is entitled to exercise its Flexing Right when responding to an Access Proposal submitted under Condition D3.4.10; (b) may not effect any Network Rail Variation to the extent that the variation is inconsistent with the Rules; (c) shall, subject to the overriding principles set out in sub-paragraphs (a) and (b) above, apply the Decision Criteria in accordance with Condition D4.6.
- 4.12 Condition D5 of the Network Code applies and Condition D5.1.1 specifies that *“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.”* As explained in section 3 above, referring this Dispute to the Panel is the appropriate forum.
- 4.13 Annex 2: Network Rail Variations of at least 12 Weeks Notice

5. EXPLANATION OF EACH ISSUE IN DISPUTE AND THE CLAIMANTS' ARGUMENTS TO SUPPORT THEIR CASE

- 5.1 The issues in dispute have been set out above. In summary, Network Rail has sought to carry out HS2 Works without adhering to the necessary procedure as specified in the Network Code and the HS2 Supplemental Agreement.
- 5.2 The Claimants acknowledge that Network Rail requires the proposed works to take place. However, the Claimants' position is that:
- (a) carrying out the proposed works should not disproportionately disadvantage the HEx Service compared to other train services / operators on the Network;

- (b) Network Rail has failed to consider the Claimants' commercial interests as required in the context of the proposed works by imposing a non-contractual flex of HEOC services.

5.3 This Dispute has been brought by the Claimants in order to comply with the applicable procedural obligations in the Network Code and ensure that the appropriate corrections can be made formally by the Panel.

6. DECISION SOUGHT FROM THE PANEL

The Claimants request that the Panel determines that Network Rail has not acted in accordance with the relevant provisions of the Network Code, nor the HS2 Supplemental Agreement.

The Claimants request the Panel to direct:

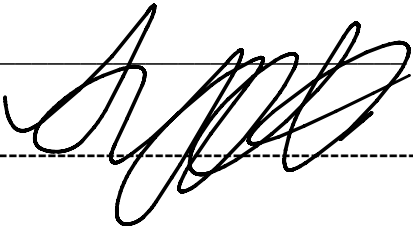
- NR to consult as per D.3.4.8.
- NR to demonstrate within its decision criteria the reasoning / weighting behind prioritising MTREL services ahead of HEOC when it comes to allocating paths.

7. APPENDICES

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

SIGNATURE

For and on behalf of Heathrow Express Operating Company Limited

—
Signed
PP - 

Print Name

Harsha Gautam

Position
Train Services Lead

Appendices

Appendix 1

Email - HEOC Response to Week 26 Capacity Study

Appendix 2

Week 26 Capacity Study

Appendix 3

Week 27 Capacity Study

Appendix 4

Email - HEOC Response to Week 32 HS2 Capacity Study

Appendix 5

Email Chain – Sun ML 2TTs

Appendix 6

Email Chain – HS2 Blocks