*TTP2517 and TTP2521*

*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 the Southall- Paddington area over the Easter holiday weekend. 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), especially if passengers have to be advised to use alternative routes It might affect any train operator providing services between Reading or Didcot Parkway and Oxford (i.e. Cross Country Trains) if for instance passengers are advised to change at Reading rather than have a through train.

1. **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.)

1. **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.

1. **SUBJECT MATTER OF DISPUTE**

4.1 Network Rail has decided to limit the number of trains it will timetable whilst a Restriction of Use applies at Acton over the four days of the Easter holiday in 2025. In addition it has decided to limit the spread of trains within this cap to specific train operators. GWR disputes this decision with regard to Good Friday, the Saturday which is the day following Good Friday, and the Bank Holiday Monday which immediately follows Easter Day, but not the decision regarding Easter Day itself. This is because GWR demand on Easter Day itself is exceptionally low for a Sunday,

4.2 Network Rail says it has done this because in its review of the Decision Objective and its Criteria it has had to prioritise train punctuality over customer comfort. It says that it has tried to provide sufficient trains but that at certain times of the day on certain days it has not been able to do this. Network Rail’s own analysis of demand clearly shows where because of its decisions supply will not meet demand yet Network Rail will not let GWR run additional services where necessary even though the Timetable Planning Rules permit and encourage this.

4.3 GWR has repeatedly informed Network Rail that in its own view the Decision Objective and Criteria lead to an inescapable conclusion that at certain times on certain days it is essential to timetable more GWR trains than Network Rail has decided upon and that GWR is in a position to supply these.

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4.4 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.”

4.5 GWR has strong and unwavering concern that Network Rail’s decision will severely damage GWR customer journeys, net industry viability and GWR and industry reputation. The decision to limit capacity in this way will cause denied boarding at key locations and risks causing increased incident of accident and assault due to the resultant serious overcrowding. It believes Network Rail’s decision is wrong in accordance with the contractual needs and driving intent of the Network Code, and is unfounded and unnecessary.

4.6 Appendix 1 shows Network Rail’s analysis of GWR demand;

Appendix 2; shows Network Rail’s analysis of each toc’s separate demand;

Appendix 3 shows Network Rail’s Decision regarding the number of paths to be made available to each operator in each hour in each direction on each day

Appendix 4 the email containing the document in Appendix 3;

Appendix 5 shows the CPPP containing the possession; and

Appendix 6 shows an email from GWR to NR before the decision;

All documents Appendix One to Appendix Three were in Network Rail’s possession in time to affect Network Rail’s decision (published as per Appendix Four)

1. **EXPLANATION OF EACH ISSUE IN DISPUTE AND THE CLAIMANT’S ARGUMENTS TO SUPPORT ITS CASE**

5.1 Network Rail has provided too much weighting to performance and insufficient to the carrying of demand. This will lead to passengers being turned away on the platform. GWR believes it is obvious that if trains can run then trains need to run to accommodate demand. Not to do so shows a callousness inconsistent with a professional train operator, and certainly not with GWR where the customer is paramount.

5.2 Network Rail’s own analysis (as per Appendix One) shows the hours, days and directions where its decision leads to insufficient GWR accommodation. Network Rail has ignored this in order it says to optimise punctuality. GWR runs train to move passengers to bring essential revenue into the industry. Network Rail uses its fixed charges to provide infrastructure and timetabling to optimise train running performance. It is under scrutiny from the Office of Rail and Road to hit train running performance targets and Network Rail, Western has recently failed to do this even though other routes have. GWR supports remedial action to restore overall punctuality (after all it affects passenger income and train operating cost) but tinkering at four days in the year will have minimal effect. Even then because demand is very low on long distance journeys on Easter Day GWR will be able to reduce its service significantly reducing congestion throughout that day and improving performance figures. In addition it will as is permitted by its contract with the DfT and being consistent with demand reduce its service particularly in the commuter and business morning peak on Bank Holiday Monday and in the commuter, business and holiday peak normally associated with a Friday.

5.3 Network Rail’s decision is inconsistent with the one it has taken for Maundy Thursday where because there is no Restriction of Use to trigger the use of Decision Criteria and Objective it has had to accept increased numbers of GWR trains to enable the huge demand to be moved.

5.4 The Decision Criteria has a number of factors which bear at different times 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”)”.

5.5 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).

5.6 Appendix One (NR’s own analysis of demand) shows GWR’s demand outstrips the decided number of paths for GWR at the following times (hours commencing at time shown measured at the point of entry into the RoU (ie as per NR’s own evidence available at the time of NR’s decision)):

Good Friday from London: 09.00; 10.00; 11.00 and 12.00;

Saturday from London: 10.00 - just on the NR graph and certainly when growth (which NR says is not included in the graph) is added;

Monday from London: nil;

Good Friday to London: 11.00 with growth;

Saturday to London: 11.00;

Monday to London: 17.00; and with growth 18.00.

growth may tip over the edge other hours where demand on the graph is close. These include:

Saturday to London: 10.00;

Monday to London: 13.00; 15.00.

5.7 To meet “the objective” (the Decision Criteria Objective) the solution required has to be the optimum in the overall best interests of the industry. The RoU occurs to ensure a reliable railway. It occurs uniquely at Easter to help keep essential freight running smoothly. (It cannot happen at Christmas (freight’s other quiet time) as NR’s resource is actively involved in Old Oak Common new station construction for the HS2 terminus interchange.) The optimum tactical use of the facility available during the RoU is that sufficient trains run to move the exceptional demand that occurs at this time of the year. The Objective alone says the trains must run.

5.8 Network Rail’s own evidence (Appendix Two) available to it at the time of decision shows that in some hours in one direction or the other on certain days there is scope to reduce the number of trains of other operators and still meet demand. Network Rail has not fulfilled its responsibilities in managing this to create space within its own overall cap on all operator paths in order to reach its decision for the number of GWR paths in that hour, direction and day. On Good Friday for instance MTR demand is low at 09.00 and 10.00 when GWR needs to run additional trains and is not at its highest at 11.00 and 12.00 when again GWR needs to run trains.

5.9 This is an RoU of the Relief Lines with all trains having to use the Main Lines. Stations like Acton and Hanwell normally served by MTR have no Main Line platforms. This means some of their market will use alternative public transport, as might certain markets within the Heathrow customer base.

5.10 GWR seeks to run above the cap on its services decided by Network Rail only in the directions, times and days identified by Network Rail itself. It has no dispute with other times and directions (including for the whole of Easter Day).

5.11 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 (GWR supports this RoU in order to renew Acton to improve year round train punctuality and the number of trains timetabled during the RoU is not at odds with this);

(b) the need to spread demand (this overides all other considerations as it is absolutely essential to meet demand for GWR services without turning passengers away);

(c) train performance (NR places too much stress on this aspect in this instance. the effect over the year is minimal and mitigations through reduction in service at other times are possible);

(d) Journey times (not intended for situations like this, however 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 (not intended for situations like this, however more people will travel long term interchanging with TfL, local road services, private car, and airports);

(f) commercial interests (Viability requires sufficient attractive product for market need, GWR’s solution maximises net income to the industry short and long term);

(g) consistency with strategic planning and ESGs (not intended for situations like this however both these are based on growth which will be dented by Network Rail’s decision);

(h) international paths (inert);

(i) environment (not intended for situations like this, however more passengers on and retained to rail aids the environment);

(j) efficient use of toc assets (train in revenue earning service attracting and retaining profitable custom aids their true efficiency);

(k) strategic train slot (inert); and

(l) international freight train slot (inert)

5.12 There has been precedent where an RoU has had to be adjusted through Determination in order to maintain an essential freight flow. This is completely analogous.

1. **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 decision concerning the number of GWR services to be timetabled is wrong in certain hours and in certain directions on certain days; and

6.3 Specific Conclusion

A determination is sought that Network Rail be instructed to change its decision for the hours, directions and days in those examples (from 6.2 above). The hours, directions and days are those shown in paragraph 5.6 above and repeated here:

(hours commencing at time shown measured at the point of entry into the RoU (ie as per NR’s own evidence available at the time of NR’s decision)):

Good Friday from London: 09.00; 10.00; 11.00 and 12.00;

Saturday from London: 10.00 - just on the NR graph and certainly when growth (which NR says is not included in the graph) is added;

Monday from London: nil;

Good Friday to London: 11.00 with growth;

Saturday to London: 11.00;

Monday to London: 17.00; and with growth 18.00.

growth may tip over the edge other hours where demand on the graph is close. These include:

Saturday to London: 10.00;

Monday to London: 13.00; 15.00.

In these hours the decision to be replaced with one that permits GWR to run more services in order to meet demand. This to be achieved either through reducing the cap on other operator services (where demand permits) or on raising the overall cap above 14.5 trains per hour. In these hours the GWR cap to be 8 trains per hour. GWR to take up this cap only where demand requires it, and to endeavour to reduce its service at other times (including throughout Easter Day) where demand, journey opportunity and resourcing arrangements exist so that reliability and punctuality can be optimised within the new decision. It is GWR’s belief that exceptional circumstances apply. For the reasons shown in the response to the First Directions GWR believes this case to be unique. In addition it is unusual in that time still exists for the decision in question to be changed and a timetable consistent with a determined decision be bid for, validated and advertised as per the timescales laid down in Part D of the Network Code. These are practical timescales. No train advertised on National Rail Enquiries System or open for reservations will be changed. Unlike the majority of cases there is scope here to make a simple change (here, the number of paths) as opposed to a more complex one (of say, finding a path).

Whilst GWR reluctantly accepted Network Rail’s exceptional proposal for there to be a Restriction of Use of this type and effect at this time of the year (accepted as it aids the freight business via Acton which has little demand at Easter) to help improve year in, year out train performance, this is indeed a unique time in the year (the first holiday after the winter and a well-established religious festival) where we get exceptional demand for long distance journeys. It encompasses the heaviest day of the year (outside the scope of the Restriction of Use as a result) and the lightest day of the year (outside the scope of the dispute). Restrictions of Use of this duration nad type are usually applied between Christmas and New Year when demand is substantially reduced. This is therefore an exceptional circumstance.

6.4 No financial remedy is sought.

6.5 No other decision is sought from the Hearing Chair.

1. **APPENDICES**

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

Appendix 1 shows Network Rail’s analysis of GWR demand;

Appendix 2; shows Network Rail’s analysis of each toc’s separate demand;

Appendix 3 shows Network Rail’s Decision regarding the number of paths to be made available to each operator in each hour in each direction on each day

Appendix 4 the email containing the document in Appendix 3;

Appendix 5 shows the CPPP containing the possession; and

Appendix 6 shows an email from GWR to NR before the decision.

1. **SIGNATURE**

For and on behalf of First Greater Western Limited

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Signed

Robert Holder

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Robert Holder

Network Access Manager

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