

TTP2525 - 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 Waterloo General Office, London, SE1 8SW ("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 is a dispute relating to Network Rail's Decision to publish changes to the Wales & Western Timetable Planning Rules for the 2025 subsidiary timetable through Condition D2.2.7, relating to restrictions in the Westbury station area on Line of Route GW560.

4.2 Publication of Rules relating to these changes have been ongoing for a significant time. For clarity, although this dispute relates to Network Rail's Decision pursuant to Part D, the timeline leading to this is included in this SRD.

4.3 On 14th September 2018 Network Rail proposed Network Change Notification NC/G1/2017/WEST/607 which related to the movement of two signals at the North end of Westbury station.

4.4 Appendix A for this Network Change Notification stated that there would be no change to the Timetable Planning Rules (See Appendix 19). This was subsequently established on 16th October 2018.

4.5 In the Timetable Planning Rules 2024 Version 3.0 Network Rail published six new overlap restrictions (See Appendix 1) which are directly related to the work carried out off the back of Network Change 607.

4.6 Freightliner formally responded to 2024 V3.0 (See Appendix 2) stating that a revised Network Change was required to be issued ahead of publishing these restrictions in the rules because all operators consulted had accepted the Network Change on the basis that it would have no impact on capacity and the timetable.

4.7 The restrictions mentioned above were subsequently removed from the Timetable Planning Rules 2024 V4.0 to await a Network Change variation.

4.8 On 2nd November 2023 Network Rail issued Network Change Variation NC/G1/2023/WEST/607V1 which included the required changes to the Timetable Planning Rules in Appendix A (See Appendix 20) to which Freightliner responded raising concerns over the negative impacts on capacity and flexibility (See Appendix 21).

4.9 No response was received to Freightliner's objection and this Network Change Notification was withdrawn on 28th May 2024 (See Appendix 22).

4.10 Despite the Network Change Variation not being established, Network Rail again published these restrictions in Timetable Planning Rules 2025 V1.0 (See Appendix 5), Freightliner again responded mentioning the lack of Network Change (See Appendix 6).

4.11 The restrictions were published again in Timetable Planning Rules 2025 V2.0 (See Appendix 7) and Freightliner formally responded again (See Appendix 8) and referred the matter to the Access Disputes Committee via a Notice of Dispute (See Appendix 9)

4.12 Upon receipt of the Notice of Dispute Network Rail issued Timetable Planning Rules 2025 V2.1 which removed the restrictions at Westbury stating, *"Removal of overlaps at Westbury due to Network Change not being agreed"* (See Appendix 10). As a result of Network Rail agreeing with our response Freightliner withdrew the dispute. 2025 Versions 3 and 4 of the Timetable Planning Rules were published without these restrictions.

4.13 On 1st August 2024 Network Rail issued NC/G1/2024/WEST/761 relating to Westbury South S&C Renewal. This also contained the paragraph: *"For wider context within the Westbury Station area this network change by default also encompasses the impacts of signal moves W502 and W402 within the previously rescinded network change 607. Due to the infrastructure/functionality constraints towards Salisbury/Exeter, the ongoing requirement for platforms 2 and 3 to be able to accommodate 10 car class 80x trains and the requirement to reverse the changes implemented above through further infrastructure amendments associated with this project not being defined at any of the stakeholder workshops it has not been affected as part of this change. However, the impacts (based on the December 2024 timetable) have been assessed, solutions proposed and the agreement/implementation of these are currently being discussed. These will be consulted via the normal processes under Part D of the Network Code."* (See Appendix 23), Freightliner responded asking for Network Change 607 & 761 to be

uncoupled from each other to enable us to accept 761 (See Appendix 24) This has been completed since Network Rail's Decision was issued.

4.14 On 14th August 2024 there was an email exchange between Network Rail and Freightliner to gauge opinion on publishing them in the rules. Freightliner disagreed with this going ahead because of the impact on capacity for future growth, which was also preventing the amended Network Change from being established. The lack of action from Network Rail in responding to Freightliner's objections was also noted (See Appendix 17).

4.15 On 23rd September 2024 Network Rail, despite this email exchange, consulted 2025 Version 4.1 of the Timetable Planning Rules which contained the restrictions at Westbury (See Appendix 12 & 13)

4.16 Freightliner responded to this consultation referring back to the emails on the 14th August stating we did not agree with the publication of these restrictions (See Appendix 14).

4.17 Freightliner received no response from Network Rail on this matter prior to the consultation concluded on 10th October and a Decision to publish issued (See Appendix 15). Freightliner again responded to the decision with no response (See Appendix 17).

4.18 Network Rail provided no evidence it had considered the Decision Criteria or Objective in reaching its Decision, despite having objections to the consultation that should have been considered.

4.19 Following the Decision being issued, Freightliner submitted a Notice of Dispute to the Access Disputes Committee (See Appendix 16). Freightliner have since had discussions with Network Rail on this matter but cannot reach an agreeable position.

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

5.1 Freightliner are supportive of changes to the TPR values to accurately reflect the capability of the Network, ensuring timetables perform to a high standard while also

making best use of the infrastructure available. Freightliner work collaboratively with Network Rail throughout the year to achieve this and will continue to do so in the future.

5.2 The capability of the Network is pre-determined at the point operators enter into legally binding Track Access Contracts with Network Rail. Should Network Rail wish to change to this capability, it is required to follow the processes outlined in Part G of the Network Code, and this must be completed prior to the change being implemented. This is to ensure a balanced decision-making process is in place, and to protect the commercial interests of operators.

5.3 Freightliner believe there are two issues here – whether publishing a Train Planning Rule that has the effect of restricting capacity in relation to a physical change that has not been established through Part G can be deemed as implementing that change, and whether Network Rail, in reaching the Decision to publish the Train Planning Rule acted in accordance with the requirements of Part D.

5.4 On the former issue, although the ORR have previously indicated (through the TTP507/509 appeal) there is no direct link between Part D and Part G, in a situation such as this where the capacity restriction under Part G would be implemented through Part D, it is impossible to completely decouple the two Parts of the Network Code.

5.5 Indeed, as per the First Directions Letter of the Hearing Chair in TTP2468, Freightliner believe it is reasonable to assume that while not linked, different Parts of the Network Code can be used to cross reference and seek guidance on Decision making.

5.6 Network Rail have, in Freightliner's opinion, historically agreed that TPRs reflect the contractual state of the Network, not the physical state, as it is not reasonable to impose capacity restrictions on operators in response to local working instructions, failures and temporarily unavailable infrastructure. This is clear from Network Rail's response to 2025 Version 2.1 as mentioned in paragraph 4.12. Indeed, this continues to this day – in the LNE TPR forum held on 3rd December 2024 a Network Rail manager was quoted as saying 'you can't put it in the rules without an established Network Change.'

- 5.7 Freightliner's principal concern is that, through implementing restrictions in the TPRs by way of Part D, without these having been processed through Part G, Network Rail is disincentivised from following the correct contractual processes, and restrictions caused by Network Rail being in breach of its Network Licence become the issue of operators (who are unable to timetable services) rather than the infrastructure manager.
- 5.8 Freightliner therefore assert that, in publishing this Decision, Network Rail are essentially using Part D processes to bypass the contractual requirements laid out in Part G.
- 5.9 On the second issue, it is vital that, when amending TPR values, Network Rail conducts itself in accordance with the Decision making process mandated in D4.6 of the Network Code. This ensures that all Decisions are made from a neutral standpoint and ensure all relevant considerations are made in order to meet the Objective.
- 5.10 In issuing the Decision to publish these changes to the Rules, Network Rail have provided no evidence to show that they had considered operators objections. Freightliner pointed this out by return of the Decision (See Appendix 17) but had no further contact from Network Rail to confirm how the Decision Criteria had been considered. Freightliner are of the opinion Network Rail failed to take its response into account, given the lack of evidence to the contrary (See Appendix 14).
- 5.11 Given the lack of evidence to support any consideration having been given, Freightliner believe that Network Rail have failed to undertake their duties under Part D of the Network Code and therefore have no right to implement these changes.
- 5.12 When making a Decision, it is reasonable for Network Rail to apply consideration to the fact there is no legal right to implement the change as part of its consideration of the Decision Criteria. Freightliner assume this has been considered in previous Decision making by Network Rail, when it issued the opposite Decision 6 months earlier, removing these restrictions from the Timetable Planning Rules 2025 V2.1 stating, *"Removal of overlaps at Westbury due to Network Change not being agreed"* (See Appendix 10).
- 5.13 Freightliner challenge that, had Network Rail undertaken the duties required of it by Part D, and taken this into account as part of the application of the Decision Criteria,

Network Rail would not necessarily have reached the Decision to implement the changes subject to dispute under D2.2.7, and instead looked at alternative remedies.

6 DECISION SOUGHT FROM THE PANEL

6.1 Freightliner request the Panel confirm that, in issuing the Decision under Condition D2.2.7, Network Rail have failed to consider operator responses, or apply the Decision Criteria to reach a balanced Decision, and that therefore there is no evidence the correct Decision has been reached.

6.2 Freightliner request that, subject to the Panel agreeing with it on Paragraph 6.1, the Panel instructs Network Rail to withdraw these Rules from the Final Rules for the 2025 Subsidiary Timetable and any subsequent versions of the Rules already consulted or Decided.

6.3 Freightliner further requests that the Panel instructs Network Rail that, before issuing a Decision in relation to these Rules in future, the process to change the capability of the infrastructure through Part G is completed and closed out.

6.3 Freightliner request that regardless of the outcomes of Paragraphs 6.1 and 6.2, the Panel finds that, in implementing the changes to the Network without the relevant Network Change in place, Network Rail are in breach of their License Conditions and legally binding contract with between Freightliner and Network Rail.

6.4 Should the Panel agree with Freightliner on paragraph 6.3, Freightliner would request the Panel confirms that Network Rail should be liable to pay for any additional costs incurred by Freightliner as a result of this breach of contract.

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:

-PDF Document (TTP 2525 Appendix 1-24) containing Appendices 1-24

8 SIGNATURE

For and on behalf of Freightliner Limited and Freightliner Heavy Haul Limited

Signed

A handwritten signature in black ink, appearing to read "Barnaby Nash". The signature is written in a cursive style with a large, sweeping underline that loops back under the first part of the name.

Print Name

Barnaby Nash

Position

Track Access Manager