

TTP2591 - 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

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 dispute relates to Network Rail's Decision to reject two Train Slots (4L73 MO and 4L73 MSX between Tinsley Intermodal Terminal and London Gateway. These Train Slots were bid through a TOVR by Freightliner on 25th November 2024.

4.2 This TOVR was rejected by Network Rail on 14/02/25 on two grounds, both of which are subject to dispute - these being TPR Compliance and Level Crossing Risk. Network Rail's rejection letter is included as Appendix 1

4.3 In terms of TPR compliance, Network Rail have applied the headway value at South Tottenham to apply to two conflicting movements. Freightliner believe the appropriate value to use in this circumstance is a Junction Margin.

4.4 In terms of level crossing risk, Network Rail have applied a risk assessment which has no contractual positioning to restrict the number of trains that can run over certain sections of line at certain times. This capacity restriction is not published in any contractual documentation and not shown in the Rules.

4.5 Freightliner assert that the Train Slots were bid compliantly with the Rules and, as such, Network Rail have no grounds to reject these Train Slots. As such, Network Rail are in breach of Freightliner's Track Access Contract in rejecting these schedules.

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

5.1 In relation to the first issue of TPR Compliance, Network Rail wrote to Freightliner on 27/01/25 to advise that *'Whilst validating 4L37HA [MSX] in Dec24, I have encountered a non-compliance: Insufficient headway between 4L37HA and 5Q98EA [TFO] at South Tottenham. 6 mins headway required and only 3 mins present.....'* Freightliner responded to counter this misinterpretation however Network Rail were not prepared to amend their viewpoint. (Email Chain in Appendix 2)

5.2 The TPRs as presented in Version 2 of the 2025 Rules (Final Rules for the 2025 Principle Timetable, ie. December 2024) at South Tottenham are shown to be 3 minutes between all 'fouling moves' (See Appendix 3) while the headway is shown to be 5 or 6 minutes (See Appendix 4).

5.3 In this specific instance, 4L73 passed South Tottenham from the Seven Sisters direction and ran towards Walthamstow while 5Q98 passed from the Upper Holloway direction

and ran towards Tottenham South Junction. One train therefore crosses between two completely separate points to the other train.

5.4 National TPR describes a Junction Margin as ‘the minimum permissible time interval between two trains that are performing conflicting moves at a timing point.’ (See Appendix 5) – this is the case here as neither train is on the same route for anything other than this one common timing point. This is a lower value than the headway due to the second train not necessarily needing to see full signal aspect sequences, which is the case when following the preceding train.

5.5 Subsequent discussions between Network Rail and Freightliner suggest a 3 minute margin may not be sufficient for this move, however, Freightliner do not see this as relevant – the Rules present a contractual situation of Network Capacity and have to be the benchmark on which capacity allocation Decisions are made – it would be for Network Rail to amend this through the provisions of Condition D2 should they see fit.

5.6 Given the above, Freightliner believe this TOVR was submitted compliantly on all days, and therefore the considerations of the second issue should be based across all 5 days.

5.6 In relation to ‘Level Crossing Risk’, this is based on an internal risk measure compiled by Anglia Route. Restrictions on quantum of trains that can operate over infrastructure due to this risk are not published in the Rules or the Sectional Appendix, which both govern the contractual capability of the Network (nor is Network Rail’s methodology for calculating this risk shared or justified).

5.7 Network Rail have a duty to provide Network capability to the published standards. In this instance, Network Rail have rejected this TOVR due to the infrastructure capability not meeting their internal threshold for level crossing management.

5.8 Freightliner contest that, in rejecting this TOVR on the above basis, Network Rail are in breach of Freightliner’s Track Access Contract, given Network Rail have failed to maintain infrastructure to its published capability.

5.9 Given Freightliner believe the TOVR was submitted compliantly within the Rules, there should have been no need for the considerations contained within Condition D4.6 to

be applied, however in doing so, Network Rail's application of the Decision Criteria raises some concerns for Freightliner.

5.10 Network Rail have sought to achieve the Objective singularly through the consideration of safety risk, seemingly without any wider consideration of the other aspects, including the primary purpose which should be to operate trains.

5.11 In their consideration of D4.6.2 (a) Network Rail believe the operation of these Train Slots will impact their operation of infrastructure monitoring (IM) services. Given this is a TPR compliant schedule and does not conflict with any IM services it is unclear why this would be the case. NR also suggest these Train Slots will degrade infrastructure more quickly. This is why Freightliner pay Track Access charges – track access charges are set to cover marginal costs of the traffic.

5.12 In the consideration of D4.6.2 (d) there is a suggestion that passengers may miss connections due to level crossings being closed. Freightliner do not believe this can be seen as a relevant consideration on whether to accommodate a compliant Train Slot or not. If Network Rail want to consider the impact on the road network, the proposed intermodal train will remove 40 HGVs from the road network in each direction. Accommodating the additional HGVs on already busy roads, would likely have a significant impact on road users looking to access stations, both in terms of congestion and also road safety. This does not appear to have been considered by Network Rail.

5.13 Network Rail have completely discounted any weighting towards Freightliner when considering D4.6.2 (f) – the Decision Criteria are intended to be considered neutrally in order to reach a balanced Decision on the correct course of action. Therefore, to recognise instances where the Decision Criteria does favour of Freightliner, but then discount that consideration based on unrelated matters is not how the Decision Criteria should be applied. Failure to do this, and application in a biased way as here, removes the value of the application of this process completely.

5.14 Freightliner would ask Network Rail for evidence to support their view that non-accommodation of this Train Slot (and therefore movement by road of c.40 containers each way per day between London Gateway and Tinsley) is less

environmentally damaging than a number of road vehicles waiting at a level crossing for, at most, 5 additional minutes each day.

6 DECISION SOUGHT FROM THE PANEL

- 6.1 Given the considerable time it took Network Rail to consider this TOVR and reach the conclusion they would Reject, to meet customer requirements Freightliner have been left with no choice but to redeploy assets and put together an alternative plan to operate this traffic.
- 6.2 The revised plan involves the use of additional locomotives and wagons, plus considerable additional train crew and ground staff resource, and requires driver training while accruing additional wear and tear for assets, additional Track Access charges and additional fuel usage.
- 6.3 Given the lack of alternative evidence, and the safety critical nature of the issues, Freightliner are unable to counter the explanation of the risks provided by Network Rail at each level crossing, even though the method of calculation is unknown. However, Freightliner would ask the Panel to decide that this risk has come as a result of Network Rail failing to manage and mitigate it as the risk has developed, and therefore Network Rail has found itself in a position where it cannot maintain published contractual Network capability.
- 6.4 Freightliner do not believe Exceptional Circumstances apply, and therefore the Panel are unable to issue a substitute Decision. However, Freightliner would request that, in rejecting the Train Slots, the Panel Decide Network Rail have breached Freightliner's Track Access Contract.
- 6.5 If the Panel Decide in favour of Freightliner's above request, Freightliner request the Panel instruct Network Rail to pay for all additional costs incurred by Freightliner in operating this service in the revised plan.

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 (TTP2591 Appendix 1) containing Appendix 1 (Non-accommodation letter)

-Word Document (TTP 2591 Appendix 2-5) containing Appendices 2-5 (Email and TPR extracts)

8 SIGNATURE

For and on behalf of Freightliner Limited

Signed

A handwritten signature in black ink, appearing to read 'Chris Matthews', written over a faint rectangular box.

Print Name

Chris Matthews

Position

Head of Planning (Long Term)