

TPP 2712

Cross Country Trains Limited	(XCTL)	Claimant
Network Rail Infrastructure Limited (NR)		Defendant

Rule H18(c) Legal Note

Background in brief

1. In November 2024 Engineering Access Statement Version 2 was published and as regards possession PPS/4100921 it proposed a block at Attercliffe. That block was disputed by XCTL which said that it would be supportive of a 1 x 5-day block rather than 3 x 54hr block, but it would require a driver walking route to be constructed at Woodburn Jn to allow for reversals. Some other issues were raised but these are no longer in dispute. As was correct and as to be expected there followed discussions between XCTL and NR in which a range of options were considered. XCTL took the position that it required a driver walking route which could accommodate a 10 - car Voyager and it said this was vital to be in place prior to the block. Evidently with a 5 - car Voyager the driver can walk through the train from one end to the other, but this is not possible with a 10 -car Voyager. The discussions were focused on the driver walking route and evidently NR carried out internal enquiries to ascertain whether funding for that walkway might be made available.
2. On 1st August 2025 XCTL received the Confirmed Period Possession Plan. It indicated a 1x 5-day block at Attercliffe to commence on 2nd February 2026. On 6th August 2025 the Attercliffe blockade was disputed and XCTL again explained why a driver walking route at Woodburn Jn was required.
3. Also on 6th August 2025 XCTL lodged a Notice of Dispute with the Secretary of the ADC which raised nine issues including the Attercliffe blockade. The dispute was allocated ref: TPP2712. A hearing date of 18th October 2025 was allocated. The dispute as regards the Attercliffe blockade was identified in the following terms:

“This possession is part of the Attercliffe blockade. XCTL service will divert via Beighton and terminate at Sheffield.

XCTL will require.... a full timetable study...

Also XCTL will require a walking route at Woodburn Jn to allow a through train between Chesterfield and Wakefield/Doncaster when Sheffield is not available. The walking route must be long enough to accommodate a 10 -car Voyager and will need to be in place for Autumn so it can be signed off with reps before Christmas. The walking route is vital in preventing huge passenger handling issues.

XCTL will continue to work with NRIL on the completion of the study and the walking route but will hold this access in dispute pending an acceptable study and successful completion of the walking route that meets XCTL requirements.”

4. In subsequent discussions all of the issues between the parties were resolved save for the Attercliffe blockade and driver walking route at Woodburn Jn.
5. On 7th August 2025 NR informed XCTL that there were no plans to build a walking route at Woodburn Jn. Further discussions took place and NR maintained its refusal to build the walking route.
6. Subsequently both parties continued discussions and explored a range of other options.

7. By 5th September 2025 NR was able to indicate that a driver walkway at Woodburn Jn might now be viable and discussions on its design took place. XCTL asserts that it made it clear to NR that the walkway should be built by Christmas 2025, and thus in good time for use during the Attercliffe blockade proposed to commence on 2nd February 2026.
8. There followed further discussions about the design, construction and lighting of the driver walkway. XCTL asserts that in all of these discussions there was a clear and settled understanding between the parties that the driver walkway would be constructed by Christmas 2025.
9. In the light of these discussions, on 26th September 2025 XCTL informed the Secretary that there had been 'productive conversations with parties regarding the walking route and the train plan' and requested that the hearing date of 18th October 2025 be vacated and TTP2712 be regarded as a holding dispute in the meantime. In the absence of any objection by NR the hearing date was vacated.
10. Evidently both parties collaborated on the design and construction of the driver walking route and NR mobilised its resources to achieve the completion of the walking route. From time to time, NR indicated dates for the completion of various aspects/stages of the project and from time to time these were adjusted and revised, mostly being put back.
11. At a meeting on 9th December 2025 NR stated that Glass Reinforced Plastic had been ordered for delivery before Christmas; that the design was taking slightly longer but meanwhile work on the ground would be undertaken with a view to construction starting on 3rd January 2026 and other prep work undertaken and materials dropped and levelling of the ground to potentially to commence w/c 15th January 2026.
12. A key progress meeting was held on 7th January 2026 at which progress was reported, a number of concerns were expressed and revised dates for key steps noted. It appears that NR stated the works would be completed by 30th January 2026.
13. It is not in dispute that a driver walking route is required at Woodburn Jn; that it should accommodate a 10 - car Voyager train so that a driver is enabled to change ends and that a driver walkway to be available for use must be constructed and lit, and the works signed off as for safe for use by the relevant H&S representatives of NR, XCTL and ASLEF.
14. It became apparent to XCTL that due to time slippage in the construction of the walking route the date for completion was in jeopardy and that it might not be available for use by 2nd February 2026 when the Attercliffe blockade was due to be imposed. XCTL is of the view that if the works are completed as late as by 30th January 2026, there will not be sufficient time for the representatives of NR, XCTL and ASLEF to inspect them, deal with any issues arising and sign them off in time for use on and from 2nd February 2026.
15. In its SRD (which is undated, but which was filed with the Secretary on Thursday 22nd January 2026) NR asserts that the driver walking route is being constructed and will be completed prior to the operation of services – but does not state what date that will be.
16. If the driver walking route is ready, signed off by those persons mentioned in paragraph 13 above and thus available for use on and from 2nd February 2026 the hearing will be otiose and the hearing date shall be vacated.

The issues in broad terms

17. XCTL asserts that a timetable dispute had arisen, it was logged with ADC and was in the process of determination. As required by the rules, the parties continued discussions and negotiations with a view to resolving the dispute. In the course of those discussions a compromise agreement was arrived at whereby NR would construct a driver walking

- route at Woodburn Jn to an agreed specification and that it would be ready and available for use prior to the imposition of the Attercliffe Blockade.
18. XCTL asserts (or fears) that due to delays on the part of NR the walking route might not be so available and, if so, it seeks damages to cover the costs it says it will incur as a direct result. XCTL asserts that these circumstances amount to 'exceptional circumstances' within the meaning of Condition D5.3.1 of the Network Code.
 19. NR asserts that there was no firm agreement to construct the walking route and that it should be ready for use prior to the imposition of the Attercliffe Blockade, that the construction of the walking route was simply a collaborative project with mutual benefits going forward and that a completion date of the walking route before the commencement of the Attercliffe blockade was only aspirational.
 20. NR disputes the right of XCTL to bring this dispute as framed also takes issue with XCTL on a number of points including that no issues arise under Part D of the Network Code, no decision within the meaning of that Code has been identified and no failure on the part of NR with regard to application of the Decision Criteria has been alleged. NR also asserts that XCTL has accepted the Attercliffe Blockade and has not requested the removal of or amendment of it.
 21. NR denies that 'exceptional circumstances' arise in this case.

Resolution of the Issues and Points of Law

22. The extent and nature of the circumstances which have given rise to the construction of the driver walking route will mostly turn on the facts as found during the course of the hearing. The normal principles of the law of contract will be applied to the facts as found in order to determine whether or not a legally binding compromise agreement was arrived at, breach of which might give rise to a claim to damages.
23. The issues raised by NR concerning Part D of the Network Code do not give rise to any points of law and will be determined on the proper construction and interpretation of the Network Code.

John Hewitt

Hearing Chair

26 January 2026