

TTP344

JOINT SUBMISSION TO THE TIMETABLING PANEL

BY

XC TRAINS LTD

AND

NETWORK RAIL INFRASTRUCTURE LIMITED

JUNE 2010

1. DETAILS OF PARTIES

1.1. The names and addresses of the party to the separate reference are as follows:-

(a) XC Trains Ltd whose Registered Office is at Cannon House, 18 Priory Queensway, Birmingham B4 6BS ("XC") ("the Claimant"); and

(b) Network Rail Infrastructure Ltd whose Registered Office is at King Place, 90 York Way, London, N1 9AG ("NR") ("the Respondent")

Contact details:

Correspondence to XC should be addressed to John Cherrington, Possession Strategy Manager. john.cherrington@crosscountrytrains.co.uk

Correspondence to NR should be addressed to Matt Allen, Network Access Unit Manager, Network Rail, Network Access Unit, City Exchange, 11 Albion Street, LEEDS, Tel: 0113 341 2230, Fax: 0113 341 2341, [0113 341 282514](tel:0113341282514), matthew.allen@networkrail.co.uk

2. THE PARTIES' RIGHT TO BRING THIS REFERENCE

2.1. This matter is referred to the Timetabling Panel ("the Panel") for determination in accordance with Conditions D.2.2.4b and D.5.1 of the Network Code and with reference to the Claimant's Track Access Contract (dated 11th November 2007).

3. CONTENTS OF REFERENCE

3.1. XC has submitted this reference, which includes:

- (a) The subject matter of the dispute in Section 4;
- (b) A summary of the issues in dispute in Section 5;

- (c) A detailed explanation of the issues in dispute prepared by the claimant in Section 6;
- (d) Section 7 Not Applicable;
- (e) The decisions of principle sought from the Panel in respect of legal entitlement and remedies in Section 8; and
- (f) Appendices and other supporting material.

4. SUBJECT MATTER OF DISPUTE

- 4.1. This dispute is centred on Network Rail's Possession Strategy Notice (PSN) for the Water Orton Corridor Re-Signalling (issue 2.0, dated 29th March 2010), and has two elements

The additional disruption caused by Network Rail's decision to schedule signalling work in the Moorthorpe area concurrent with works planned for the Water Orton Resignalling project in Period C of the 2011 Timetable Year will make it impossible to produce an acceptable timetable for services between Birmingham and Edinburgh.

The published possession for the phase 2 commissioning of Water Orton was not published clearly and clarity over Tyseley Depot access during this phase of Water Orton at Easter 2012 was not confirmed until a meeting which was held on the 8th June 2010. Tyseley Depot is the main centre for the maintenance of the XC Class 170 DMU fleet .The Water Orton Resignalling works planned for Easter 2012 will block the direct route between Birmingham New Street and Tyseley Depot for 4 days and will have a significant impact on maintenance as extended transit times due running via Leamington and Coventry will reduce time on depot by at least 2 hours.

- 4.2. The Part or Condition that this dispute relates to or is associated with is D6(c) and D6(j)

XC contends that when reaching its final decision regarding the Water Orton Possession Strategy Notice and the scheduling of resignalling work in the Moorthorpe area Network Rail has not taken due regard of XC's ability to comply with the contractual requirements of its Service Level Commitment (SLC2), operate services for

which it has contractual rights and make the most efficient use of traincrew and rolling stock.

- 4.3. Attached as Annexes to this submission are the documents listed below, all of which have specific relevance to this dispute:

XC Track Access Contract - Firm Rights - Annex A

XC Service Level Commitment (SLC) – Annex B

Details of the 2011 Rules of the Route restrictions of use applicable to the routes between Swinton South Jn and Moorthorpe and between Kingsbury Jn and Castle Bromwich Jn.- Annex C

Copies of relevant communications on this specific subject – Annex D

5. SUMMARY OF DISPUTE

- 5.1. Water Orton represents a critical point on the rail network for XC's services, with four out of our six service groups passing through Water Orton Station. Any disruptive engineering access at Water Orton therefore has a disproportionately large impact on the operation of our services, and hence subsequently a significant detrimental commercial impact on our business and means that XC is unable to:

Operate services for which it has Firm Access Rights for (as detailed in Annex B)

Utilise its resources efficiently and effectively at weekends.

Meet the contractual requirements of its Service Level Commitment (SLC2)

Maintain direct connections between regional centres due to the degraded frequency / short-termination of weekend services.

- 5.2. The restriction of use proposed in the Water Orton Resignalling PSN for Weeks 47 to 52 in the 2011 timetable year will require XC services between Birmingham and Derby to be diverted via Lichfield. This results in journey times being extended by approximately 25 – 30 minutes and means that the timetable structure for services between Reading/Plymouth and Newcastle/Edinburgh is completely altered and through services between Edinburgh and

Plymouth will be severely limited. In discussions regarding the possession strategy for the Water Orton Resignalling XC have made it clear that whilst we would be prepared to accept the Water Orton work we would not accept any other engineering work taking place on the route between Birmingham and Edinburgh at the same time. Despite this Network Rail has planned for resignalling work in the Moorthorpe area to also take place in Weeks 47 – 52 meaning that services via Leeds will have to be diverted via Doncaster adding a further 15 to 20 minutes to the journey time for the affected trains. The combined impact of these two items of engineering work makes it impossible to construct an acceptable timetable for services between Birmingham and Edinburgh.

- 5.3. The restriction of use proposed in the Water Orton Resignalling PSN for Week 02 in the 2012 timetable year will require services to be diverted via Lichfield and also prevent direct access to/from Tyseley Depot. Tyseley Depot is the main centre for the maintenance of the XC Class 170 DMU fleet and although an alternative route via Leamington and Coventry is available the transit time to/from depot is increased by approximately 1 hour in each direction meaning that the available time on depot is reduced. This together with timetabling and resource issues will significantly constrain XC's ability to ensure that with the agreed maintenance plan for the Class 170 Fleet is delivered.

6. EXPLANATION OF EACH ISSUE IN DISPUTE WITH RESPONSE

- 6.1. **Issue 1:** 2011 Timetable Year Period C Weekends 47 – 52 Water Orton East Jn to St Andrews/Grand Jn blocked 2350 Sat to 0410 Mon. In our response to Version 1.0 of 2011 Rules of the Route Section 4 we stated that this series of blocks was not acceptable at the same time as period blocks between Swinton South Jn and Moorthorpe and between Moorthorpe and South Kirkby Jn. This was recognised by NR in their reply to our Version 1.0 response and it was therefore our expectation that the Moorthorpe area work would be redated. However the situation was unchanged in Version 2.0 and XC again restated the position in its Version 2.0 response and proposed that the Moorthorpe work would be a better fit in Period D. This was because due to the effect of engineering works between Derby and Chesterfield the Moorthorpe works would have no additional impact. In our response to the Water Orton PSN XC again made it clear that the two pieces of engineering work were

unacceptable if done concurrently. The NR response was that the combined impact on journey time equated to around 40 minutes and was not unreasonable in the context of the emerging Route Categorisation principles. Apart from the issue of double disruption and extended journey times, the conclusion of our timetable planning team was that the combined impact of the engineering work at Water Orton and Moorthorpe would make it virtually impossible to construct an acceptable timetable for our services to/from the North East and Scotland. This view was supported by Network Rail Train Planners at Leeds TPC. XC has always recognised the primacy of the Water Orton work and whilst NR is making efforts to redate the Moorthorpe work a decision has not yet been made.

6.2. Response to Issue 1 by Respondent.

6.2.1 Network Rail has consulted in accordance with Network Code condition D2.2 with affected Train / Freight Operating Companies (TOCs / FOCs) on a Project Strategy Notice (PSN-MA-015) which contains details of the disruptive engineering access plan to deliver the Water Orton resignalling project. The possessions contained in the PSN will enable Network Rail to resignal the routes between the following locations:

Grand Jn and Wichnor Jn (Birmingham-Derby route)

Water Orton East Jn and Abbey Jn (Birmingham-Nuneaton route)

Landor St Jn and Lifford East Jn (Washwood Heath / Birmingham New St to

Kings Norton route)

Water Orton West Jn and Aldridge (Water Orton – Walsall ('Sutton Park') route)

6.2.2 The project is part of the wider West Midlands Resignalling project, which encompasses the progressive transfer of signalling control in the West Midlands area to the West Midlands Signalling Centre at Saltley. The signalling renewals programme is driven by the condition of the signalling asset. In overall terms the signalling equipment in the control area described above has reached the end of its asset life. This affects four main areas: wire degradation within the interlocking and lineside equipment; reed transmission equipment; presence of

metal-based relays required to be removed from the infrastructure under SIN100 and signalling structures which require life extension works.

- 6.2.3 If Network Rail does not carry out the proposed Water Orton signalling renewals, Network Rail will not meet the requirements of Signalling Instruction Notice (SIN) 100. SIN100 requires Network Rail to remove M-Style relays from its infrastructure by December 2010. In order to obtain a relaxation of this requirement, Network Rail has implemented a special maintenance regime for these relays and has committed to replacing them by delivering the Water Orton Resignalling Project.

The Water Orton project contains elements of both like-for-like renewal and enhancement (details of which are outlined in section 2.2 of the PSN),

- 6.2.4 Negotiations began in August 2007 for the Moorthorpe resignalling works and the associated engineering access requirements; all impacted train operator companies were represented at the preROTR and post ROTR planning meetings (however during the early states of these negotiations the CrossCountry franchise was operated by Virgin Trains). All operator comments were listened to and an access plan was developed for the delivery of the works in 2009 tt yr.

- 6.2.5 The Moorthorpe project contains elements of both like-for-like renewal and enhancement, the signalling control area of Moorthorpe signalbox is to be re-controlled to the York IECC area. Benefits for the scheme include:

Improved assist condition and reduced operationing and on going maintenance costs

Installation of 4 aspect signalling

upgrading of existing Goods loops to the Passenger loops

Improved performance ARS performance (the extension of the ARS control area will improve the systems regulating logic due to the improved visibility of trains)

- 6.2.6 The Moorthorpe engineering access plan focuses around a timetable engineering period block (period 'C') of 6x 22hr Sunday possessions, a 4 week gap and a major commissioning possession of 79hrs to be dated on a Bank Holiday weekend. Unfortunately not long after this,

the Moorthorpe scheme was deferred by two years. Operators had agreed in 2009 that the scope of works justified this access footprint, and in 2011 tt yr when the job returned to the plan the same disruptive access footprint was proposed.

- 6.2.7 During the development of the 2011 tt yr plan, the Water Orton signalling scheme was also deferred into the same timescales. The Water Orton scheme requires a significant amount access throughout 2011 and early 2012 tt yrs, proposing a significant challenge in terms of optimisation of the 2011 tt yr engineering plan. Network Rail recognises that CrossCountry generally don't support double disruption to their Birmingham to the North East / Scotland services, however the volume of work proposed for 2011 tt yr has made it difficult to avoid planning some weekends of double disruption. Significant works planned in 2011 tt yr between Birmingham and the North East are:

PLTR between Derby and Chesterfield (via Ambergate)

S&C renewals Burton Leicester Jn

Holgate Four Tracking enhancement

Water Orton Resignalling

Moorthorpe Resignalling

- 6.2.8 The first visibility of both projects being planned simultaneously was the tt yr 2011 Principal Rule Proposal issued 23rd October 2009.

Cross Country has disputed the combined impact of the period 'C' Water Orton and Moorthorpe weekend disruptive engineering access since publication of the tt yr V1 2011 ROTR. Although Network Rails initial response to CrossCountry's 2011 ROTR V1 issues was that we confirm we would look to re-date the Moorthorpe works further verbal dialog confused the focus on replanning of these works and failed to identify the full impact of this double disruption on CrossCountry services until a lot later in the planning process.

Network Rail is of the belief that this double diversion for the Leeds hourly services would increase journey times by approximately 42 minutes – Lichfield 25 minutes and Doncaster 17 mins however fitting within a constraint of 42 minutes journey extension would only be possible

if a timetable solution was found which avoid CrossCountry having to slot into the next ½ hourly north east path to avoid an extension of journey time by approximately 60 minutes.

The development of the Route Categorisation principles for the 2012 tt yr identified that a journey time increase of up 30% between Birmingham and York is a reasonable level of weekend disruption to this passenger flow. Network Rail hopes it is possible to find a timetable solution which delivers the double disruption of Lichfield and Doncaster diversions within the cape of 30% increase in journey time.

- 6.3. **Issue 2:** 2012 Timetable Year Weekend 02 Water Orton East Jn Exc / Lifford West Exc/Kingsbury Jn Exc /Ryecroft Jn Exc to Grand Jn Exc /Kings Norton Exc /Small Heath South Jn Exc blocked 2350 Fri to 0410 Wed (96 hours). In our response to the Water Orton Resignalling PSN we requested further clarification of the impact of this extensive restriction of use over the Easter period in 2012. Once Network Rail had provided additional information it became clear that in addition to the disruption to services between Birmingham and Derby there was a significant issue relating to depot access for our Class 170 fleet as direct access between Birmingham New Street and Tyseley Depot would not be possible. Tyseley Depot is the main centre for the maintenance and repair of the XC Class 170 DMU fleet and although an alternative route via Leamington and Coventry is available the transit time to/from depot is increased by at least 60 – 75 minutes in each direction. This additional time will severely limit XC's ability to meet its train maintenance schedule for the Class 170 fleet due to the reduced time available on depot. Of the 29 strong Class 170 fleet a minimum of 18 sets are required off Tyseley for our weekend requirements. There is another alternative route via Birmingham Snow Hill and Langley Green. This would be a better option but is not viable due to lack of route knowledge. To overcome this XC is willing to train some of its drivers at Birmingham the route via Birmingham Snow Hill and Langley Green. This would require XC to train at least 24 drivers plus Driver Team Managers and will also require Driver Instructor time to prepare training materials etc. XC would seek a contribution of £20,000 from Network Rail towards the cost of providing the training. XC would be able to retain the route knowledge by the regular routeing of ECS moves via this route.

6.4. Response to Issue 2 by Respondent.

6.4.1 Network Rail accepts that the blocked line details of the 2012 Timetable Year Weekend 02 Water Orton process could have been published with greater clarity in the PSN. The format and wording of for this possession was slightly improved between preliminary and final version of the PSN. Page 10, paragraph 5.2 of the final PSN clearly reads: "0200 Fri to 0410 Tue ECS between Birmingham New St and Tyseley to divert via Coventry & Leamington or via Rowley Regis and Birmingham Snow Hill." The inclusion of this statement into the PSN Network Rail hopes demonstrates to the committee that it is aware of the critical nature restricted access to Tyseley Depot has on CrossCountry ability to deliver train services.

Network Rail is keen to work with CrossCountry to find solutions to the constraints upon access to Tyseley Depot and is keen to support any requirements from CrossCountry to constrain the planning of possessions which impact alternative stabling and maintenance facilities, or requirements for alternative routes to/from Tyseley.

7. ANY FURTHER ISSUES RAISED

7.1. None.

8. DECISION SOUGHT FROM THE PANEL

8.1. The Panel is asked to determine:

- a) That Network Rail has not taken due regard of XC's ability to comply with the contractual requirements of its Service Level Commitment (SLC2), to operate services for which it has contractual rights and to make the most efficient use of traincrew and rolling stock, when reaching its final decision regarding the Water Orton Possession Strategy Notice and the scheduling of resignalling work in the Moorthorpe area to be done in Weeks 47 to 52 of the 2011 timetable year. If the panel finds this to be the case XC asks the panel to direct Network Rail to redate the Moorthorpe resignalling work to Period D of the 2011 Timetable year.

- b) That when reaching its final decision regarding the Water Orton Possession Strategy Notice Network Rail has not taken due regard of XC's ability to ensure that the maintenance requirements of its Class 170 DMU fleet can be delivered during the Easter 2012 commissioning possession without additional train crew training. If the panel finds this to be the case XC asks the panel to determine that Network Rail should make a contribution of £20,000 toward the costs of the additional crew training over the route via Birmingham Snow Hill and Langley Green.
- (c) That Network Rail has correctly applied the Decision Criteria in regard to the decisions that were made in PSN-MA-015 Water Orton Corridor Resignalling and that Network Rail is entitled to take the possessions published in this document .
- (d) That the disruptive engineering access described in the Water Orton PSN should be deemed to have priority over Network Rail's 2011 Rules of the Route proposals on the route between Birmingham and Edinburgh for other works, in accordance with condition D2.2.3 of the Network Code.

9. APPENDICES AND ANNEXES

9.1. The party confirms that they have complied with Rule A1.34 of the Access Dispute Resolution Rules, which requires that

"Copies of the following documents shall also be annexed and cross referenced to the reference:

- (a) *the relevant extracts of contractual documents containing the provision(s) under which the referral to the Panel arises (other than provision(s) from [the current] Access Conditions);*
- (b) *the relevant extracts of contractual documents containing provision(s) associated with the substance of the dispute; and*
- (c) **[the relevant extracts of] any other documents referred to in the reference". (Rule A1.34)**

- 9.2. Extracts of Access Conditions/ Network Code ARE included where the dispute relates to previous (i.e. no longer current) versions of these documents.
- 9.3. All appendices, and annexes have been bound into the submission, and are consecutively page numbered.
- 9.4. Any information only made available after the main submission has been submitted to Panel Members, will be consecutively numbered, so as to follow on at the conclusion of the previous submission.

10. SIGNATURES

For and on behalf of XC Trains Limited Ltd

John Cherrington

Signed

JOHN CHERRINGTON

Print name

Position: POSSESSION PLANNING
MANAGER

Date: 21/06/10

For and on behalf of Network Rail Infrastructure Limited Ltd

Matt Allen

Signed

MATT ALLEN

Print name

Position: ENGINEERING ACCESS MANAGER

Date: 21/06/10

LIST OF ANNEXES

- Annex A** XC Track Access Contract - Firm Rights
- Annex B** Extract of XC Service Level Commitment (SLC)
- Annex C** 2011 Rules of the Route restrictions of use applicable to the routes between Swinton South Jn and Moorthorpe and between Kingsbury Jn and Castle Bromwich Jn.
- Annex D** Copies of relevant communications on this specific subject.

Annex A

XC Track Access Contract - Firm Rights