
ACCESS DISPUTES COMMITTEE

Freightliner Ltd
Freightliner Heavy Haul Ltd
together "FL"

Network Rail Infrastructure Ltd ("Network Rail")

From: Hearing Chair
Floor 8
1 Eversholt Street
London NW1 2DN

Tel: 0207 554 0601
Fax: 0207 554 0603
e-mail: sec.adc@btconnect.com

Ref: ADC/TTP371/513/514/570/571
Date: 13 March 2014

Dear Sirs

Directions relating to Timetabling Disputes TTP371, TTP513, TTP514, TTP570 and TTP571

As you know, a Directions Hearing has been listed for 24 April 2014 as a Case Management Conference.

To ensure that the Parties achieve the maximum benefit from the Case Management Conference, I have decided to give the following Directions:-

1. By 1500 on Monday 14 April 2014 FLL shall serve on the Committee Secretary and Network Rail a brief Note summarising:-
 - (a) FLL's understanding of how the recent discussions within the industry on headways and junction margins affect the issues still in dispute; and
 - (b) FLL's position in relation to each issue still in dispute, including the remedy which it is seeking from the Timetabling Panel.
2. By 1500 on Thursday 17 April 2014 (Maundy Thursday) Network Rail shall serve on the Committee Secretary and on FLL its response to FLL's Note, dealing both with general principles and specific issues.

Documents are to be served by e-mail using the following addresses [redacted]

Yours faithfully

Clive Fletcher-Wood
Hearing Chair

ACCESS DISPUTES COMMITTEE

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Ref:
ADC/TTP371/513/514/570/571

Date: 19 March 2014

Dear Sirs

Directions relating to Timetabling Disputes [TTP371](#), [TTP513](#), [TTP514](#), [TTP570](#) and [TTP571](#)

This letter replaces the directions issued on 13 March 2014.

A Directions Hearing will take place at the Committee's offices on Thursday 1 May 2014 at 11 00, forming a Case Management Conference.

To ensure that the Parties achieve the maximum benefit from the Case Management Conference, I have decided to give the following Directions:-

1. By 15 00 on Monday 14 April 2014 FL shall serve on the Committee Secretary and Network Rail a brief Note summarising:-
 - (a) FL's understanding of how the recent discussions within the industry on [headways and junction margins](#) affect the issues still in dispute; and
 - (b) FL's position in relation to each issue still in dispute, including the remedy which it is seeking from the Timetabling Panel.
2. By 12 00 on Tuesday 22 April 2014 Network Rail shall serve on the Committee Secretary and on FL its response to FL's Note, dealing both with general principles and specific issues.

Documents are to be served by e-mail using the following addresses:-

ACCESS DISPUTES COMMITTEE

Freightliner Ltd
Freightliner Heavy Haul Ltd
(together, "Freightliner")
Network Rail Infrastructure Ltd ("Network Rail")

From: Hearing Chair
Floor 8
1 Eversholt Street
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Tel: 0207 554 0601
Fax: 0207 554 0603
e-mail: sec.adc@btconnect.com
Ref:
ADC/TTP371/513/514/570/571
Date: 1 May 2014

Dear Sirs

Directions relating to Timetabling Disputes TTP371, TTP513, TTP514, TTP570 and TTP571

At the directions hearing held today (at which your companies were represented by Jason Bird for Freightliner and Shona Elkin for Network Rail), discussion brought me to the conclusion that the following Directions should be made in the interests of effective case management:-

Dispute items 1 and 2 (as previously identified by Freightliner)

By 15 00 on Thursday 5 June 2014, Freightliner is to serve on Network Rail and the Committee Secretary its counter-proposals. These are to explain (in sufficient detail for a Timetabling Panel to reach a decision at a hearing) what amendments Freightliner proposes should be made to the Sectional Running Times on the North London Line between Stratford station and Acton Wells Junction and how these amendments would affect the headways achievable.

By 15 00 on Thursday 10 July 2014, Network Rail is to serve on Freightliner and the Committee Secretary its detailed response.

Dispute item 8

By 15 00 on Thursday 5 June 2014, Freightliner is to serve on Network Rail and the Committee Secretary its counter-proposals. These are to explain (in sufficient detail for a Timetabling Panel to reach a decision at a hearing) what amendments Freightliner proposes should be made to the junctions margins at Stratford station.

By 15 00 on Thursday 10 July 2014, Network Rail is to serve on Freightliner and the Committee Secretary its detailed response.

Dispute items 19 and 20

As soon as reasonably possible, Network Rail is to provide Freightliner with signalling diagrams and any other information which might be reasonably required by Freightliner to enable Freightliner to develop counter-proposals in the same level of detail as set out for items above. The signalling diagrams are to be delivered for the attention of Jason Bird at Freightliner's offices at Euston.

By 15 00 on Thursday 5 June 2014, Freightliner is to serve on Network Rail and the Committee Secretary its counter-proposals for headway values on the two sections of route.

By 15 00 on Thursday 10 July 2014, Network Rail is to serve on Freightliner and the Committee Secretary its detailed response.

If Freightliner anticipates that additional time will be required for developing counter-proposals for items 19 and 20, application (with explanation and suggesting a revised date) should be made to me via the Committee Secretary in good time.

General

Freightliner is reminded of the requirement in Network Code Condition D1.1.8 to maintain resources which are necessary to comply with the procedures in Part D, including dispute resolution.

Further Directions may be given after I have considered these further submissions and preparatory to making arrangements for a Panel hearing.

Apart from the signalling diagrams, documents are to be served by e-mail using the following addresses:-

ACCESS DISPUTES COMMITTEE

All Resolution Service Parties

Copy to the Dispute Parties:-

Freightliner Ltd
Freightliner Heavy Haul Ltd
Network Rail Infrastructure Ltd
("Network Rail")

From: Hearing Chair
Floor 8
1 Eversholt Street
London NW1 2DN

Tel: 0207 554 0601
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e-mail: sec.adc@btconnect.com

Ref: ADC/TTP371/513/514/570/571
Date: 24 June 2013

Dear Sirs

Directions relating to Timetabling Disputes TTP371, TTP513, TTP514, TTP570 and TTP571

1. These Directions do not require any action by the Parties to these Disputes (i.e. Freightliner Ltd, Freightliner Heavy Haul Ltd – together, "FL" – and Network Rail). They are issued to enable any Resolution Service Party which is not an Involved Party to make submissions before a Determination may be reached on one of the points emerging from these Disputes.
2. At a Directions Hearing held on 17 April 2013, FL identified 21 items relating to the Timetable Planning Rules ('TPRs') in which it was dispute with Network Rail. Since then, many of these items have been settled between the Parties. A Timetabling Panel hearing listed for 20 & 21 June 2013 was adjourned to establish whether the outstanding Items are capable of settlement between the Dispute Parties.
3. In setting out its case in its Sole Reference Document dated 10 May 2013, FL referred to two points of principle emerging from the disputed Items. One (on page 3 of FL's Sole Reference Document) referred to FL's submission that there is no defined way of calculating headways and junction margins. FL's point also extended to Sectional Running Times ('SRTs').
4. In the Directions which I gave on 20 May 2013, I included a Direction for Network Rail to explain in general terms in its Sole Reference Document how headways, junction margins and SRTs are calculated, and the authority relied on for the form of calculation used.
5. In its Sole Reference Document dated 7 June 2013, Network Rail dealt with these issues. In Section 5, under the heading 'Next Steps', Network Rail said:

"Network Rail is currently in discussion with Freightliner with proposals to address these issues. These are that Network Rail:

- Commits to continue to work closely with Freightliner to resolve the outstanding dispute items. The Panel are asked to note that there has been and that there continues to be, significant on-going dialogue between us. The text for these discussions is captured in red within the chronology of events for each item.

- Commits to work with our Ops Planning Teams to improve the quality and standard of evidence to support TPR change proposals, through a process of briefing and training. We also intend to implement an element of compliance checking for assurance purposes.

- Works with the industry to publish an industry agreed standard for the calculation of headways, junction margins, dwells, etc, and consistently adopt the agreed methodology across each of the Ops Planning Route Teams. We intend that this work follows an on-going project to agree an industry standard for the calculation of SRTs. A number of Timetable Participants are already part of the Working Group.

- Sets up an Industry Working Group to investigate whether Part D2.2 is fit for purpose. If the group felt that there was enough there to warrant a change to the Network Code, then would be expected to put those recommendations to Class Representative Committee."

6. The Panel welcomes this constructive approach by Network Rail, but it does not consider that any Determination would assist in this process.
7. A further point of principle concerned two items in dispute which FL regarded as arising solely because of a proposed amendment to TPRs which would be the consequence of a Network Change which had not yet been agreed. FL submitted that TPR changes related solely to a Network Change should not be implemented before the associated Network Change, even if they were notified to operators in advance of their implementation.
8. In its Sole Reference Document, Network Rail agreed that the items concerned were solely the consequence of the proposed Network Change and withdrew them pending agreement (or otherwise) of the Network Change. Network Rail agreed with FL's submission that TPR changes arising solely from a Network Change should not be implemented before the associated Network Change.
9. The Network Code is not explicit on this issue. The Panel has been unable to identify any existing authority deciding the point.
10. Both Parties have submitted that it would assist the industry if this agreed point were to be recorded in a Determination, thus providing an authority for the industry.
11. If these Disputes do eventually require an oral hearing, then the usual convention permitting any Resolution Service Party to attend the hearing and make submissions to the Panel on this point would apply. If, however, the outstanding items in dispute are capable of settlement, then the Panel does not consider it to be an appropriate use of resources, including the time of the Parties and the Panel members, to convene an oral hearing solely to reach a Determination on a point agreed by the Parties.
12. If, however, there is eventually to be no oral hearing, then there is no existing mechanism to enable any other Resolution Service Party to make any representations to the Panel without formally joining the Disputes.
13. Therefore, in exercise of the powers conferred upon me as Hearing Chair in Access Dispute Rule H20, by which I may, '.....*make or amend the procedure to be followed by the parties in the TTP,*' and conscious of the requirement that this power shall only be exercised if any such Directions, '.....*shall be in accordance with the Principles and this Chapter H...*', I **hereby DIRECT:**

That any Resolution Service Party which is not an Involved Party which wishes to

make any representations on the proposal that a Determination may be reached without an oral hearing recording a decision by the Panel that TPR changes which arise from a proposed Network Change should not be implemented before the associated Network Change, shall advise the Committee Secretary and the Dispute Parties of its representations by 12 July 2013. If such representations are made, further Directions may be required to indicate how these representations will be considered by the Timetabling Panel.

14. The Sole Reference Documents and Directions Letters can be found on the Committee's website (www.accessdisputesrail.org)

[redacted]

Yours faithfully

Clive Fletcher-Wood
Hearing Chair



Committee Secretary

ACCESS DISPUTES COMMITTEE

Freightliner Ltd
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together "FL"

Network Rail Infrastructure Ltd ("Network Rail")

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Ref: ADC/TTP371/513/514/570/571

Date: 22 July 2014

Dear Sirs

Directions relating to Timetabling Disputes [TTP371](#), [TTP513](#), [TTP514](#), [TTP570](#) and [TTP571](#)

Thank you for your submissions in response to my Directions letters of 1 May 2014 and 16 June 2014. I have read the submissions thoroughly and sought the views of the Panel members before now making the following further Directions:-

1. [Forest Gate to Stratford](#)

- 1.1 It is my preliminary view that, on the basis of the statements presented - including frank admissions on the part of Network Rail, it is clear that Network Rail failed to consult adequately and to comply with the Network Code when introducing various Rules of the Plan/Timetable Planning Rules changes. It may be that there has been some unanticipated accumulative effect of infrastructure schemes upon the Forest Gate Junction to [Stratford](#) route over recent years which may now be giving Network Rail cause for concern regarding performance delivery, but the failure to comply with the Network Code indicates that there was no contractual entitlement to revise the Rules (with the consequent potential for reduction in capacity). In the event of the matter proceeding to a Panel hearing, therefore, I do not think that it would be productive for the Panel to become embroiled in the minutiae of the timings presented by the parties. Instead I think it would be appropriate for the Panel to determine that the Timetable Planning Rules should return to those which applied prior to introduction of the December 2012 Timetable (as sought by FL), but only from the introduction of the New Working Timetable Publication for 2016 (effective from December 2015). Therefore existing services and those currently in the Timetable planning process would not be affected, but Network Rail would need to revert to the earlier Rules at that stage, unless in the meantime it has them amended through due process.
- 1.2 It is not the function of a Panel to punish any party but I do not think that unilateral changes to the Rules which have not been subject to proper consultation can simply be endorsed by a Panel, as that will risk fossilising possible reductions in the capacity of the Network. While recognising the importance of performance, especially in the light of the ORR's recent imposition of penalties on Network Rail, the task of the Timetabling Panel is to do its best to determine disputes in a way which achieves all the objectives of the Network Code, including those related to capacity, in particular ensuring that the contractual rights of Access Parties are respected.

- 1.3 Given the nature of this proposal it is possible that the Parties may wish to accept this way forward without the need for an oral hearing on this issue. If, however, either Party elects to have an oral hearing then submissions should be limited to the remedy proposed in these Directions.
2. The two Scotland issues
 - 2.1 The essential complaint from FL in both matters is that headways were amended by Network Rail without any details of how the revised values were calculated, nor any reason as to why amendment was necessary. FL has offered counter-proposals which Network Rail has indicated willingness to take forward in part, through due process.
 - 2.2 It seems to me that the Parties are not actually now very far apart and that Network Rail may well have consulted adequately but perhaps not then made the optimum decisions in some cases, which is a different matter. Again, to avoid discussing the minutiae of the timings during a Panel hearing, I would propose to structure questioning towards securing acceptance by Network Rail that some of the headway decisions were not the best, identify which they were and arrive at a determination which requires those specific headways to be reviewed through due process for the New Working Timetable Publication for 2016 (effective from December 2015).
 - 2.3 Unlike the Forest Gate to Stratford issue, the further inter-actions required to put this Scotland proposal into effect may well warrant a Panel hearing, unless this guidance enables the Parties to reach agreement on all the matters still in dispute. Please note that if an oral hearing is deemed to be necessary the Parties should be prepared to make submissions regarding the headway decisions at the hearing.
3. Action required
 - 3.1 Each Party should confirm whether it considers that an oral hearing is necessary in relation to the Forest Gate to Stratford issue.
 - 3.2 Each Party should confirm whether it considers that the guidance in these Directions will permit agreement to be reached on the Scotland issues, or whether an oral hearing is required to determine those issues.
 - 3.3 As explained above, should an oral hearing be required the Parties are to direct their submissions to the points set out in these Directions.
 - 3.4 Your responses should be provided by 15 00 on Friday 8 August 2014, using use the following addresses:
 - 3.5 Should you require further time to consider this letter, please notify the Committee Secretary.
 - 3.6 I anticipate that after reading your responses, I will be in a position to instruct the Committee Secretary whether to convene the Timetabling Panel hearing.

Yours faithfully

Clive Fletcher-Wood

ACCESS DISPUTES COMMITTEE

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Ref:

ADC/TTP371/513/514/570/571

Date: 8 August 2014

Dear Sirs

Directions relating to Timetabling Disputes TTP371, TTP513, TTP514, TTP570 and TTP571

I am grateful to the Parties for their responses to the Directions Letter dated 22 July 2014 (the "Directions Letter"), but must admit to being confused at the position recorded in the Parties' submissions. Towards clarifying matters, further Directions are contained in this letter.

1. Forest Gate to Stratford

- 1.1 Network Rail's e-mail at 14 02 on 7 August 2014 stated that Network Rail intended to 'accept the contents of the letter' (in other words the Directions Letter) in full. Network Rail also intimated in this e-mail that its understanding of paragraph 1.1 of the Directions Letter differed from the understanding reached by FL.
- 1.2 The second paragraph of FL's e-mail at 13 06 on 8 August 2014 correctly reflected the intention of paragraph 1.1 of the Directions Letter: that the Timetable Planning Rules should revert to the pre-2012 version, but that the effective date selected for this change (as endorsed by the appointed Panel members) would be far enough in the future to:
 - avoid affecting any services in the current timetable, or the versions already planned,
 - while giving Network Rail sufficient time to consult all relevant industry parties to introduce any amendments reasonably required, but only after complying with the provisions of Part D of the Network Code.
- 1.3 Compliance with the provisions of Part D would obviously involve the other TOCs/FOCs using the affected routes, not just FL. I do not read FL's words as suggesting anything else; in particular I cannot read into these words any suggestion that consultation should be restricted to Freightliner Ltd and Freightliner Heavy Haul Ltd but exclude other operators.
- 1.4 I am therefore having difficulty in understanding how Network Rail interprets this explanation of FL's understanding as contradicting paragraph 1.2 of the Directions Letter.
- 1.5 My view is that a formal Determination is required if the Parties accept my proposal; the Directions Letter asked for the Parties' view on whether an oral hearing was required, not a Determination. (The Parties will recollect being consulted earlier in this process on the

possibility of a Determination being reached without an oral hearing).

- 1.6 On the basis of this explanation, it is assumed that FL will be content for the Panel to reach a formal Determination without an oral hearing, but will FL please confirm this by 10 00 on Friday 15 August 2014.
- 1.7 Will Network Rail now please, by the same time, confirm whether it does now accept the proposal set out in paragraph 1.1 of the Directions Letter, as explained further in these Directions.

2. The two Scotland issues

- 2.1 I understand that Network Rail and FL will be meeting on 4 September 2014 to discuss the counter-proposals advanced by FL. Given the length of time since the start of this dispute, I do not think it productive to list an oral hearing now, if there is a realistic prospect of agreement being reached between the Parties.
- 2.2 I am therefore willing to adjourn any further consideration of the Scotland items for 1 month. The Parties are to report the outcome of their 4 September 2014 to the Committee Secretary by 10 00 on Friday 12 September 2014; this can be a joint report if the Parties so agree. Any items still in dispute should be particularised so that an oral hearing can then be listed.

3. Action required

- 3.1 Your responses in relation to paragraphs 1.6, 1.7 and 2.2 above should use the following addresses: