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17 December 2012

Kate Maton
Legal Adviser
Network Rail
Kings Place
90 York Way
London
N1 9AG

Dear Ms Maton

Appeal against the Decision in TTP494

1. You wrote to me on 11 December submitting a Notice of Appeal on behalf of Network Rail against the Decision of the Timetable Panel in dispute TTP494. In your letter you said that Network Rail was submitting the notice now as it was not clear when the timescales for appeal start.

2. You are in receipt of a Preliminary Record of Determination which was issued by the Hearing Chair on 5 December. In that document the chair explains that it is a preliminary written record of the decisions and conclusions reached in his Determination of disputes TTP493, TTP494 and TTP495. He also says that "A full written Determination of the disputes, including the content required under the Rules, will be published as soon as is practicable."

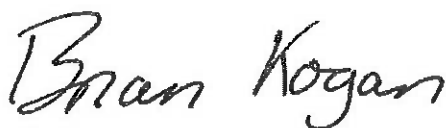
3. Rule 51 in Chapter H of the ADRR specifies that the Hearing Chair's determination of a dispute shall be in writing and comprise a number of things identified in a bulleted list (a) to (l) and I assume this is what the Chair means by "the content required by the Rules".

4. In paragraph 3.2 of your Notice of Appeal you say "It is not clear to Network Rail whether this document is to be treated as the Determination for the basis of the timetable for submitting an appeal pursuant to Part M. Consequently, this notice of Appeal is submitted prior to the receipt of the Determination so that Network Rail is not precluded from appealing once the Determination is received."

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5. Under Condition D5.2.1(a) of Part D of the Network Code, if Network Rail or a Timetable Participant is dissatisfied with the decision of a Timetabling Panel under Condition D5.1, it may refer the matter to the Office of Rail Regulation for determination under Part M, provided that any such referral must be made within five working days of receipt of the Timetabling Panel's written reasoned determination to which objection is made.
6. In paragraph 3.3 of your Notice of Appeal you say that Network Rail does not believe it is possible to fully plead the basis of the appeal prior to the receipt of the full written reasoned Determination. In paragraph 4.5 you set out the matters which Network Rail believes the Panel failed to give due consideration but you say that these are subject to seeing the Determination.
7. Having reviewed the Preliminary Record of Determination, we do not consider it constitutes the Timetabling Panel's written reasoned Determination for the purposes of D5.2.1 and, according to D5.2.1 you cannot refer the matter to ORR until you are in receipt of this. We cannot therefore accept your Notice of Appeal dated 11 December as a valid appeal.
8. In your Notice of Appeal you also asked ORR to issue an interim order pending hearing the appeal. Our powers in relation to issuing interim orders only apply in relation to an appeal we have accepted as being properly referred to us. As we do not consider your appeal to be valid, I'm afraid we cannot consider issuing an interim order pending hearing the appeal.
9. I can confirm that the timescale for appealing the Timetabling Panel's decision on TTP493, TTP494 and TTP495 will commence when the full written reasoned determination in accordance with Rule 51 has been issued.
10. I am copying this letter to Richard McClean at Grand Central, Chris Brandon at Alliance, Shaun Fisher at East Coast and Tony Skilton at the Access Disputes Committee.

Yours sincerely

A handwritten signature in black ink that reads 'Brian Kogan'.

Brian Kogan