

1 DETAILS OF PARTIES

1.1 The names and addresses of the parties to the reference are as follows:-

- (a) **GRAND CENTRAL RAILWAY COMPANY LIMITED**, ("Grand Central"), a company registered in England under number 3979826 having its registered office at 1 Admiral Way, Doxford International Business Park, Sunderland SR3 3XP ("The Claimant"); and
- (b) **NETWORK RAIL INFRASTRUCTURE LIMITED** ("Network Rail") whose Registered Office is at Kings Place, 90 York Way, London N1 9AG ("the Defendant").
- (c) For the purpose of correspondence in relation to this dispute the parties should be contacted at the following addresses:
 - (i) Grand Central C/O Alliance Rail Holdings Limited 88 The Mount York YO24 1AR Tel 01904 628904 gs@alliancerail.co.uk
 - (ii) Network Rail Dan Grover York George Stephenson House, Toft Green, York, YO1 6JT 07515 626122 daniel.grover@networkrail.co.uk

1.2 The following Third Parties may be affected:

East Coast Mainline Limited, 25 Skeldergate, York, YO1 1DH

2 THE DEFENDANT'S RIGHT TO CONTEST THIS REFERENCE

2.1 This matter is referred to a Timetabling Panel ("the Panel") for determination in accordance with Part D, Condition 4.2.2 and 5.61 of the Network Code.

2.2 Network Rail disputes the right of Grand Central to bring this Reference. For reasons set out more fully below, no Determination for TTP494 has been received and therefore Network Rail has not been able to implement any findings of the TTP panel. In these circumstances, the Reference now being made simply repeats the issues before the Panel in TTP494.

3 CONTENTS OF REFERENCE

This Response to the Claimant's Sole Reference includes:-

- (a) The subject matter of the dispute in Section 4.

- (b) A Summary of Network Rail's response on Section 5.
- (c) A detailed response to the points raised in Section 6.
- (d) The decisions of principle sought from the Panel in respect of
 - (i) legal entitlement and
 - (ii) remedies;
- (e) Appendices and other supporting material.

4 SUBJECT MATTER OF DISPUTE

- (a) Grand Central state that the Dispute arises out of the failure of Network Rail to implement the Determination of the Panel in TTP494. Network Rail submits that no Determination has yet been received and therefore it cannot have failed to implement it.
- (b) In addition to Part D of the Network Code the Panel needs to have regard to Chapter H of the Access Dispute Resolution Rules.

5 SUMMARY OF DISPUTE

- a) Grand Central alleges that Network Rail has not implemented the determination made by the Timetabling Panel in TTP494.

Network Rail submits that pursuant to the Access Dispute Resolution Rules a Determination has not yet been received which means that Network Rail cannot have failed to implement it. However, Network Rail has been seeking to find a validated path which might give effect to the verbal decision that was given by the Panel, subject to Network Rail's right to appeal on receipt of the Determination. Network Rail has shared its progress with Grand Central on its efforts to find a suitable solution to the verbal determination and both parties have agreed to work together to identify a validated paths.

- b) Network Rail has offered a non compliant 1608 London King's Cross – Newark Northgate service to East Coast.

To clarify, the May 2013 Offer letters only covered Sundays Periods E-J (May to December 2013) This is reflected in the offer sent to East Coast (Annex A) which is clearly stated as being for Sundays only and so did not cover SX. As a result the 1608 was not offered in the May 2013 timetable Offer letter. It remains in the December 2012 timetable pending receipt of the Determination in TTP494. For the avoidance of doubt, Network Rail considers TTP494 to apply to the timetable period between December 2012 – December 2013.

c) Network Rail has rejected the 1608 London King's Cross – Wakefield Kirkgate service (1D81).

As above, the May 2013 Offer covered Sundays Periods E-J only. Network Rail and the industry consider the December 2012 timetable to be a year long timetable running until December 2013. The timetable Offer letter to Grand Central clearly states it is for Sunday Periods E-J only. However references to the SX 1608 path are made in the letter, which was done with the best of intentions to re-state that we were aware of the uncertainty over this path, but which in hindsight appear to have led to confusion and were unnecessary. Again, Network Rail considers TTP494 to apply to the timetable period between December 2012 – December 2013.

6 EXPLANATION FROM THE DEFENDANT'S PERSPECTIVE OF EACH ISSUE IN DISPUTE

The May offer letter was clearly stated to apply for Sundays only. Whilst the inclusion of reference to the SX and SO Grand Central paths was in hindsight unhelpful, it has been made clear to GC verbally that Network Rail considers the December 2012 timetable to be a year long timetable and that TTP494 applies equally to the Timetable post May 2013 as it does post December 2012. Network Rail acknowledges that the Network Code makes no provisions for a yearly timetable period, however this process has been used for December 2011 and December 2012 with full industry knowledge and co-operation.

Further, Network Rail does not consider this to be a valid Appeal as this Appeal simply seeks to re-open matters in TTP494 where as yet no Determination has been received.

Chapter H of the Access Dispute Resolution Rules contains the determinative process rules for the Timetabling Panel to which timetabling disputes must be referred under Chapter B Rule 5.

Rule H16 states:

"It is an overriding objective of these Rules that disputes referred to a Timetabling Panel shall be administered in a way which is proportionate to:

- (a) the objective importance of the dispute to the Dispute Parties;
- (b) the complexity of the issues;
- (c) the significance (if any) of the issues involved to the railway industry; and
- (d) the need to ensure that the production processes for the railway operational timetable are not disrupted to the potential detriment of third parties.

Accordingly the Hearing Chair shall (where appropriate) adapt the procedures adopted in respect of each dispute to reflect its specific requirements in terms of the subject matter, timescales and significance. All procedures adopted must reflect the Principles and this Chapter H."

Rule H 18 states the Hearing Chair

"(d) will make a final determination of the dispute referred to a Timetabling Panel and prepare a written determination which is legally sound, appropriate in form, and otherwise compliant with this Chapter H."

Rule H49 states that having considered the submissions of the parties and the advice of the Panel members,

"the Hearing Chair shall make a determination of the dispute in accordance with Rule H51."

Rule H 50 states,

- (c) guidance to the Dispute Parties and other observations not forming part of a decision upon either legal entitlement or upon remedy
- (k) the reasons for those decisions and conclusions (including any relevant legal principles or rule of law applied); and
- (l) signed and dated confirmation of the Hearing Chair that the determination is legally sound and appropriate in form."

On 5 December 2012, Network Rail received a document entitled Preliminary Record of Determination (PDR). This document states:

"1.1 This is a preliminary written record of the decisions and conclusions reached in my Determination of dispute...TTP 494..., as given extempore in an oral statement at the end of the hearings...A full written Determination of the disputes, including the content required under the Rules, will be published as soon as is practicable."

The Access Dispute Resolution Rules (ADRR) are a contractual document setting out the full terms governing the handling of timetabling disputes. The Parties must comply with its terms. Equally the Hearing Chair has no power which is not provided to him by the ADRR. So it is only if the ADRR allow him to make a PRD that he is entitled to do so. If they do not then the PRD is simply a nullity binding on neither of the parties.

The Hearing Chair relied on Rule H16 to adapt the procedure, and states that his determination had been made extempore and orally, and that the PRD is a record of that determination under that adaptation.

Rule H16 states that "All procedures adopted must reflect the Principles and this Chapter H". This power is plainly one relating to procedural matters and does not give any power to alter the requirements set out in Rules H49 to 51 as to the making and necessary contents of a Determination. The language of Rules 49 to 51 is strict and requires that the Hearing Chair "shall make a determination" and that he can make orders "in his determination" requiring Network Rail to act and that the determination "shall be in writing and comprise etc."

The Hearing Chair was clear that the PRD did not comply with Rule H51 as he stated that a full Determination will be provided subsequently. In particular it does not appear to comply with 51(f),(g),(h),(i),(j) or (k). Accordingly it is not a written Determination and is therefore on the face of it of no effect.

Likewise while Condition D5.6.1 states that Network Rail must implement rulings of the timetabling Panel and ORR, it does not state that such rulings can be made outside the terms of the ADRR.

Network Rail submits that the PRD is of no legal effect and that Grand Central is not entitled to rely upon it. This view was confirmed by the ORR in connection with the appeal submitted to preserve Network Rail's position which was rejected by ORR on the basis no Determination had been received. (Annex B)

As a result, Network Rail does believe Grand Central can Appeal against Network Rail's failure to implement a Determination that has not yet been given.

7 DECISION SOUGHT FROM THE PANEL

The Panel is asked to:

- (a) determine that there has been no Determination yet made in TTP494;
- (b) dismiss this Appeal as demonstrating no valid cause of Appeal on the basis that no Determination has been made.

8 APPENDICES AND ANNEXES

- (a) The Defendant confirms that it has complied with Rule H21 of the Access Dispute Resolution Rules.

ANNEX A – EAST COAST MAY 2013 OFFER LETTER

ANNEX B – ORR LETTER TO NETWORK RAIL 17 DECEMBER 2012

9 SIGNATURE

For and on behalf of
Network Rail Infrastructure Limited

Signed



Print Name
Daniel Grover

Position
Customer Manager



Shaun Fisher
Operational Planning Manager
East Coast Trains

Andy Lewis
Operational Planning
Project Manager
LNE Programme
Network Rail
The Quadrant
Milton Keynes
MK1 1E9

16 November 2012

Tel : 07920509120

May 2013 Timetable. Formal Offer Sundays Periods E-J

1. General Comments

I am writing to advise you of progress with the development of the New Working Timetable commencing 9th December 2012 under Network Code Condition D2.7.

This part of the New Working Timetable contains trains for Sunday for Periods E-J.

We do believe that this offer is a good representation of the timetable that we expect to operate from 9th December 2012.

We also attach a list of services which have been flexed during timetable development and a list of those services currently shown as rejected, together with an explanation. We expect that the majority of these flexes will have already been discussed with operators or communicated via E – Mail in regular dispatches during the timetable progression period.

We continue to review every schedule error that has caused delay in the current timetable, with the aim of eliminating conflicts or non-compliances from future timetables. This has on occasions, required our teams to work together to find solutions and again, we are grateful to you for your help and support with this.

If you become aware of trains that you believe are missing from the publication of the new working timetable, or alternatively, have been included when they should not have been, I would be grateful if you would raise this with me at the earliest opportunity.

We look forward to receiving your responses within the timescales agreed. However, if these timescales are a problem to you, we would be happy to discuss them further.



2. Progress with the May 2013 Timetable

A detailed flexing spreadsheet is attached for your reference that describes any changes made to your services during development work.

Any flexes that have been agreed to either verbally or by E – Mail are marked up accordingly and highlighted with a blue background for ease of reference.

A full Sunday offer is being made for Periods E-J (May 2013 – December 2013).

3. Caveats on Train Paths included in the Timetable

Station workings to be finalised at;
London Kings Cross

4. Train Operators' Requests which Network Rail has declined to include

Nil

5. Flexing of Trains

Please see attached spreadsheet "East Coast Trains May 13 flexed paths"

6. Stabling of Stock at Network Rail Locations

SUN - Nil

7. Data Issues

The following schedules failed to be included in the electronic offer, as such, Train prints are appended:

Nil

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Andy Lewis', written over a light grey grid background.

Andy Lewis
Operational Planning Project Manager
LNE Programme
Tel. [REDACTED]

Brian Kogan
Deputy Director,
Railway Markets and Economics
Telephone 020 7282 2097
E-mail brian.kogan@orr.gsi.gov.uk



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.

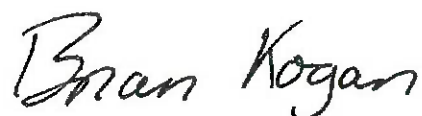
7. Having reviewed the Preliminary Record of Determination, we do not consider it constitutes the Timetabling Panel's written reasoned Determination for the purposes of D5.2.1 and, according to D5.2.1 you cannot refer the matter to ORR until you are in receipt of this. We cannot therefore accept your 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