



**Sole Reference by West Coast Trains Limited ('Virgin
Trains') to a Timetabling Panel (ref TTP602) in accordance
with the provisions of Chapter H of the ADR Rules
effective from 1 August 2010
(and as subsequently amended)**

1 DETAILS OF PARTIES

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

- (a) West Coast Trains Limited whose Registered Office is at The Battleship Building, 179 Harrow Road, London W2 6NB "Virgin Trains" "the Claimant";
and
- (b) Network Rail Infrastructure Limited whose Registered Office is at Kings Place, 90 York Way, London N1 9AG "Network Rail" "the Defendant".
- (c) Correspondence address, contact details and e-mail address:

Jonathan Dunster, 1st Floor, Meridian, 85 Smallbrook Queensway,
Birmingham, B5 4HA.

Tel: [REDACTED]

Email: [REDACTED]

1.2 Where the Claimant is aware that any third party may be affected by the Panel finding in any of the ways sought in this sole reference, it should ensure that this information is conveyed to the Secretary of the ADC at the earliest possible opportunity, and the names of the relevant parties recorded here:

All other West Coast Main Line Access Parties - (freight and passenger).

2 THE CLAIMANT'S' RIGHT TO BRING THIS REFERENCE

2.1 This matter is referred to a Timetabling Panel ("the Panel") for determination in accordance with Condition D 2.7.2 of the Network Code.

3 CONTENTS OF REFERENCE

This Sole Reference 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 in Section 6;

- (d) Any further issues raised by the respondent in Section 7;
- (e) In Section 8, the decisions of principle sought from the Panel in respect of
 - (i) legal entitlement and
 - (ii) remedies;
- (f) Appendices and other supporting material.

4 SUBJECT MATTER OF DISPUTE

This is a dispute as to an offer of train slots.

- 4.1 This Dispute arises over the interpretation by Network Rail of Condition D.4.6 The Decision Criteria.
- 4.2 Provide details of any other documents that are relevant to the dispute. The relevant parts must also be copied and annexed to this Reference.
 - I. Section PT3C of Virgin Trains Priority Date Notification Statement ('PDNS') dated March 1st 2013.
 - II. Extract from Network Rail report to ORR regarding West Coast Main Line capacity dated November 23rd 2012 describing their conclusions
 - III. ORR letter to NR in response to item II above
 - IV. Virgin Trains response to ORR in relation to item II above
 - V. Network Rail Document 'Additional Train Paths bid by Virgin Trains for December 2013'.
 - VI. Network Rail Timetable Offer Letter dated 7th June 2013
 - VII. DfT draft SLC amendments incorporating services to Blackpool and Shrewsbury.
 - VIII. Virgin Trains performance analysis regarding the December 2013 timetable

5 SUMMARY OF DISPUTE

- 5.1 In response to the Secretary of State for Transport's announcement on 6/12/12 regarding the introduction of new services between London and Blackpool and London and Shrewsbury, VT submitted a Section 22a application to ORR for access rights to

operate the additional services that are the subject of this dispute. In parallel with the access application, VT has worked with DfT to develop the business case for these services and satisfy the Departments funding requirements. This has been achieved and our Service Level Commitment obligations have been amended by DfT to cater for the provision of these services. As such, we bid for the services within our Priority Date Submission on 1/3/13 under Appendix PT3C "Details of FCRs (Firm Contractual Rights) which we wish to negotiate with Network Rail as, set out in Condition D2.4.1, to be exercised in the 2014 Timetable (Principle Change Date 8th December 2013)". These specific services to be dealt with under Condition 2.4 Submission of Access Proposals by Timetable Participants – before and after the Priority Date at D-40 and particularly Condition 2.4.1(a) the expectation of rights to obtain train slots. Section PT3C of our December 2013 Priority Date Notification Statement is attached as Annexe 1

- 5.2 As part of the timetable validation process Network Code Part D 2.4.7 requires Network Rail to advise Train Operators of progress in relation to delivery of any timetable amendments being sought. In cases where the operator's aspirations are in conflict with the rights of others, then the opportunity must be given to allow amendments to the original access proposal to be made as it may then be possible to accommodate these as prescribed under Condition D2.4.1(c). In relation to the Saturday Blackpool and Shrewsbury services, at no point did Network Rail advise Virgin Trains there were any issues with these and we only discovered the extent of the problem when the Timetable Offer was made on June 7th. We had been in constant dialogue regarding the weekday services and had offered a number of amendments to the original specification during the validation process in order to find suitable paths for these that were compliant with all the applicable Timetable Planning Rules ('TPRs').

6 EXPLANATION OF EACH ISSUE IN DISPUTE AND THE CLAIMANT'S ARGUMENTS TO SUPPORT ITS CASE

We were very disappointed to receive Network Rail's (NR) offer letter on June 7th 2013 stating that the new Shrewsbury and Blackpool paths had been rejected, since the proposed services meet the requirements of the Secretary of State, stakeholders and customers. We believe that NR's stated reasons for rejecting the paths, being they either cannot be accommodated

within the Rules or they have insufficient weighting with regards to the Decision Criteria, do not provide adequate justification. We also consider that NR's key argument, its performance analysis that shows a 0.5% negative impact on Virgin Trains PPM, is inadequate and misleading, since we have undertaken our own, more detailed analysis, which yields a performance improvement of 0.51%.

We are concerned that NR's approach has been driven by its position set out in its report "West Coast Main Line Capacity: December 2013" dated 23/11/12 consulted upon at the request of ORR. This report essentially states that no further capacity should be allocated until the West Coast ESG has concluded its work for the December 2016 timetable recast. The Conclusions section of this report and both ORR's and our own response to it are attached as Annexes II III and IV respectively to this submission. We believe this has resulted in a lack of willingness and inertia within NR to resolve the conflicts, evidenced through the following:

- NR has not devoted the same amount of diligence, time and effort to the new Blackpool and Shrewsbury services as it has to other more technically challenging aspects of our December 2013 timetable bid such as the addition of Crewe stops to our Liverpool services, alterations to the structure of our services in the West Midlands and amendments to calling patterns of services at Milton Keynes and Watford Junction;
- Our bid last year for priority iii service extensions to Euston - Lancaster services to run through to Glasgow was successfully accommodated, albeit, again being more technically complex than the 2013 Blackpool and Shrewsbury proposals.

Our responses to the particular aspects of NR representations set out in its document "Additional Train Paths bid by Virgin Trains for December 2013" (attached itself as Annexe V) are given below and it is this document that forms the basis of our dispute. For completeness also we have attached NR's formal timetable offer letter to ourselves as Annex VI).

6.1 The Timetable Planning Rules

NR's representations acknowledge that seven of the eight weekday services, one Saturday and all the Sunday services can be accommodated within the timetable.

We agree with NR's assessment that the outstanding weekday service, 1A93, does have some conflicts that need to be resolved, however during the period prior to the formal offer being

made, we were engaged in informal dialogue with the affected party (Freightliner) and our belief is that a mutually acceptable solution would be found through continued dialogue. We made NR aware of these discussions and kept them informed of progress, although NR ceased dialogue on this subject without explanation, some ten working days prior to the timetable offer being issued.

With regards to the SO services, we do not see how NR can make the statement that the services could not be accommodated as we are of the view that no substantive work had been undertaken to look at these paths. Indeed, NR had no dialogue at all with us regarding these services, which led us to believe that there were no problems with accommodating them. It was therefore a great surprise to find that the paths were rejected only when we received the formal offer letter. This is extremely unsatisfactory and has deprived us of the opportunity to resolve any conflicts or resubmit an Access Proposal. This is a clear failure of NR to meet its obligations under D2.4.7 of the Network Code.

Our own assessment is that since the services can be accommodated on weekdays (albeit subject to concluding resolution of 1A93), and Sundays (which we consider to be the busier, more challenging scheduling exercise for the weekend services), the Saturday services can also be accommodated as there are fewer trains on the network. Between 08.00hrs and 10.00hrs Monday to Friday there are 27 Class One services arriving at London Euston compared to only 25 on Saturdays for example.

NR, in its representations, states that solutions can be found for the conflicting services, but implies that it has not undertaken an analysis of the application of the available flexing rights that would enable this. Furthermore, we understand that NR was severely constrained in terms of the time available to actually undertake the timetable validation process, principally due to the amount of manual data entry needed to capture the details of the changes within their systems. Such a resource intensive process was deemed necessary due to the lack of functionality within the ITPS Planning system to record this information automatically. However, we do not consider NR's failure to undertake the required analysis due to flaws in its planning system or resources as justification for rejecting the bid. As such, we believe NR failed in its obligations to have suitable systems and resources in place as specified within Condition D1.1.8 of the Network Code.

6.2 Network Rail's application of The Decision Criteria weighting

a) *Maintaining, developing and improving the capability of the Network*

NR's argument in this instance is that allocation of the xx33 path out of Euston will make the xx36 path "un-saleable" to other potential operators due to the performance differential between the Class 221 trains being proposed to operate the service, and the Class 390 service scheduled to depart Euston at xx40. NR also states this erodes the service recovery potential that the two, currently vacant, slots could provide. NR considers that this does not make best use of the present network capability.

As it stands, the only train operator who could take advantage of the xx36 slot (certainly between now and December 2016) is WCTL as no other train company operates Class 390 rolling stock. We consider that it is inappropriate and wrong for NR to allocate capacity solely for service recovery purposes. All train operators have published contingency plans (agreed with NR) to address the consequences of unplanned disruption by reducing the number of trains in service to better manage the performance impact.

Furthermore, we have firm rights for, and currently operate, the 13.33hrs service from Euston using Class 221 rolling stock. NR did not previously contest the application for these rights so we are curious as to why such a concern is now being raised. We only intend to use a further three of the xx33 slots, with NR retaining the remainder to provide a performance buffer should it remain of the view it is essential to do so (although we disagree with this argument in principle).

b) *That the spread of services reflects demand*

The spread of services reflects the requirements set by the Secretary of State for Transport and he has asked that the service be incorporated into our Service Level Commitment. See Annex VII "Proposed SLC amendments"

c) *Maintaining and improving train service performance*

NR states that the detrimental impact on performance from operating these services has been given the highest weighting out of its assessment of the Decision Criteria, and is quantified as a 0.5% negative impact on Virgin Trains PPM. However, NR also concedes in its statement that

its analysis is limited in its geographical scope and does not take into consideration the performance of WCTL's full network, or the WCML as a whole.

We have undertaken our own analysis looking at a full year's data (2012/13), excluding 52 days where there were periods of severe disruption or severe weather, and also, more fundamentally, taking into account the effect of the wider changes being introduced to our timetable from December 2013 (which have been validated by NR). These key changes being:

- Merging Euston to Birmingham and Birmingham to Scotland services
- Withdrawal of a path in each direction Birmingham New St – Wolverhampton every hour and withdrawal of the 0603 Euston to Birmingham and 1950 Birmingham to Euston services.
- Changes to fleet and train crew deployment to enhance service reliability.

Looking at Virgin Trains services only, (since we don't have direct access to other TOC data), we have calculated a 0.51% overall improvement in Virgin Trains PPM, and we would expect our reactionary impact on other TOCs to reduce accordingly as a result, although we cannot model this element as we do not have access to other TOC data. As such therefore, we do not consider performance as a prime reason to reject the services, but rather a positive reason to offer them. A summary of our performance analysis is attached as Annexe VIII.

d) That journey times are as short as reasonably possible

We see the importance of this criterion as a measure of NR's timetable planning process and its ability to offer the best paths available in consideration of all the circumstances. Whilst NR may have an opinion as to the attractiveness of the journey times that are achievable, we believe that the commercial merits of the journey times offered for the scheduled services is a matter for the TOC, DfT and other key stakeholders. With the current ORR policy of not granting firm rights to journey time, the onus firmly rests with NR to offer the shortest reasonably possible journey times, and we expect NR to meet this obligation. We are satisfied that the suggested journey times are acceptable.

f) The commercial interests of Network Rail (apart from the terms of any maintenance contract entered into or proposed by Network Rail) or any Timetable Participant of which Network Rail is aware

The main cause of delay on the WCML is infrastructure reliability, with WCTL responsible for typically 12 - 15% of delays, of which fleet delays contributes to half this. Notwithstanding the

fact that the proposed net increase in quantum is six trains, not eight, since we have also introduced a reduction by merging the Euston – Birmingham and Birmingham Scotland service groups (which has been validated and offered by NR). It is interesting to note that NR assesses the commercial impact as a measure of how much delay it can cause without being at a financial loss. Equally, it presents a (small) opportunity to earn a performance bonus, which has been overlooked. Looking at the wider context of the WCML, the net increase of six services is a very small increase in its overall liability and one which is actually negated given that our detailed analysis shows the overall package of changes to our December 2013 timetable will deliver improved performance.

g) Seeking consistency with any relevant Route Utilisation Strategy

Whilst the established West Coast RUS does not specifically mention Blackpool, it does not expressly exclude it, and we would argue that services to Blackpool satisfy the reference in the RUS to additional off-peak services to the North West. We would also contend that further analysis has been undertaken, resulting in the Secretary of State's requirement to include the services in our SLC. It should be noted also, that the introduction of these services to Blackpool enables improvements to be made in terms of faster journey times on certain key Euston to Glasgow (and vice versa) services, which was also a key recommendation in the RUS, and this remains a key aspiration for stakeholders and passengers alike. Interestingly, NR has been able to accommodate the changes to the Anglo Scottish services and other service groups we proposed, despite many of these being more technically challenging to achieve than the Blackpool and Shrewsbury services.

i) Mitigating the effect on the environment

Whilst the carbon footprint of diesel traction is not as low as electric, the wider benefits of rail as an environmentally credible alternative to road are widely known. We have seen the positive effect of modal shift from introducing new services on the Euston – Chester route. This has been so successful that additional stops at Crewe have been added to our Liverpool services to cater for the demand. We would argue that catering for this change alone is more complex than resolving the Blackpool and Shrewsbury conflicts.

It is also worth remembering that NR's power supply upgrade works require a restriction on additional electric traction on the route. Our use of diesel rolling stock supports this. The use of diesel trains also provides greater operational flexibility and resilience as the performance of the OHLE remains a concern, as borne out by recent events.

j) *Enabling operators of trains to utilise their assets efficiently*

We constantly work with our train service providers to develop our rolling stock utilisation plans in conjunction with their fleet maintenance requirements, so that our approach to service delivery is demand-led, rather than resource-led. This helps us better plan our fleet to target specific aspects of our business, be they through the allocation of 11-car Pendolinos to match demand and manage overcrowding, to developing new markets.

7 DECISION SOUGHT FROM THE PANEL

7.1. We are asking the Panel to determine that:

7.1.1. Network Rail failed to apply the Network Code Condition D4.6 Decision Criteria correctly in relation to the Shrewsbury and Blackpool services proposed for introduction in December 2013.

7.1.2. Network failed in its obligations under Network Code Condition D2.4.7

7.1.3. Paths compliant with Timetable Planning Rules could have been found for these services and should have been offered to Virgin Trains accordingly.

7.2. Network Rail be directed to work with VT and those affected operators to complete the validation process for these new services and identify paths that are compliant with the Timetable Planning Rules and which are mutually acceptable to all parties thus enabling the services to be introduced.

7.3. We do not wish the Hearing Chair to decide any other issues. – such as ordering costs.

8 APPENDICES AND ANNEXES

Virgin Trains confirms that it has complied with Rule H21 of the Access Dispute Resolution Rules: “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 Timetabling Panel arises and/or provisions associated with the substance of the dispute; and*

(b) *[the relevant extracts of] any other Documents referred to in the reference”.*
[Rule H21(b)(i)(l)]