**TTP643 brought by Freightliner Heavy Haul Limited concerning the failure of Network Rail Infrastructure Limited to offer certain train paths following a slot review and recast of the train service into Ratcliffe Power Station with effect from introduction of the New Working Timetable on 8 December 2013.**

**Sole Reference by Freightliner Heavy Haul Limited to a Timetabling Panel 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. The names and addresses of the parties to the reference are as follows:-
      1. Freightliner Heavy Haul Limited whose Registered Office is at 3rd Floor, The Podium, 1 Eversholt Street, London, NW1 2FL ("FHH") ("the Claimant"); and
      2. Network Rail Infrastructure Limited whose Registered Office is at Kings Place, 90 York Way, London N1 9AG (“Network Rail” (“the Defendant”)).
      3. Correspondence for FHH should be addressed as follows:

John Sadler

Freightliner Heavy Haul Limited

Office Suite 2, Ferrybridge Business Park

Fishergate, Ferrybridge,

West Yorkshire

WF11 8NA

[redacted]

* 1. DB Schenker Rail UK Limited and Colas Rail Limited operate services to/from Ratcliffe Power Station and were also party to the recast of services to/from the Power Station.

1. **The Claimant’s’ right to bring this reference**
   1. This matter is referred to a Timetabling Panel ("the Panel") for determination in accordance with Condition D3.3.9 and D5 of the Network Code*.*
2. **Contents of reference**

This Sole Reference includes:-

* + 1. The subject matter of the dispute in Section 4;
    2. A summary of the issues in dispute in Section 5;
    3. A detailed explanation of the issues in dispute in Section 6;
    4. Any further issues raised by the respondent in Section 7;
    5. In Section 8, the decisions of principle sought from the Panel in respect of
       1. legal entitlement and
       2. remedies;
    6. Appendices and other supporting material.

1. **subject matter of dispute**
   1. Provide very brief details of the dispute.
      1. Network Rail has failed to make an Offer of train slots to FHH to enable it to meet the requirements of the Ratcliffe Power Station Slot Recast
      2. Further, Network Rail has advised it is unable to offer the existing train plan as some parts of the capacity have already been relinquished

This dispute arises over the application of Network Rails use of its flexing right (D4.3.1 (a), interpretation of the Decision Criteria (Condition D4.6.2 of the Network Code) and the removal of train slots prior to an operator accepting an offer made under D3.3.

* 1. FHH has provided relevant extracts of correspondence relating to the dispute as Annexes to this document as described below:

Annex A: Spreadsheet attachment Email FW Ratcliffe slot plan notes

Annex B: Email FW Ratcliffe slot plan notes

Annex C: Email Ratcliffe PS Slot Review & Recast

Annex D: Email FW WEEK 28 DIAGRAM 22 x

Annex E: Email Ratcliffe Recast DEC13WTT

Annex F: Word attachment Email Ratcliffe Recast DEC12WTT

Annex G: Email RE Ratcliffe PS Slot Review & Recast Dec 12 Response 1

Annex H: Email RE Ratcliffe PS Slot Review & Recast Dec 13 Response 1

Annex I: Email RE Ratcliffe PS Slot Review & Recast Dec 13 Response 2

Annex J: Email RE Ratcliffe PS Slot Review & Recast Dec 13 Response 3

Annex K: Email RE Ratcliffe Recast Colas Paths

Annex L: Email RE Ratcliffe Recast Immingham Additionals

Annex M: PDF attachment Email Ratcliffe PS Recast DEC12WTT

Annex N: Email 6M63ED SUN DEC12WTT Ratcliffe recast

* 1. Extracts from the Network Code have not been provided.

1. **summary of dispute**
   1. In order to improve performance of train services delivering coal to Ratcliffe Power Station the owners of the Power Station (EON) undertook a review of its coal supply requirements resulting a recast of the loaded schedule Arrival Slot Plan. This recast was agreed with train operators (FHH, DBS and Colas) and Network Rail. FHH supplied Network Rail with details of the trains it required to ensure it could meet the agreed loaded schedule Arrival Slot Plan. Network Rail failed to Offer train slots from a number of loading locations and no train slots whatsoever in to the 1835 [SX] loaded schedule Arrival Slot at Ratcliffe.
   2. FHH understands that this request for change constitutes a Train Operator Variation Request in accordance with D3.3 of the Network Code.
   3. Given the volume of alterations and required changes FHH chose to waive its right to receive a response within 5 working as conferred in D3.3.7 (g)
   4. FHH is of the opinion that NR could have offered train slots as requested in the December 2013 WTT but that it has not exercised its flexing right D4.3.1 (a) and applied the decision criteria D4.6.2 correctly.
   5. Furthermore NR has advised FHH that it cannot reinstate train slots that have been removed as part of the Train Operator Variation Request. FHH disputes this in that if NR cannot amend the train slots in accordance with D3.3 then it should be able to retain its existing train slots.
2. **explanation of each issue in dispute and the Claimant’s Arguments to support its Case**
   1. Network Rail has not offered train slots as required by FHH to fulfil its contractual requirements with its customer. FHH is of the opinion that NR could have offered the following train slots in accordance with D3.3 by applying its flexing right (as conferred by D4.3.1(a)) and correct application of the decision criteriain D4.6, specifically D4.6.2 (c) and D4.6.2 (e). The specific train slots concerned are as follows:
      1. 1510 arrival slot – no train ex Hunterston [MSX] & [SO] Offered

FHH run Hunterston to Ratcliffe trains to serve the 1510 [MSX] & [SO] Arrival Slots planned under STP arrangements and believe the same train slots are available in the DEC13WTT

* + 1. 1650 arrival slot – no train ex Kellingley [SX] & [SO] Offered

FHH run Thoresby to Ratcliffe trains to serve the 1650 [SX] & [SO] Arrival Slots planned under WTT arrangements and believe train slots are available from Barrow Hill in the DEC13WTT

* + 1. 1835 arrival slot – no train ex Immingham [SX] Offered

FHH run Immingham to Ratcliffe train to serve the 1835 [SX] Arrival Slot planned under STP arrangements and believe the same train slot is available in the DEC13WTT

* + 1. 2015 arrival slot – no train ex Kellingley [SX] & [SO] Offered

FHH run Thoresby to Ratcliffe trains to serve the 2015 [SX] & [SO] Arrival Slots planned under WTT arrangements and believe train slots are available from Barrow Hill in the DEC13WTT

Planning trains under STP arrangements offers FHH no assurance that it can meet the customers requirements

* 1. FHH also disputes NR’s statement that it is unable to revert the timetable to its previous form. FHH has bid in accordance with D3.3 to amend its timetable to support a revised service, however we hold contractual rights to the existing level of train slots. If NR is unable to offer revised train slots then FHH requires the existing train slots to meet its contractual requirements with its customer. NR has advised that it is unable (Annex J) to reinstate the train slots that were relinquished, FHH disputes this as it believes that until it has accepted an offer made under D3.3 the existing capacity should be retained.

1. **decision sought from the PANEL**
   1. FHH seeks the following decisions from the panel:
      1. the matters of principle:
         1. NR should apply its flexing right D4.3.1 (a) to accommodate the train slots as requested by FHH. In doing so it should apply the use of Decision Criteria D4.6.2 (c) and D4.6.2 (e).
         2. If it is ultimately unable to offer the train slots as required then it should not remove train slots held by FHH until such a point when an offer has been made under D3.3 and accepted by the operator
      2. specific conclusions deriving from those matters of principle:
         1. FHH requests the panel direct NR to revisit the timetable for December 2013 to allow it to make an offer for the following services:

1510 arrival slot ex Hunterston [MSX] & [SO]

1650 arrival slot ex Kellingley [SX] & [SO]

1835 arrival slot ex Immingham [SX]

2015 arrival slot ex Kellingley [SX] & [SO]

* + - 1. If it is unable to do action 7.1.2.1 then it should allow FHH to continue to use its previously offered and accepted train slots prior to any amendments conferred in this Train Operator Variation Request.
  1. FHH seeks no further decisions from the panel.

1. **Appendices and Annexes**

The Claimant confirms that it has complied with **Rule H21** of the Access Dispute Resolution Rules

Any information only made available after the main submission has been submitted to the Panel will be consecutively numbered, so as to follow on at the conclusion of the previous submission.

1. **signature**

| For and on behalf of Freightliner Heavy Haul Limited  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Signed  -----------------------------------------------------------  Print Name  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Position  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
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