

1 DETAILS OF PARTIES

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

- (a) Freightliner Group Ltd whose Registered Office is at The Podium, 1 Eversholt Street, London, NW1 2FL, representing Freightliner Limited and Freightliner Heavy Haul Limited ("Freightliner") ("the Claimant"); and
- (b) Network Rail Infrastructure Limited whose Registered Office is at 2nd Floor, 1 Eversholt Street, London NW1 2DN ("Network Rail" ("the Defendant")).

1.2 *Third parties: First Great Western, GB Railfreight, DB Schenker, Heathrow Express.*

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 D2.2.8(a) of the Network Code.

3 CONTENTS OF REFERENCE

This Sole Reference includes:-

- (a) The subject matter of the dispute in Section 4;
- (b) A detailed explanation of the issues in dispute in Section 5;
- (c) In Section 6, the decisions sought from the Panel in respect of
 - (i) legal entitlement, and
 - (ii) remedies;
- (d) Appendices and other supporting material.

4 SUBJECT MATTER OF DISPUTE

4.1 This is a dispute regarding the decision by Network Rail in respect of the 2016 Timetable Planning Rules ("TPRs") at West Ealing.

4.2 This dispute arises over the Network Rail's entitlement to implement amended TPRs in respect of a change to the Network which has not completed the process outlined in Part G of the Network Code.

- 4.3 On 5 August 2014, Network Rail issued a Network Change proposal (reference NC/G1/2014/CRL001, in accordance with Condition G1 of the Network Code) concerning the remodelling of the junction at West Ealing [Appendix A]. In summary, this proposal entails removing the double junction at West Ealing between the Relief lines and the Greenford branch lines with a single lead junction, and also providing an Up bay platform at West Ealing to allow the Greenford branch passenger service to terminate there, independently of the Relief lines.
- 4.4 On 5 September, Freightliner responded (according to Condition G2) to the proposal [Appendix B]. This response was a rejection under:
- Conditions G2.1.1(a)(ii) “that Network Rail has failed, in respect of the proposed change, to provide sufficient particulars to that Access Beneficiary under Condition G1.2”;
 - G2.1.1(a)(iii) “the implementation of the proposed change would result in a material deterioration in the performance of that Access Beneficiary’s trains which cannot adequately be compensated”; and
 - G2.1.1(a)(iv) “the proposed change does not adequately take account of the reasonable expectations of the Access Beneficiary as to the future use of the relevant part of the Network”
- 4.5 The response was on the basis that Network Rail had yet to demonstrate how it would be possible, both immediately after implementation, and once Crossrail services commence, to accommodate the Greenford line passenger service and also accommodate Freightliner’s current services and future aspirations. Freightliner stated that it believed the proposal would have an unacceptably adverse effect on capacity due to the lack of parallel moves at the junction between the Relief lines and the Greenford branch, and also the confliction between all Down trains and revised Up Greenford line passenger services using the new bay platform. The effect would become more acute when the inevitable proposal would appear to increase the Greenford line passenger service above its current half-hourly interval. In terms of performance, the reduction in capacity, together with an increase in passenger services, could only result in a material deterioration in performance.

- 4.6 Various meetings and correspondence has taken place since Freightliner's rejection of the Network Change, but to date without further progress and hence the Network Change has yet to be established, despite the proposal being due to be implemented at Christmas 2016.
- 4.7 On 13 February 2015, Network Rail made a proposal in respect of the Principal 2016 TPRs at West Ealing [Appendix C], stated as being under D2.2 (but presumably being pursuant to D2.2.7 specifically, given the timing of the proposal. This represented the changes Network Rail thought necessary to take into account the Network Change, although this was not explicitly stated. Reference was made, however, to "the new layout" in the proposal.
- 4.8 Freightliner responded on 16 February 2015 [Appendix D]: "we will have to object to this as we have strongly objected to the associated Network Change proposal. We (and others) are having further discussions with the Crossrail project team."
- 4.9 On 2 March 2015, Network Rail issued its decision notice in respect of the changes [Appendix E]. The detail in it was unchanged from the consultation document of 13 February. Freightliner therefore responded to Network Rail [Appendix F] to inform it that a dispute would be registered "as the decision is not in accordance with Part D and is contrary to ADC's ruling in respect of TTP371 etc regarding changes to TPRs pursuant to Network Changes which have yet to be established."

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

- 5.1 Part G of the Network Code provides the procedures which Access Parties must go through when certain types of change to the Network occur or are proposed, and as such provides the mechanism for contractual change to what constitutes the Network.
- 5.2 It is Freightliner's contention that changes to the TPRs should not be implemented in respect of a change to the Network which has not been proposed *and established* under Part G. In the case of West Ealing (as in other similar circumstances), because the Network Change has not been established, the scope and size of the Network remains unchanged at this location, contractually speaking.

- 5.3 Freightliner therefore believes it unreasonable for a TPR change proposal that is based on different infrastructure to be implemented in advance of the establishment of the associated Network Change .
- 5.4 Freightliner has some sympathy with the situation in which Network Rail's Capacity Planning section finds itself, namely that a layout change is due for implementation at Christmas 2015 and the offer for the working timetable applicable after the change is due to be made in June 2015. However, this does not excuse the chain of events that has led to this situation, namely Network Rail's failure to close out the Network Change, or the overriding of due process.
- 5.5 Freightliner believes it to be desirable and indeed good practice for Network Rail to formulate TPR change proposals in good time, and will participate in processes that hopefully lead to agreement being reached over necessary change. However it is important that the processes in the Network Code are adhered to, and completed in the correct order, to ensure that the infrastructure and TPRs do not become misaligned.
- 5.6 Freightliner believes it to be desirable that a Network Change proposal should contain full details of the effect on the Network and that this by definition includes changes to TPRs and the capacity of the Network. To this extent, it is logical that Network Rail should investigate such change to TPRs in advance of a Network Change, in order that a TPR change proposal may follow the Network Change in Part D timescales.
- 5.7 In the case of West Ealing, such detail was omitted from the Network Change and the TPR element has been proposed under Condition D2.2.7 (no mention has been made of the effect on capacity). It should be noted that no detail was provided in Network Rail's TPR proposal as to how the revised TPR values had been derived.
- 5.8 It is of note that some 8 months have elapsed since Freightliner's rejection of the Network Change. Discussions have been on-going between Network Rail, Freightliner (and other operators) but it our understanding that the proposal remains unchanged and without an alternative.
- 5.9 Condition G10 provides for a process for Network Rail to confirm whether or not it is entitled to implement a Network Change. Although there are no timescales specified in Part G, this process has yet to be invoked. It is however logical to assume that this should happen in good time for the whole industry to have certainty about the shape of the Network and plan its business according to timescales specified in other parts of the Network Code.

6 DECISION SOUGHT FROM THE PANEL

- 6.1 The Panel is requested to determine that a change to TPRs may not be implemented if the associated Network Change has not been established under Condition G10.
- 6.2 For the avoidance of doubt, the Panel is also requested to determine that Network Rail may not implement changes to TPRs in respect of a changes or changes to the Network where Network Rail has failed to propose Network Change.
- 6.3 The above two requests are suggested in order to avoid incentivising Network Rail not to complete the Network Change process or indeed not to propose Network Change at all.
- 6.4 Freightliner believes that it is desirable that a Network Change proposal should contain full details of the effect on TPRs and the capacity of the Network. However we leave it to the panel whether this should form part of a determination.

7 APPENDICES

The Claimant confirms that it has complied with Access Dispute Resolution Rule H21.

8 SIGNATURE

For and on behalf of Freightliner

Signed

Print Name

Jason Bird _____
Position

Track Access Manager _____

The Appendices

- Appendix A Network Change proposal
- Appendix B Freightliner's response to the Network Change
- Appendix C Network Rail's TPR change proposal
- Appendix D Freightliner's response to the TPR change proposal
- Appendix E Network Rail's TPR change decision
- Appendix F Freightliner's response to the TPR change decision