

**Submission to Timetabling Panel**


**TTP927**

**ATW**

**5<sup>th</sup> April 2016**

## **1 DETAILS OF PARTIES**

1.1 The name and address of the parties to the reference are as follows:-

- a) Arriva Trains Wales whose Registered Office is at St Mary's House, 47 Penarth Road, Cardiff, CF10 5DJ ("ATW") ("the Claimant") and
- b) Network Rail Infrastructure Limited whose Registered Office is at 1 Eversholt Street, London, NW1 2DN ("Network Rail") ("the Respondent").
- c) ATW's contact details are Chris Dellard, Engineering & Access Planning Manager, 

## **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 Conditions D3.4.16 and D5.1.1 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) 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 A dispute regarding a Restriction of Use published in the Confirmed Period Possession Plan for Weeks 21-24 of 2016. This dispute arises from Network Rail's decision to publish a possession

(PPS number 2106165) in Week 22 of 2016 between Codsall and Abbey Foregate Junction, 0001 Saturday 27<sup>th</sup> to 0500 Tuesday 30<sup>th</sup> August 2016. This possession affects ATW's Birmingham-Aberystwyth/Pwllheli services and Birmingham-Chester/North Wales services.

4.2 The Part or Condition that the dispute relates to is Condition D3.4 of the Network Code, Network Rail Variations with at least 12 Weeks' Notice.

4.3 An extract from ATW's Track Access Contract, detailing the rights held to operate services, is attached at **Appendix A**.

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

5.1 ATW disputes Network Rail's decision to publish the Restriction of Use in Week 22 of 2016. This is because ATW believes that Network Rail has not properly considered the impact of the Restriction of Use on ATW. The August Bank Holiday weekend is the worst weekend of the entire year to block the route between Birmingham and mid Wales, both for rail passengers accessing mid Wales and the Cambrian Coast, and for ATW's business in general.

### 5.2 Correspondence with Network Rail

5.2.1 The email correspondence is attached at **Appendix B**.

5.2.2 On 28th September 2015 Network Rail consulted ATW on a proposal to take a possession between Codsall and Abbey Foregate Jn for 3 consecutive days over the weekend of August Bank Holiday 2016. This would require ATW to replace trains with buses between Wolverhampton and Shrewsbury. The deadline for responses was 12th October 2015.

5.2.3 On 5<sup>th</sup> October 2015 ATW replied to Network Rail's request to state that the August Bank holiday weekend was not supported and asked what alternative dates had been considered.

- 5.2.4 On 13<sup>th</sup> January 2016 (by which time the original request from Network Rail had timed out) Network Rail responded to state that they still intended to secure the access in Week 22.
- 5.2.5 On 19<sup>th</sup> January 2016 ATW replied with further information to support its position that August Bank holiday weekend was not at all suitable and again stressed that other Bank Holiday weekends are preferable if a 3-day closure is required.
- 5.2.6 On 27<sup>th</sup> January Network Rail responded, reiterating that August Bank Holiday was Network Rail's preferred date and attaching two documents: a letter from Mark Pritchard MP to Network Rail, attaching a briefing note from the 'Ramp Team' (**Appendix C**) and a letter from Network Rail to Mark Pritchard MP in reply (**Appendix D**).
- 5.2.7 On 2<sup>nd</sup> February 2016 ATW replied to continue to object to this date.
- 5.2.8 On 17<sup>th</sup> February 2016 the Confirmed Period Possession Plan (CPPP) for Weeks 21-24 was published which included the Restriction of Use as originally proposed by Network Rail (extract at **Appendix E**).
- 5.2.9 On 19<sup>th</sup> February 2016 ATW referred Network Rail's decision to include the Restriction of Use in the CPPP to the Access Disputes Committee.

### 5.3 Impact on ATW's customers

5.3.1 An all-weekend closure of any route is particularly bad for customers as it is very difficult for people to avoid the closure if they must travel on that particular weekend. This problem is intensified on Bank Holiday weekends because many people will be travelling for pre-arranged holidays and will have very little flexibility in their travel plans. This is particularly the case on the Wolverhampton-Shrewsbury route which is affected by Network Rail's possession, because this route has a direct service between Birmingham and Aberystwyth/Pwllheli which allows easy access to the holiday areas of mid Wales and the Cambrian Coast. Our experience tells us that the impact of a 3-day closure over the August Bank Holiday weekend will be particularly acute for a number of reasons:

5.3.1.1 Tourism in mid Wales is very strongly seasonal, with few holidaymakers in the winter months and during term time, but with high volumes of holidaymakers in the summer months and the school holidays. August Bank Holiday weekend is the peak of the tourism calendar.

5.3.1.2 Replacement road transport would be required between Wolverhampton and Shrewsbury. This considerably worsens journey times between Birmingham centre and Machynlleth as well as introducing two interchanges between train and bus.

<b>Direct ATW train service</b>	2hr 18m
<b>Private car</b>	2hr 25m
<b>Train-bus-train</b>	3hr 30m

The direct train service is not particularly competitive with private car and the addition of a bus journey can easily tip the balance against rail, particularly for holidaymakers who are more likely to be travelling in groups and with luggage who will be less able to manage the additional two interchanges (Wolverhampton and Shrewsbury) that the bus journeys would require. Many passengers for mid Wales and the Cambrian Coast connect into ATW's services at Birmingham and Wolverhampton from further afield and so an additional 60+ minutes on an already long journey will have a negative effect on passenger numbers.

5.3.1.3 August Bank Holiday is an unusual time of year, when many people are making one-off journeys for their holidays. The impact of disrupting these customers is greatly exacerbated because they are infrequent travellers on these holiday routes and so one bad experience can make them much less likely to make the same journey by train next time. ATW provides a useful and well used rail route between Birmingham and mid Wales but it is not without strong competition from the car. Affecting such a sensitive market over the peak holiday weekend will drive people away from rail and suppress demand in future years.

#### 5.4 Impact on ATW's revenues

5.4.1 Any late notice possession is by its nature unexpected and so not accounted for in ATW's budgets. Revenue forecasts are carefully constructed taking into account engineering work among other factors, with business plans built around ways of attracting more passengers and supporting revenue growth during the year. Late notice possessions undermine all of this work.

5.4.2 Forecasting the actual revenue impact of any engineering work before it takes place is very difficult. For example, revenue is allocated to the day that the ticket is purchased and not to the day of travel. This means that the revenue for advance tickets for a particular day, which are made available from TW-12, cannot be isolated from other advance ticket revenue or on-the-day

travel. Understanding this allows us to take it into account in our forecasts.

5.4.3 On August Bank Holiday weekends, the Birmingham to Shrewsbury and Beyond Service Group (Service Codes 261, 334 and 335) together account for a sizeable proportion of ATW's daily revenues of around 18-19%. This figure is for ticket purchases on the day only, and does not reflect advance tickets which are more likely to be purchased on longer distance routes, as explained in section 5.4.2. This means that the figure is likely to be even higher than this.

5.4.4 Comparing the August Bank Holiday 2015 weekend with that of two weeks earlier (weekend of Saturday 15th August 2015) demonstrates that the Service Codes 261, 334 and 335 together show a 15% uplift in revenues. The table below demonstrates the weighting towards mid Wales routes over the August Bank Holiday weekend. This is despite an overall decrease in total ATW revenues across all Service Groups caused by a drop off in shorter-distance journeys (e.g. shopping, commuting).

Service codes	% change over August BH weekend compared to non-BH August weekend
261, 334, 335 (together forming Birmingham-Shrewsbury-Aberystwyth/Pwllheli)	15
All	-12

The imbalance of revenue earnings on this route across the year, with its strong weighting towards holiday periods and August Bank Holiday weekend in particular, makes it more important that as full a service as possible operates during the busier times.

5.4.5 Schedule 4 compensation is sometimes cited as a suitable mitigation against revenue loss. It does indeed help to reduce the financial impact on operators to a degree, but it should never be used as a justification for poor access planning decisions. It is not a satisfactory remedy in this case for the following reasons:

5.4.5.1 As discussed above, August Bank Holiday is an atypical time of year because many people are travelling for annual holidays. Schedule 4 compensation does not distinguish between high and low seasons or between peaks and troughs in passenger numbers and hence revenues. Therefore it will be more likely to under-compensate for revenue loss at key holiday times.

5.4.5.2 Schedule 4 compensation does not acknowledge the lag effect which will be much more pronounced if a holiday route is affected during a holiday period.

5.4.5.3 ATW's Schedule 4 compensation from Network Rail is subject to a 'no net gain no net loss' clause in its franchise agreement that maintains ATW's actual exposure to that which would have been applicable Control Period 2. This means that the actual proportion of Schedule 4 compensation that ATW retains for any Type 1 Restriction of Use is considerably less than that paid by Network Rail, with the rest being passed on to DfT. For example, ATW retains none of the Cost Compensation element of Schedule 4 (bus compensation). This is not directly Network Rail's concern, but it is the reality in which ATW must run its business and it ensures that all parts of the business are very finely tuned to understanding and seeking to reduce the impacts of engineering work.

5.5 ATW's work with Network Rail on access planning

5.5.1 Operating on a largely rural network with few diversionary routes, ATW is regularly affected by possessions which necessitate lengthy replacement bus journeys. Because its average fare is very low, and many routes serve sparsely populated areas, overall revenues and passenger numbers are relatively small compared to many other operators. This makes the business particularly sensitive to external events that can prevent a normal service from operating. Therefore ATW places much emphasis on the careful negotiation of engineering access to minimise the impact on our customers. Over the years ATW has worked with Network Rail access planners to help them to understand our business and to be able to make informed access planning decisions that take into account our requirements as far as possible.

5.5.2 ATW maintains a possession planning document, 'ATW Amended Timetable Planning Guidelines', that it has periodically provided to Network Rail to provide key information to help Network Rail to make informed planning decisions. Listed under 'Section 4.9 – Route-Specific Guidelines for Possession Planning' are specific notes on the Cambrian mainline and coast routes:

Cambrian Mainline (Shrewsbury-Machynlleth)	Traffic:	Seasonal/Commuter
	Acceptable times of year:	September-March (Winter)
	Avoid:	Easter, Bank Holidays, Half Terms, May-September (Summer)
	Acceptable days/times:	Sunday, extended midweek nights

	Acceptable times for 20h blocks	1900 Sat-1300 Sun
	Special notes:	No possessions should affect university term start/end dates
	Suitable Diversionary routes:	None
	<b>Overall preference</b>	<b>Midweek nights after 1900 (approx)</b>

Machynlleth-Aberystwyth	Traffic:	Seasonal/Commuter
	Acceptable times of year:	September-March (Winter)
	Avoid:	Easter, Bank Holidays, Half Terms, May-September (Summer)
	Acceptable days/times:	Extended midweek nights, Sunday
	Acceptable times for 20h blocks	1900 Sat-1300 Sun
	Special notes:	No possessions should affect university term start/end dates
	Suitable Diversionary routes:	None
	<b>Overall preference</b>	<b>1. Extended midweek nights 2. Winter Sundays</b>



Cambrian Coast	Traffic:	Seasonal
	Acceptable times of year:	September-March (Winter)
	Avoid:	Easter, Bank Holidays, May-September (Summer)
	Acceptable days/times:	Sunday, midweek blockade (Feb or Oct Half Term only)
	Acceptable times for 20h blocks	Sunday
	Special notes:	
	Suitable Diversionary routes:	None
	<b>Overall preference</b>	<b>Half Term blockades</b>

5.5.3 Network Rail's decision to rush through this road bridge job disregards this work and the good working arrangements that ATW and Network Rail have built up.

5.6 Reasons given by Network Rail for choosing August Bank Holiday weekend and ATW's counter arguments

5.6.1 Network Rail appears to have three reasons for imposing this access on Arriva Trains Wales in Week 22:

5.6.1.1 The local council have secured funding for a footpath works in the vicinity, which they want to undertake only after Network Rail's road bridge works are completed in order to avoid the possibility of damage to the footpath caused by Network Rail's contractors. £40k is allocated to this work and there apparently was a possibility that the funds might have been withdrawn by Shropshire Council if the planned footpath work was not committed to quickly.

5.6.1.2 Network Rail wrote to Mark Pritchard MP sometime after 9th December 2015 promising that the road bridge work would be carried out over the August Bank Holiday weekend.

5.6.1.3 Network Rail states that costs will increase if they do not carry out the road bridge works in 2016 and that they have run out of other bank holiday weekends, being too late to consider either of the May Bank Holiday weekends in 2016, and being unable to consider future Bank Holiday weekends due to the resource requirements of other as yet unconfirmed Restrictions of Use.

5.6.2 ATW does not see these arguments as valid reasons for taking the Restriction of Use over August Bank Holiday and does not believe that they should have any place in a robust and consistent planning framework. In particular:

5.6.2.1 Network Rail has put itself in an awkward position by committing to deliver works by a specified date before negotiating the necessary access. It is quite unacceptable to ATW that Network Rail should use this unfortunate mistake as a means to force through the possession.

5.6.2.2 Based on the information it has seen, ATW does not believe that there is a pressing requirement to undertake the road bridge works before the footpath is upgraded, as they are two separate worksites to be undertaken by separate contractors on behalf of separate clients. The only reasons for carrying out the road bridge works sooner rather than later (to avoid a new footpath from being damaged by Network Rail's contractors and to avoid the risk of the footpath funds being lost) do not appear to reasonably outweigh ATW's requirements to operate a normal train service over the August Bank Holiday weekend.

5.6.2.3 ATW was first made aware of the intention to reconstruct this bridge in 2011. Bridges do not fall down overnight: their maintenance, refurbishment and eventual replacement are planned over months and years. Network Rail has had numerous opportunities to undertake this work in the past 5 years and is now rushing to meet a self-imposed and arbitrary deadline. There is no suggestion from Network Rail that the August Bank Holiday date is at all necessary to ensure the safety of the structure for road or rail users.

5.6.2.4 ATW understands the concerns of local residents who want to ensure that the footpath is upgraded as quickly as possible, but this should not trump ATW's reasonable requirements to run its business. ATW is a low revenue-earning operator but this does not in any way diminish the importance of revenues and passenger growth to the business. Because revenues are low ATW is in a poorer position to manage shocks, in particular late notice Restrictions of Use which are by their nature unbudgeted. ATW is unable to absorb additional costs easily and the strength of its revenues directly influences the investment that ATW can make in the business such as improvements to stations and to customer service.

## 5.7 ATW's consideration of the Decision Criteria

Network Rail has not indicated whether, and if so how, it applied the Decision Criteria before confirming the possession. ATW believes that an objective interpretation of the Criteria supports ATW's arguments in this submission. ATW's consideration of the Decision Criteria is attached (**Appendix F**).

## 5.8 Conclusion

In conclusion, it appears to ATW that its own contractual rights to run trains between Birmingham and the Cambrian, and the negative impacts on our business of blocking this route over the August Bank Holiday weekend, seem to have been disregarded by Network Rail while it forged ahead with planning the road bridge works and making commitments to the local MP and to the council. The potential loss of the £40k funding to lay a new footpath is acknowledged as only a possibility, while the inevitable adverse impact on passengers and the subsequent loss of revenues and damage to ATW's business are very real.

## **6 DECISION SOUGHT FROM THE PANEL**

6.1 The Panel is asked to determine:

6.1.1 That Network Rail's grounds for dating the Restriction of Use at August Bank Holiday are unreasonable and that a proper application of the Decision Criteria supports the dating of the proposed Restriction of Use at a time other than an August Bank Holiday Weekend; and

6.1.2 That Network Rail should withdraw the Restriction of Use and submit a new access request to operators for a date that does not fall on the August Bank Holiday weekend of any year.

## 7 APPENDICES

ATW confirms that it has complied with Access Dispute Resolution Rule H21. All appendices are bound into the submission, and consecutively page numbered. To assist the Panel, quotations or references that are cited in the formal submission are highlighted (or side-lined) so that the context of the quotation or reference is apparent.

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.

## 8 SIGNATURE

For and on behalf of Arriva Trains Wales Limited  
Signed

Chris Millar

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Name: Chris Millar

Position: Head of Train Planning

THE APPENDICES

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