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## **ACCESS DISPUTES COMMITTEE**

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**To:** Direct Rail Services Ltd ("DRS")  
Network Rail Infrastructure Ltd ("Network Rail")

**From:** Hearing Chair  
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**Ref:** ADC/TTP930  
**Date:** 16 March 2016

Dear Sirs

### **Directions relating to Timetabling Dispute TTP930**

I have read the Sole Reference documentation served by DRS. Towards clarifying matters for the Panel and to enable Network Rail to address matters sufficiently in its Statement, I have decided that it is appropriate to issue the Directions set out below.

1. DRS has not provided relevant extracts from the Engineering Access Statement to indicate the dates, times and geographical limits of possessions which are of concern. The Notice of Dispute served by DRS on 24 February 2016 indicated that the dispute arises out of Network Rail's decisions in Version 2 of the Engineering Access Statement for 2017 and this Timetabling Panel hearing must accordingly restrict itself to that decision document. **I require DRS to provide the Secretary with all relevant extracts from Version 2 of the Engineering Access Statement for 2017.**
2. The inference (gained largely from the Notice of Dispute) is that the possessions under notice form part of long term electrification works associated with the EGIP (Edinburgh Glasgow Improvement Programme) project. **Will DRS please say** whether the possessions now under notice formed part of a Possessions Strategy Proposal served and consulted by Network Rail in accordance with Network Code Condition D6 and, if not, whether DRS considers that Condition D6 should have been followed.
3. DRS has not given the Panel sight of correspondence or minutes of meetings to demonstrate what train service arrangements have been explored with Network Rail and what compromises might be possible. For example, could the traffics be run as separate trains at times to better suit the individual customers? Does DRS have a view regarding the feasibility of train 4N83 being able to be passed through the possession and/or travelling via the Forth Bridge when the route via Stirling is not available? What discussion has taken place - and with whom - regarding possible retiming of 4S49 (which I understand is operated by DB Cargo departing Daventry at 21 59 and due at Grangemouth at 06 26)? **Will DRS please provide appropriate documentation and comment.**

Continued....

4. Whilst it is not appropriate for the Panel to make close examination of an operator's contractual arrangements with its customer, **will DRS please provide** an indication as to whether it would face contractual penalties if its customers were to be informed soon (e.g. by the end of April 2016) of definite inability to operate train 4N83 on the dates concerned in 2017.
5. Is it to be understood that in the event that if the possession arrangements are allowed to stand unchanged, then DRS is asking the Panel to order that Network Rail is to pay compensation to DRS? If so, **will DRS please say** on what basis it believes that the Panel may make such an order
6. Sight of the letter of support for DRS from Messrs Stobart is still awaited. **DRS is to provide this urgently** or I will not allow it to be taken into account by the Panel.
7. The response from DRS to these Directions is to be provided by e-mail **by 12 00 on Friday 18 March 2016**, addressed to [redacted]

Yours faithfully

Clive Fletcher-Wood  
Hearing Chair

## Email sent on 21 March 2016

The Hearing Chair has decided to issue the following further Directions:-

"I am grateful to DRS for its submission dated 180316, while regretting the fact that a number of the questions posed in the Directions dated 160316 have not been answered as fully as I had hoped. Given the time remaining for NR to prepare its Defence, I see no point in requesting further information from DRS at this stage.

Having seen the extracts from Version 2 of the Scotland Route Engineering Access Statement 2017 provided by DRS, I recognise that the possessions referred to fall just short of the period which might lead NR to produce a Possessions Strategy Notice.

I also note that the cumulative effect of possessions all timed to run from 2130 – 0530, in a series of limited locations, will prevent DRS from running 4N83 in its current path for very nearly a year.

### **I direct NR to cover the following points in its Defence:**

Whether the effect on DRS's Firm Rights of its proposed possessions suggests that these amount to a Short Term Network Change, which should have been processed as a Network Change Proposal.

Is it currently anticipated that possessions planned to take place after 091217 will continue to prevent DRS from running 4N83 in its current path?

The extracts from the EAS provided by DRS do not state whether Grangemouth Junction is inclusive or exclusive to those possessions in which it is included. Please clarify the position in each case.

To advise the Panel of discussions which have taken place with DRS to enable 4N83 to operate, either by restricting possession times (which appear to have adopted a 'blanket' standard timing), or by examining the feasibility of passing this one train through the relevant possessions. NR is also to comment on the feasibility of such movements.

Please explain what is to be achieved by the planned possessions between Grangemouth Junction and Grangemouth Tongues AOCL? What is to prevent these possessions starting and finishing at a later time?

On the assumption that a Timetabling Panel is not empowered to order a Party to pay compensation to another Party (a point not addressed by DRS), is NR willing to compensate DRS for any losses which it suffers if it proves impossible to operate 4N83 during any or all of the planned period?

Alternatively, would NR compensate DRS for the additional costs of splitting the service into two parts to serve DRS's different customers, using the alternative paths offered by NR (each of which satisfies only one of DRS's customers)?

### **I direct DRS to be prepared to deal with the following issues at the hearing:**

Whether it would be feasible to run the current services as two trains if NR were prepared to compensate DRS for the additional costs incurred?

To explain the operational problems likely to arise if passing 4N83 through any possession.

To explain the contractual issues more fully, including what break clauses exist in DRS's contracts with ASDA, Stobart and any other relevant customers, as DRS's answer dated 160316 implies that there are no such break clauses."

Tony Skilton  
Secretary  
Access Disputes Committee