

## **Sole Reference**

**Abellio Greater Anglia – Statement of Claim**

**December 2016 – Timetabling Dispute TTP985**

## **1 DETAILS OF PARTIES**

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

- (a) Abellio Greater Anglia Ltd (Company number 06428369) whose Registered Office is at 1 Ely Place, London, EC1N 6RY ("AGA") ("the Claimant"); and
- (b) Network Rail Infrastructure Limited (Company number 2904587) whose Registered Office is at 1 Eversholt Street, London NW1 2DN ("Network Rail") ("the Defendant").
- (c) MTR Corporation (Crossrail) Ltd (Company Number 08754715) whose Registered Office is at Providence House, Providence Place, Islington, London N1 0NT ("MTR") ("Dispute Party")

## **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 D4.6 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 allocation of platform capacity at London Liverpool Street station for a standby train.

4.2 This dispute arises over the interpretation of Condition D4.6 of the Network Code (See Appendix H).

- 4.3 AGA and its predecessors have for many years stabled an 8 car Class 321 set in Platform 18 at London Liverpool Street station on Mondays to Fridays during off peak times. Between the hours of 10.01 and 16.24 this set has been available for use by AGA Control as a standby train. If during the course of the day a fault develops with another train at Liverpool Street, the driver will quickly swap to Platform 18 and bring the standby train into service therefore avoiding a potential cancellation. A class 321 EMU is specifically employed as it is able to substitute for a wide range of services.
- 4.4 1F31 09.00 SX Braintree to Liverpool Street arrives 10.01 in Platform 18. This is formed of an 8 car Class 321 set which stables and becomes an unmanned standby train before forming 1K68 16.24 SX Liverpool Street to Southend Victoria later in the day (See Appendix C).
- 4.5 The AGA D40 Priority Date Notification Submission for the December 2016 WTT, submitted to Network Rail on 4<sup>th</sup> March 2016, once again contained this arrangement for 1F31 to form 1K68 and become a standby train between 10.01 and 16.24 in Platform 18.
- 4.6 For the December 2016 WTT, MTR also submitted a bid for a standby train of its own to stable in Liverpool Street platform 18 during the off peak period on weekdays (2W45 08.52 SX Shenfield to Liverpool Street which arrives at 09.32 in Platform 18). It is proposed this will be formed of an 8 car class 315 set which will stable and become a manned standby train before forming 2C00 16.28 SX Liverpool Street to Gidea Park. We understand this provision will only be required for around 2 years until Crossrail moves to its own new station at Liverpool Street.
- 4.7 Therefore AGA and MTR both bid for a standby train in Platform 18 at the same time from December 2016, obliging Network Rail to make a decision using “The Decision Criteria” (Condition D4.6 of the Network Code). Network Rail found in favour of MTR on the basis that MTR’s standby train will be crewed whilst AGA’s standby train is unmanned. Network Rail has justified its decision by placing a high weighting on Condition D4.6.2 (c) “maintaining and improving train service performance”. However it has disregarded the use of criterion (j) “enabling operators of trains to utilise their assets efficiently” and AGA disputes that Network Rail has adequately demonstrated a significant performance benefit to MTR Crossrail.

- 4.8 In the December 2016 WTT (issued on 10<sup>th</sup> June 2016) Network Rail offered platform 18 to MTR Crossrail for its proposed new standby train and instead offered AGA additional ECS paths to/from Southend Victoria CS as an alternative stabling location for its standby unit.
- 4.9 The paths (See Appendix B) in question offered to AGA are:
- 1F31 09.00 SX Braintree to Liverpool Street (10.03)
- 5F37 10†10 SX Liverpool Street to Southend Vic CS (Arrive 11†18) – Additional ECS.
- 5K68 15†06 SX Southend Vic CS to Liverpool Street (Arrive 16†09) – Additional ECS.
- 1K68 16.24 SX Liverpool Street to Southend Victoria (Arrive 17.23)
- 4.10 AGA disputes the outcome and Network Rail's application of the Decision Criteria (see Appendix A) because, in reaching its decision to allow MTR to operate a new standby train from platform 18, Network Rail's application of the Decision Criteria does not demonstrate it has considered the full range of implications to our train service provision or customer impact by removing AGA's standby unit against any marginal improvement in MTR's performance. Network Rail's assessment has also not provided adequate justification for introducing a new MTR standby unit in favour of AGA's previous arrangement. The Decision Criteria document we have received from Network Rail does not appear to take cognisance of the fact that no longer having a standby unit available for AGA use will result in an increase in train delays and cancellations for our customers from Liverpool Street and beyond, and that the alternative paths offered will have a significant cost impact on our business in terms of unit mileage, additional train crew costs and revenue losses.

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

### **Performance issues**

- 5.1 From December 2016 AGA will no longer have a suitable standby train based at Liverpool Street on weekdays during the off peak period to cover for unplanned disruptive events on Great Eastern Main Line services. We are of the view that this will lead to an increase in delays and cancellations affecting our customers and has considerable cost implications.

5.2 AGA Control made use of its standby unit 28 times between 1<sup>st</sup> January 2015 and 30<sup>th</sup> April 2015 and 45 times between 1<sup>st</sup> May 2015 and 8<sup>th</sup> June 2016. The main reason for use is to swap with another unit which might have developed a defect in service and therefore avoid a cancellation. It is also used to help 'step up' services at Liverpool Street assisting to maintain right time departures in times of disruption.

5.3 Network Rail's opinion is that there will be a larger PPM benefit if the MTR unit is stabled in platform 18. However MTR's PPM is currently better than AGA's and improving all the time without the use of a standby unit at this location, so AGA believes that the biggest benefit to PPM will be gained from AGA's continued use of its standby unit. For information current PPM figures are:

AGA 2016/17: Period 1 – 90.2% PPM, 89.1% PPM MAA, Period 2 – 92.5% PPM, 89.3% PPM MAA, Period 3 – 89.2% PPM, 89.3% PPM MAA.

MTR 2016/17: Period 1 – 95.3% PPM, 94.3% PPM MAA, Period 2 – 96.9% PPM, 95.0% PPM MAA, Period 3 – 88.7% PPM, 94.6% PPM MAA.

5.4 AGA does not consider the paths and consequential alterations offered by Network Rail to be reliable or robust (See Appendix B). 1F31 09.00 SX Braintree to Liverpool Street has been slowed down by a total of 2 minutes. Dwell time at Stratford has increased from ½ to 1½ minutes as well as (1) pathing time approaching Bethnal Green 10/00. This has been inserted to avoid a conflict with 1K28 09.55 SX Liverpool Street to Southend Victoria crossing from Down Electric Line to Down Main Line at Bethnal Green East Jn just in front at 09/58. This will worsen the overall journey time for customers on board 1F31, with resulting negative impact on revenue. Using MOIRA we have calculated this revenue impact to be £15,412.80 per annum and there is also a consequential negative reallocation of revenue under ORCATS of approximately £6k per annum due to the schedule alterations at Stratford. 1F31 is scheduled to arrive Liverpool Street platform 13 at 10.03 with a minimum turnround time of 7 minutes before forming 5F37 10+10 SX Liverpool Street to Southend Victoria CS. 1F33 08.58 SX Colchester Town to Liverpool Street is then scheduled to arrive Liverpool Street platform 13 at 10.10. If 1F31+5F37 are late it will immediately impact on 1F33 and other arrivals at Liverpool Street.

- 5.5 The path for 5F37 (See Appendix B) is slow and fragile because it involves a number of crossing movements from one running line to another (5F37 should be a 5K Train ID but has wrongly been offered as a 5F Train ID).

#### **Customer Service issues**

- 5.6 AGA's 321 standby train is cleared to operate to a wider range of destinations than a 315, including Southend Victoria, Braintree, Colchester Town, Clacton-on-Sea, Ipswich and even Norwich therefore making a material improvement to more AGA customers' journeys (who generally travel greater distances than MTR's customers and have no viable alternative transport for their journeys available). MTR's 315 standby train can only operate as far as Shenfield and is not suitable for covering AGA services as is suggested by Network Rail in its Decision Criteria Document.
- 5.7 AGA's services are not as frequent as MTR's. If an AGA train is cancelled customers may have to wait up to 60 minutes for the next available service. If a MTR service is cancelled, customers only have to wait up to 10 minutes for the next Shenfield service. Without this standby unit it is AGA customers who travel the longest distance and therefore suffer the greatest inconvenience.

AGA's current off peak service frequencies are: Southend Victoria = Every 20 minutes. Braintree, Colchester Town, Ipswich (Slow) and Clacton-on-Sea = Every 60 minutes. Norwich = Every 30 minutes.

- 5.8 Based on Spring 2016 internal passenger counts, AGA's normal off peak loadings are:
- Liverpool Street to Southend Vic – loadings range from 36 to 474 (160 average).  
Liverpool Street to Braintree – loadings range from 29 to 255 passengers (110 average).  
Liverpool Street to Colchester Tn – loadings range from 67 to 424 passengers (170 average).  
Liverpool Street to Clacton – loadings range from 78 to 290 passengers (157 average).  
Liverpool Street to Ipswich – loadings range from 59 to 270 passengers (111 average).  
Liverpool Street to Norwich – loadings range from 88 to 333 passengers (164 average)

## **Operational issues**

- 5.9 There will be significant additional costs to AGA's business incurred from the increased unit mileage and additional train crew required to run additional ECS paths to and from Southend Victoria CS. These are anticipated to be as follows.
- 5.10 A 4-car Class 321 unit currently costs £1.23 per unit mile to operate (inclusive of EC4T, EAC & VTAC). The distance between Liverpool Street and Southend Victoria is 41.53 miles (equals 166.12 miles total additional daily unit mileage per 8-car Class 321). Therefore  $£1.23 \times 166.12 = \underline{£204.33}$  cost per day which equates to £53,125.18 additional cost per annum.
- 5.11 AGA has no spare driver available to work additional Southend ECS trips (see Appendix D). 1F31 is currently worked by diagram CC 5 (Clacton Driver) who requires a PNB at Liverpool Street before working 1N20 11.18 SX Liverpool Street to Clacton-on-Sea. 1K68 is worked by diagram SV 26 (Southend Driver) and is booked to work 1F47 15.00 SX Braintree to Liverpool Street from Shenfield arriving Liverpool Street 16.01. Neither CC 5 nor SV 26 has any spare time in the diagram. Therefore in order to crew these additional ECS workings to/from Southend it will be necessary for AGA to have an unproductive additional Ilford driver rostered each day just to work 5F37+5K68. This diagram will sign on at 09.08 and sign off at 16.50 (7 hours 42 minutes each day). It is anticipated that AGA would need to hire two additional drivers to achieve this at a total cost of £118,000 per annum.

## **Application of Decision Criteria**

- 5.12 AGA believes it has identified some significant errors and omissions in Network Rail's "Decision Criteria Liverpool St Platform 18 Dec 16 AGA" document (see Appendix A):

Page 2 c) Evidence – the document states "MTR's average turnaround at Shenfield SX is approx 10 minutes and at Liverpool St is usually between 5 & 9 minutes". This statement is factually incorrect and should read "11 minutes at Shenfield and 13 minutes at Liverpool St". It would appear to AGA therefore that MTR's turnaround times are actually greater than those which Network Rail has based its assessment on.

Page 2 j) Evidence – Network Rail does not appear to have taken into account D4.6.2 (j) "enabling operators of trains to utilise their assets efficiently" when coming to its

decision. AGA believes that because it would incur substantial additional unit mileage each day, a requirement for additional train crew just to work ECS services and additional paths each day, does not represent an efficient use of assets. AGA believes Network Rail should have taken these issues into account in its application of the Decision Criteria.

- 5.13 Network Rail's opinion is that MTR's operation of a standby unit based in platform 18 will see a big reduction in its Schedule 8 costs. However it does not appear to take into account a corresponding impact in its Schedule 8 costs in respect of AGA. In addition AGA believes that the alternative paths offered by Network Rail to/from Southend Victoria will also incur additional Schedule 8 costs (due to additional services in traffic between London and Southend and additional AGA cancellations due to the lack of a standby available) and that these additional costs will at least offset any reduction in Schedule 8 payments to MTR.

#### **Other issues**

- 5.14 AGA does not have rights under its Track Access Contract to stable at platform 18 for this unit however AGA has made continuous use of platform 18 for this unit over many years even prior to the commencement of its current Track Access Contract in 2004. (Presumably special stabling rights were not sought in respect of this train because the incumbent franchisee was the sole passenger operator on the route at the time.)
- 5.15 There are no alternative stabling locations in the London area to accommodate an additional 8 car class 321. Orient Way CS and Ilford EMUD are full to capacity, Aldersbrook CS is difficult to access and AGA has no depot access agreement in place to use Gidea Park CS. Southend Victoria CS is the nearest available stabling location for AGA to use but it is 41.53 miles in distance from Liverpool Street which equates to a journey time of between 45 and 60 minutes (depending on path). MTR is however able to stable its proposed standby train at Gidea Park CS which is only 14.04 miles in distance from Liverpool Street. MTR therefore possesses a suitable stabling location close to Liverpool Street whereas AGA has no such viable alternative.
- 5.16 Prior to May 2016, AGA also used to stable additionally an 8 car 321 set in Ilford platform 5 (Back Platform) during the off peak period. Platform 5 was decommissioned in May 2016 in order to accommodate Ilford platform lengthening for the Crossrail



project. At the time of the relevant Network Change consultation in 2014, AGA did not raise any objections to the removal of Ilford platform 5, content with our ongoing ability to stable in Liverpool Street platform 18 plus the capacity to put two units into Ilford EMUD would be sufficient to carry on operating its service as reliably in future. However AGA would have categorically objected to the removal of platform 5 at Ilford at the consultation stage had we been aware we were shortly to lose the ability to stable at Liverpool Street platform 18.

#### 5.17 AGA Calendar of events:

04/03/16 – AGA submitted December 2016 WTT PDNS to Network Rail which included the usual Platform 18 standby train arrangement.

09/03/16 – AGA pre-warned Network Rail at a face to face Lead TOC meeting that they believed MTR had bid for a Platform 18 standby train of their own which would be in direct conflict with AGA and therefore Decision Criteria would need to be applied.

04/05/16 – Christopher Giles (Network Rail) emailed Shane Young (AGA) requesting information on how AGA utilise the spare unit during times of disruption and how useful it has been. Shane Young forwarded email to AGA Control for response and comments.

19/05/16 – Hazel Chalk (Network Rail) emailed Shane Young (AGA) asking five questions about the AGA standby unit (See Appendix E). Shane Young immediately responded to four of Hazel Chalk's questions and forwarded the fifth question "How often has it been used previously?" to AGA Control for response and comments.

20/05/16 – AGA Control responded to say the standby had been used 28 times between 1<sup>st</sup> January and 30<sup>th</sup> April 2015 (See Appendix F).

23/05/15 – Shane Young (AGA) forwarded AGA Control's response to Hazel Chalk (Network Rail). (See Appendix F).

02/06/16 – Hazel Chalk (Network Rail) emailed Rachel Paget (AGA) asking a further question about what conditions the spare would be used to recover train service performance (See Appendix G). Rachel Paget (AGA) forwarded Hazel Chalk's email to AGA Control for response and comments. AGA Control advised they would not be able

to provide information before 06/06/16 due to annual leave. Rachel Paget advised Hazel Chalk of this slight delay.

06/06/16 – Hazel Chalk (Network Rail) phoned Charlotte Bindley (AGA) to inform her that through Decision Criteria, Network Rail had found in favour of MTR rather than AGA. This decision was made by Network Rail before AGA had an opportunity to submit the further information requested on 02/06/16.

10/06/16 – Network Rail published new Working Timetable for December 2016 which includes MTR standby train and additional AGA ECS paths to/from Southend Victoria.

### **Summary**

- 5.18 AGA believes that Network Rail's decision to offer platform 18 at Liverpool Street is based on a review of the Decision Criteria which is incomplete and does not take account of the full impacts of the decision on AGA's business.
- 5.19 To remove the standby unit from AGA's operation has far wider implications than Network Rail has accounted for in its assessment. These include substantial cost impacts on the business, far wider performance impacts than appear to have been considered and a worsenment in customer experience, with potential knock on effects to our NPS scores. However continuing to offer AGA the use of platform 18 would have no cost impact on MTR Crossrail, would not cause worsenment of its PPM which continues to improve and there would be no change to MTR passengers' experience.

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

- 6.1 AGA is seeking the panel to determine that Network Rail has not applied the Decision Criteria correctly, its assessment of the two bids received from MTR and AGA is inadequate and does not take into account AGA's business critical concerns (particularly in respect of detrimental customer impacts, performance and operational impacts and the imposition of unnecessary significant additional costs to AGA). Therefore AGA also asks the panel to direct Network Rail to withdraw its offer to MTR in respect of capacity at platform 18 Liverpool Street for a standby train and reinstate the offer of capacity at platform 18 Liverpool Street to AGA for its standby unit.

## APPENDICES

Appendix A – Decision Criteria Liverpool St Platform 18 Dec 16 AGA

Appendix B – Extract of Train Schedules

Appendix C – Extract of Unit Diagram

Appendix D – Extract of Traincrew Diagrams

Appendix E – 190516 Emails

Appendix F – 230516 Emails

Appendix G – 020616 Emails

Appendix H – D4.6 Network Code Extract

## 7 SIGNATURE

For and on behalf of Abellio Greater Anglia Limited

Signed



Print Name

SHANE YOUNG

Position

TIMETABLE DEVELOPMENT MANAGER