

1 DETAILS OF PARTY

1.1 The names and addresses of the party to the separate reference is as follows:-

(a) (Virgin) West Coast Trains Ltd. whose Registered Office is at 120 Campden Hill Road, London W8 7AR "[WCTL]" ("the Claimant"); and

(b) Correspondence address – Virgin Trains Commercial Department, Room 15, North Wing Offices, Euston Station, London NW1 2HS "[WCTL]".

2 THE PARTIES' RIGHT TO BRING THIS REFERENCE

2.1 This matter is referred to a Timetabling Panel ("the Panel") for determination in accordance with Condition 3.5.4 of the National Rules of the Plan and D2.1.11 & D5.1 of the Network Code (England & Wales).

3 CONTENTS OF REFERENCE

The Parties have together produced this joint reference and it includes:-

- (a) The subject matter of the dispute in Section 4;
- (b) A summary of the issues in dispute in Section 5;
- (c) A detailed explanation of the issues in dispute prepared by the claimant with a paragraph by paragraph response from the respondent(s) in Section 6;
- (d) Any further issues raised by the respondent in Section 7;
- (e) The decisions of principle sought from the Panel in respect of legal entitlement and remedies in Section 8
- (f) Appendices and other supporting material.

4 SUBJECT MATTER OF DISPUTE

- 4.1 The imposing by Network Rail of an additional 26 hour possession {*extension*} at Rugby (All lines) at the end of an originally planned Christmas Blockade in December 2007. Note: this dispute does not cover any aspect associated with the further over-run that occurred on New Years Day through to the 4th January 2008.
- 4.2 Those Parts or Conditions that the dispute relates to and are associated with are D2.10, D2.1.11, D5.1 (and D6) and Sections 3.1, 3.4 & 3.5 of the National Rules of the Plan 2008 [nROTP].
- 4.3 **For the avoidance of doubt this dispute unquestionably relates to only one of Principle and Precedent regarding NR's application of the Network Code. It does not relate to any matters of compensation that maybe payable as a consequence of the Restriction of Use, resultant from the consequential disruption caused on this day.**
- 4.4 Appendices A to F are attached and referenced against Section 6 below.

5 SUMMARY OF DISPUTE

- 5.1 Through the 2007-08 West Coast Route Modernisation [WCRM] Possession Strategy Notice [PSN] process and subsequent Rules of the Route [ROTR] procedures, WCTL originally agreed to the implementation of a 7 day Rugby Blockade (from 2330hrs 24/12/07 to 0330hrs 31/12/07). The disruption to WCTL services was such that, from the 27/12/07 to 30/12/07, all trains started / terminated at Birmingham International with a variety of onward southbound options {v.v.} dependant on other engineering works south of Milton Keynes.
- 5.2 **Although a full explanation is detailed in the timeline of events encompassed below in section 6, put straightforwardly, WCTL received from NR, an initial proposal 9 weeks past the Informed Traveller deadline. This proposal to extend the Rugby Blockade (by 26 hours to 0520 on 01/01/08), thereby increased the disruption effect to WCTL services through**

Part 5.3 Cont....

to close of play on New Year's Eve evening, rather than the end of service, originally planned to take place on the 30/12/07.

5.3 This whole episode, from receiving the original proposal through to the last working day (28/12/07), upon which we received the *Final Proposal*, NR's methodology and application of the Network Code is considered by WCTL, to not only be confusing, but in direct breach of those conditions laid down by the Industry through the Network Code.

5.4 In summary, notwithstanding WCTL's inability to have its dispute heard by the ADRC in conjunction with this matter, (i.e. after the 28/12/07), simply because of the very fact that the possession was due to take place only 3 days there-after, NR imposed the possession without:

- a) Due regard to the Network Code [D2.1, D5.1 {& D6} and Section 3 of the nROTP apply]; and
- b) Imposing and implementing a possession before WCTL had had the opportunity to formally invoke the dispute process and consequently be represented, heard & determined through the ADRC dispute process.

6 EXPLANATION OF EACH ISSUE IN DISPUTE WITH RESPONSE

6.1. In view of the timescales within which to compile this response and the complexities surrounding those events leading up to the matter in dispute, it seems (having taken cognisance of the retrospective nature of the dispute) sensible to present a "*Timeline*" of those events as experienced by WCTL, accompanied as appropriate, with information pertaining to where WCTL consider the Network Code has been breached; (also with applicable appendices where deemed necessary).

6.2 In view of those timescales involved and with confusion over the formulation of the Joint Response within Network Rail, it has been ultimately necessary to provide a WCTL only paper, using an abridged version of the ADRC template.

6.3. Timeline of Events (items in **BOLD** relate specifically to the Dispute)

6th December 2007 (Thu) :

Having agreed to the original planned blockade through the formal 2007-08 PSN and ROTR / CPPP processes, the first intimation of any additional 24-26 hour requirement at Rugby over the Christmas/New Year period (24th or 31st December) was an *informal verbal request* from NR that afternoon.

(Such approach actually followed a WCPB meeting to which ORR, DfT, NR & TOC's attended, and where NR categorically confirmed all was going to plan with the Rugby Project). WCTL understandably rebuffed this request.

7th December 2007 (Fri) :

We received *informal verbal advice* (from the WCRM project team) clarifying that NR had found a method of working that no longer required any additional 24-26 hour requirement at Rugby.

10th December 2007 (Mon):

Following an e-mail sent to Network Rail [See Appendix A] highlighting our concerns about a possible over-run, we received *informal verbal advice* (from the WCRM project team) that NR did indeed now require an additional 24-26 hour possession on the 31st December 2007. WCTL took away such advice to investigate the feasibility (bearing in mind Informed Traveller timescales would now be severely breached) with a view to discussing it further at the monthly 1:1 NR meeting the following day.

11th December 2007 (Tue):

WCTL informed NR at the 1:1 meeting, that we would accept the additional extended possession proposal, subject to NR agreeing to proposals for managing the closure. WCTL set a deadline of 0900 on Wed 12th December (which was the latest time that could be accepted in terms of re-planning/diagramming & re-marketing a whole day's services in such short timescales). In good faith WCTL started the re-planning process, although there were no guarantees that this could be completed in the timescales.

12th December 2007 (Wed) – Part 1:

WCTL were informed by NR that they would not accept the management proposals set by WCTL the day before. A new deadline was set (1200) to enable further Executive Level discussions to take place, whilst the re-planning process continued. No agreement was subsequently reached between parties, and although re-planning was suspended, contingency planning in the eventuality of such 'over-run' was started.

12th December 2007 (Wed) – Part 2:

In parallel with such discussions, that same morning a *proposal* was received [under the direction of Network Code Condition D2.1.10 and Section 3.1 of the nROTP], from NR's National Access Unit (NAU) [See Appendix B] detailing the requirement for an additional 26 hour possession with accompanying reasons for the late requirement. NR specifically stated that they required the consultation period to be reduced to 2 Working Days (Fri 14th December); when the nROTP Part 3.4.2 (v.v. Network Code – D2.1.10) quite clearly stipulates a 10 Working Day response period. WCTL immediately responded rejecting the proposal [also see Appendix B] based on the disruption likely to be caused to its business, inability to re-plan in the timescales and in particular, not being able to inform those 4000+ booked (reserved) passengers (at that time) that they no longer had through journey capability.

13th December 2007 (Thu):

WCTL sent e-mail to the ADRC Secretary outlining their concerns with the process being adopted by NR in view of their breach of D2.1.10. and its perceived view of the best way forward in lieu of an anticipated final decision from NR on Friday 14th December, [See Appendix C]. Another TOC in parallel informs NR of their need to re-propose the possession request on the basis of the required (*initial*) consultation period being 10 days [nROTP Part 3.4.2].

14th December 2007 (Fri) Part 1:

The anticipated *re-proposal* (amending the 2 working day response period to 10 working days) is received from the NAU but in the format of an *Informal Decision* notification letter [See Appendix D].

Although this *Informal Decision* notification letter, (which immediately followed the expiry of the 2 vice 10 working day consultation period), quoted an extension for another 10 working days, it was in fact deemed by WCTL (due in part, to its statement of intent regarding taking the possession and in view of the stipulated deadline being the last working day before the possession itself) as NR's final notification letter. It was therefore WCTL intention to formally dispute this '*Decision*' to the ADRC, prior to receiving the formal notification letter due on or after the 28/12/07.

So, taking WCTL's understanding of the events, TOC's were actually given 10 working days (under D2.1.11b) to refer their disputes to the ADRC, but only 2 days (under D2.10 / nROTP 3.4.1&2) to consider the effect to their business and operations. Furthermore, irrespective of the content above, following receipt of their final notification on the 28/12/07, WCTL would still not have been given opportunity, prior to the implementation of the additional possession, to appeal within the permitted five working days, as contained under D2.1.11b.

As previously indicated, NR had already made their decision to formally extend the possession (under nROTP Part 3.5.3), irrespective of the fact that TOC's would not be given the full opportunity within which to formally dispute, hold a hearing and have determination(s) set pertaining to the appropriate issue(s). Furthermore part of NR's decision was primarily based upon their own judgement of the longer term impact to WCTL customers – a decision made with no input from WCTL – See Appendix E under the WCTL Managing Director's comments to NR as examples of the concerns being expressed by WCTL at that time.

14th December 2007 (Fri) Part 1 Cont:

In detail to that already outlined above, this proposal/decision therefore breached the Network Code in four distinct areas:

- i) Disregard of Condition D2.1.10 (*Part 3.4.1&2 of the nROTP*) in terms of timescales and procedures for consultation – the condition stipulates 10 working days from receipt of an initial proposal primarily to allow the TOC's to establish the effect on their business and operations ~ the original 2 days was not contractually sufficient;
- ii) Disregard (at that time) to Condition D2.1.11a (*Part 3.5.2 of the nROTP*) in terms of knowingly imposing a possession without balanced regard to our response; which effectively highlighted the fundamental affect to WCTL's business, operations and passengers; (Section 7 also refers)
- iii) Disregard of Condition D2.1.10 / D2.1.11b / D5.1.1d in terms of knowingly implementing a possession despite such actions not being permitted until a hearing and determination had been undertaken and determinations set.
- v) In conjunction with the above four issues, there was a further disregard by NR, to the ORR's determination, set in February 2007, following an appeal under TTP102 by EWS & Freightliner, which resulted in NR being prohibited *{forthwith}* to impose possession(s) without due consultation, regard and agreement with TOC's.

14th December 2007 (Fri) Part 2:

WCTL Executive Board informs Network Rail of its intention to refer the whole matter to the ORR. WCTL informally notifies the ORR requesting an investigation into those events leading up to the anticipated decision by Network Rail to impose the possession; one of which contained reference to the disregard of a TOC's ability, prior to the extended possession taking place, to make appropriate representations to the ADRC through the correct Network Code process(es).

17th December 2007 (Mon):

The ORR is met by the WCTL Executive (following an unsuccessful Executive meeting between NR and WCTL) with a view to suspending the additional closure as a direct result of NR's perceived breach of Licence and Network Code.

18th December 2007 (Tue):

WCTL: The ORR writes to Network Rail requesting reasons for the additional possession requirement and to WCTL for additional information.

19th December 2007 (Wed):

WCTL: NR responds to the ORR, and following receipt of the additional information from WCTL, ORR rules that the additional possession for the long term good of the Industry needs to go ahead. WCTL therefore initiate contingency planning procedures by, suspending reservations (for the third time), formalising emergency train service timetables, arranging replacement bus services, alerting both staff and media and updating its website. WCTL Executive respond to the ORR outlining its disappointment and the reasons for requesting a formal investigation into the events both leading up to and during this event.

20th December 2007 (Thu):

WCTL continue to work on contingency plans for the 31st December closure.

21st December 2007 (Fri) Part 1:

WCTL formally lodged its dispute with the ADRC Secretary, setting out its reasons for doing so, in accordance with Network Code conditions D2.1.11b / D5.1.1d [See Appendix F]. This also being within the due timescale (28/12/07) stipulated in the '*Informal Decision*' letter, received from NR. It would have been at this point* (without prejudice to the outcome of other TOC's responses) that NR would have had to suspend implementation of the possession following receipt of our own dispute letter.

21st December 2007 (Fri) Part 2:

WCTL served notice on Network Rail due to its actions (with one specific reference to their disregard to the procedures set out in the Network Code) being in breach of its Track Access Agreement.

22nd to 27th December 2007 inc

Not Applicable to the dispute.

28th December 2007 (Fri):

WCTL received the Final notification* from NR [See Appendix G] confirming that their decision was to go ahead with the additional.

* Note that the letter was still titled confusingly, '*Informal Decision*'

7 FURTHER ISSUES RAISED

- 7.1.1 Whilst NR needs to have due regard to specified Decision Criteria when making decisions regarding proposing changes to the Working Timetable and ROTR, these Criteria must be weighted and balanced in the context of those circumstances surrounding its decisions. Although we would have originally disagreed with NR's position regarding their application of Decision Criteria had the opportunity presented itself, prior to the possession occurring, the correct application of Decision Criteria is, we believe no longer an issue for this hearing.

7.1.1 Cont....

Our issue is related (and only related to) the fact that due process was not adhered to and consequently we were not given, in advance of the possession taking place, the opportunity to have all our considerations and concerns heard (by the ADRC), one component of which would have been related to NR's application of Decision Criteria.

8 DECISION SOUGHT FROM THE PANEL

8.1 The Panel is asked to determine whether or not Network Rail

- a) Adhered to the correct timescales and procedures associated with Part D of the Network Code (including nROTP) and therefore in breach of WCTL Track Access Agreement;**
- b) Have not established, going forward, any precedents by taking such actions;**
- c) Was in general breach of their respective position regarding the imposing of a possession that was not deemed a safety critical issue or operational emergency?**
- d) Was in breach of the ORR's determination [TTP102].**

8.3 The Panel is asked to decide the following other issues:

8.3.1 Whilst integrally linked with Informed Traveller deadlines, whether further protections are necessary within the ROTR planning process to ensure that this sort of imposing of possessions after T-12 never happens again (except for obvious safety reasons).

10 APPENDICES AND ANNEXES

APPENDIX A

Tony Sadler
10/12/2007 10:40

To: jo.kaye@networkrail.co.uk
cc: Ross Spicer/NTR/VirginTrains@VirginTrains
Subject: Rugby

Jo,

At the recent WC Ops group that you chaired, NR asked for a number of additional possessions or amendments to the current plan;

BTET Rugby 0100 to 0530 08/12/07 (or thereabouts)
1025 all lines block Rugby 15/12/07, or
All lines block Rugby 31/12/07.

We have since been informed by Simon Maple that there is now no longer any need for these possessions, which of course is good news, however we do have some concerns.

How have you managed to shoe horn this work back into the plan ?

Do you intend to over run on the 31st ?

What contingency arrangements do you have if we have wind / rain or snow over the Xmas blockade ?

After this weekends overrun, we are beginning to doubt an organisation that asks for a possession one day and the next day withdraws said request as though all is well, then has a colossal, possibly unrelated possession overrun two days later.

We really are concerned about an overrun on the 31st, could I ask that you consider my highlighted points.

Regards

Tony

APPENDIX B

----- Forwarded by Susan Nichol/PRD/VirginTrains on 13/12/2007 15:19 -----

"Allen Matthew (NAU Leeds)"
<Matthew.ALLEN@networkrail.co.uk> To: <Susan.Nichol@virgintrains.co.uk>
13/12/2007 07:42 cc: <Rob.Hodgkinson@virgintrains.co.uk>, <Tony.Sadler@virgintrains.c
Subject: RE: Week 40 - MD101 - Rugby (Proposal)

Susan,

Thanks for the prompt reply. I am grateful for the feedback as to how this late notice possession request affects the arrangements you have made to move passenger post the Christmas holidays between London and the West Midlands and North West. I will discuss the colleagues your objections to this very late notice request.

The Rugby Project have been seeking additional disruptive possession access before the Christmas Block as a result of issues:

- *the late approval of Overhead Line design,
- *adverse weather conditions preventing crane work in recent weekends,
- *failure of infrastructure at Rugby North Jn.

This work it is proposed to undertake in the 24hr extension of the BLOCKADE is critical to the completion of the infrastructure necessary to run train services after the signalling commissioning. The Project seeks to deliver the delayed Overhead Line works within the existing Christmas block, but wishes to extend that block by 24 hours to allow the 'wheels free' Signalling Commissioning to be successfully completed.

I hope to be able to feedback the outcome of our internal discussions within the next day.

Regards

Matt

From: Susan.Nichol@virgintrains.co.uk [mailto: Susan.Nichol@virgintrains.co.uk]
Sent: 12 December 2007 09:59
To: Allen Matthew (NAU Leeds]
Cc: Rob.Hodgkinson@virgintrains.co.uk; Tony.Sadler@virgintrains.co.uk
Subject: Re: Week 40 - MD101 - Rugby(Proposal)

Matt

Virgin Trains wishes to dispute this proposal.

This proposal is for 31st December with as you said very short timescales in what is a very busy period of travel for our customers. We have already over 4000 reservations on this day with very little possibility of advising our customers of this disruption. The possibility of providing road transport at such sort notice & to this extent will be limited & due to such a busy travel period their is very little chance of other operators taking our customers. Not withstanding other issues such as well past T-12.

Regards

Susan

Susan Nichol
TSP & ROU Liason Manager
Virgin Trains
07825376138

"Allen Matthew (NAU
Leeds)"

<Matthew.ALLEN@network
rail.co.uk>

12/12/2007 09:31

To: <barretts@freightliner.co.uk>, <Susan.Nichol@virgintrains.co.uk>, "Janet Jones" <janet.jones@londonmidland.com>, <mark.haslam@londonmidland.com>, <Ian.Kapur@gbrailfreight.com>, <david.stubbs@drsl.co.uk>, <barretts@freightline
<HassallC@freightliner.co.uk>, <Bevis.Thomas@chilternrailways.co.uk>, <michael.webb@eastmidlandstrains.co.uk>, <S
<Andy.Lawton@colasrail.co.uk>, <tim.wileman@ews-railway.co.uk>
cc: "Schwartz Eddy" <Eddy.Schwartz@networkrail.co.uk>, "Jones Jacqueline (NAU Leeds)" <Jacqueline.Jones@
<David.Walgate@networkrail.co.uk>, "Alebon June" <June.ALEBON@networkrail.co.uk>
Subject: Week 40 - MD101 - Rugby (Proposal)

Week 40 - MD101 - Rugby(Proposal)

Dear All,

I have been approached by colleagues in the WCRM project for an extension of 24hrs to the Rugby Christmas all lines BLOCKADE. The late request is due to late completions with overhead line design and approval, and loss of critical work in weeks 35 & 36 due to adverse weather conditions and failure of vital infrastructure at Rugby North Jn.

Please could I seek your support for the following short notice possession amendment (proposed alterations marked in bold) ?

LNW (S) Draft WON Week 40 item 4, amended to read:

PPS Ref:P2007/933798

Week 40 Monday 24th December 2007 to Tuesday 1st January 2008

At/Between:Rugby South Jn and TrentValleyJn

Lines:All BLOCKED

and

At/Between:Hanslope Jn and Rugby South Jn(via Weedon)

Lines:Down and Up MainBLOCKED

and

At/Between:RugbyTrentValleyJn and Brandon

Lines:Down and Up CoventryBLOCKED

and

At/Between:RugbyTrentValleyJn and Shilton

Lines:All BLOCKED

Times:2330 Mon 24/12 to **0520 Tue 1/1**

and

At/Between:Hanslope Jn and Rugby South Jn (via Northampton)

Lines:All BLOCKED

Times:2330 Mon 24/12 to 0300 Fri 28/12

and

At/Between:AlthorpeParkand Rugby South Jn

Lines:Down and Up NorthamptonBLOCKED

Times:0300 Fri 28/12 to 0140 Sun 30/12

and

At/Between:Hanslope Jn and Rugby South Jn (via Northampton)

Lines:All BLOCKED

Times:0140 Sun 30/12 to 0915 Sun 30/12

and

At/Between:AlthorpeParkand Rugby South Jn

Lines:Down and Up NorthamptonBLOCKED

Times:0915 Sun 30/12 to **0520 Tue 1/1**

Work:Remodelling works, signal and OLE commissioning

Traffic Remarks: 2330 MON 24/12 - 0600 THU 27/12 CHRISTMAS SHUTDOWN.
2330 MON 24/12 - 0300 FRI 28/12 AND 0140 SUN - 0915 SUN 30/12 NO ACCESS
NORTHAMPTON STATION, NORTHAMPTON RIVER SIDINGS, KINGS HEATH
DEPOT, NORTHAMPTON CASTLE YARD. 2330 MON 24/12 - 0300 TUE 1/1 NO

ACCESS DAVENTRY IRFT. 0300 FRI 28/12 - 0520 TUE 1/1 TRAINS TO/FROM THE TO START/TERMINATE AT NORTHAMPTON AND TRAINS TO/FROM THE WEST MIDLANDS AND THE NORTH WEST TO START/TERMINATE COVENTRY OR BIRMINGHAM INTERNATIONAL, RAIL REPLACEMENT ROAD SERVICE TO OPERATE.

Please note that due to the very late notice of this request the period of industry consultation has been reduced to two days.

This email is in accordance with Access Condition D2.1.10 and relates to Section 3.1 of National Rules of the Plan being the Procedure for Altering Rules of the Route or Rules of the Plan other than through the Twice-Yearly Process Having Effect from a Passenger Change. I look forward to receiving your support for the above proposal by Friday 14th December 2007.

Regards

Matt

Network Access Unit

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APPENDIX C

Rob Hodgkinson

13/12/2007 17:04

To: "Tony Skilton" <sec.adc@btconnect.com>
cc: Richard Miller/NTR/VirginTrains@VirginTrains, Tony Sadler/PRD/VirginTrains@Virgi
Nichol/PRD/VirginTrains@VirginTrains
Subject: Possession Proposal Concern - Virgin Trains

Dear Tony,

I thought it pertinent to bring to your attention, a recent matter involving an approach by Network Rail for an additional possession, requested to take place on Monday 31st December 2007. If I may take the opportunity of giving you some breakdown regarding our concern, which may then help you understand more fully our concerns and the appropriate course of action we intend to follow.

On the 12th December 2007 (ie. this wed) Network Rail approached those affected TOC's including Virgin Trains, with a preliminary proposal for a 24+ hour extension of the currently already agreed Christmas Rugby Blockade, thereby closing the route between London Euston and the Midlands, North West, & Scotland on New Years Eve. This is attached below for your perusal.

This proposal was sent to TOC's under the due Industry process contained in the Network Code (under D2.1.10) and the National Rules of the Plan (NRoP - Section 3.3). Train Operators have, under the NRoP (Section D3.4) the opportunity to respond to such preliminary proposals up to 10 working days from receipt (i.e. by 09.30 Boxing Day!) - In this instance we have only been given 2 days to respond i.e. Friday 14th December 2007. Furthermore, we have been tipped off that Network Rail will, under NRoP section 3.5.1, formally propose (a "decision proposal") the same possession tomorrow afternoon (Fri 14th Dec).

Without labouing the point, not only does this contravene those Rules set out in the National Rules of the Plan, (despite the fact that the attached e-mail makes clear reference to being "*.....in accordance with Access Condition D2.1.10 and relates to section 3.1 of the NRoP.....*") and the Network Code, but also takes no cognisance of issues relative to 'Decision Criteria' and being able to comprehensively assess within a probable maximum period of 24 hours, all those Train Operator's responses, bearing in mind the immensity and disruption such a proposal brings.

The core reason for bringing this to your attention, is that whilst we have had to respond to the preliminary proposal, such that we are able to register our disputed position, we will in anticipation of receiving the formal ' decision' proposal tomorrow or Monday, be responding to Network Rail within those timescales as laid down in the Network Code (D5.1.2) - namely 5 working days. The problem is though that were Network Rail abiding to correct timescales they should not be formally proposing anything until after Christmas! Furthermore we wish to hereby bring to your notice that under Condition D2.1.10 Network Rail are not able to '*...implement any change....*' until a dispute hearing is undertaken and a determination set.

I therefore thought it necessary to ensure that you were made aware we are trying to comply with those Industry measures put in place to stop these sorts of occurrences happening, and to perhaps understand from you where Virgin stands in this particular circumstance?

Looking forward to your consideration,

many thanks

Robert Hodgkinson
Commercial Manager (Operations)
Virgin West Coast
0207-391-8120 (00-48120 Int.); 07771-832030 (m)

APPENDIX D

"Allen Matthew (NAU
Leeds]"
<Matthew.ALLEN@netw
orkrail.co.uk>

14/12/2007 14:54

To: <barretts@freightliner.co.uk>, <Susan.Nichol@virgintrains.co.uk>, "Janet Jones" <janet.jones@londonmidland.com>, <mark.haslam@londonmidland.com>, <Ian.Kapur@gbraillfreight.com>, <david.stubbs@dntl.co.uk>, <barretts@freightline
<HassallC@freightliner.co.uk>, <Bevis.Thomas@chilternrailways.co.uk>, <michael.webb@eastmidlandstrains.co.uk>, <st
<Andy.Lawton@colasrail.co.uk>, <tim.wileman@ews-railway.co.uk>, <nick.gibbons@ews-railway.co.uk>, <tony.sadler@
cc: "Schwartz Eddy" <Eddy.Schwartz@networkrail.co.uk>, "Jones Jacqueline (NAU Leeds)" <Jacqueline.Jones@
<David.Walgate@networkrail.co.uk>, "Alebon June" <June.ALEBON@networkrail.co.uk>, "Dunster Jonathan" <Jonathan
<Adrian.Thear@networkrail.co.uk>, "McDowell Les" <Les.MCDOWELL@networkrail.co.uk>, "Maple Simon" <Simon.M
Subject: Week 40 - MD101 - Rugby (Informal Decision)

Week 40 – MD101 – Rugby(Informal Decision)

Dear All,

Further to my e-mail dated Wednesday 12th December an operator has asked for the full 10 working days to respond to this request. Therefore in accordance with this proposal you have until Friday 28th December to respond to Network Rail.

Network Rail is grateful for the feedback received so far from operators and the information on how this late notice request affects operators' timetabling arrangements over the Christmas period. The Rugby Project have sought the 26hr extension as a result of issues with:

*the late approval of Overhead Line design,

*adverse weather conditions preventing crane work in recent weekends,

*failure of infrastructure at Rugby North Jn.

The work planned in the extension is critical to the completion of the infrastructure necessary to run train services after the signalling commissioning. The Rugby Project seeks to deliver the delayed overhead line works within the existing Christmas block, but will use the extension to allow the 'wheels free' Signalling Commissioning to be successfully completed.

Given the particular circumstances of this situation we consider that there is an overwhelming case to proceed with the extended possession on the basis that it is in the longer term interests of passengers, freight users and the industry (even taking into account the realistic worst possible impact on any operator that has yet to respond). In that case we feel that it is desirable to provide information as soon as possible. Therefore, by this letter we informally give you advance warning that once the 10 working days have elapsed we will be formally notifying you of our decision to go ahead with the extension of the blockade to 0520 Tuesday 1st January 2008.

Taking this into account and the impact this proposal has to operators, Network Rail believes that the right thing is therefore to start the timetable re-planning works and inform the public and freight customers of this disruption.

LNW (S) Draft WON Week 40 item 4, amended to read:

PPS Ref:P2007/933798

Week 40 Monday 24th December 2007 to Tuesday 1st January 2008

At/Between:Rugby South Jn and TrentValleyJn

Lines:All BLOCKED

and

At/Between:Hanslope Jn and Rugby South Jn(via Weedon)

Lines:Down and Up MainBLOCKED

and

At/Between:RugbyTrentValleyJn and Brandon

Lines:Down and Up CoventryBLOCKED

and

At/Between:RugbyTrentValleyJn and Shilton

Lines:All BLOCKED

Times:2330 Mon 24/12 to 0520 Tue 1/1

and

At/Between:Hanslope Jn and Rugby South Jn (via Northampton)

Lines:All BLOCKED

Times:2330 Mon 24/12 to 0300 Fri 28/12

and

At/Between:AlthorpeParkand Rugby South Jn

Lines:Down and Up NorthamptonBLOCKED

Times:0300 Fri 28/12 to 0140 Sun 30/12

and

At/Between:Hanslope Jn and Rugby South Jn (via Northampton)

Lines:All BLOCKED

Times:0140 Sun 30/12 to 0915 Sun 30/12

and

At/Between:AlthorpeParkand Rugby South Jn

Lines:Down and Up NorthamptonBLOCKED

Times:0915 Sun 30/12 to 0520 Tue 1/1

Work:Remodelling works, signal and OLE commissioning

Traffic Remarks: 2330 MON 24/12 - 0600 THU 27/12 CHRISTMAS SHUTDOWN. 2330 MON 24/12 - 0300 FRI 28/12 AND 0140 SUN - 0915 SUN 30/12 NO ACCESS NORTHAMPTON STATION, NORTHAMPTON RIVER SIDINGS, KINGS HEATH DEPOT, NORTHAMPTON CASTLE YARD. 2330 MON 24/12 - 0300 TUE 1/1 NO ACCESS DAVENTRY IRFT. 0300 FRI 28/12 – 0520 TUE 1/1 TRAINS TO/FROM THE TO START/TERMINATE AT NORTHAMPTON AND TRAINS TO/FROM THE WEST MIDLANDS AND THE NORTH WEST TO START/TERMINATE COVENTRY OR BIRMINGHAM INTERNATIONAL, RAIL REPLACEMENT ROAD SERVICE TO OPERATE.

If you require further information or if I can help further, please give me a call.

Regards

Matt

Network Access Unit

APPENDIX E

Chris Gibb

14/12/2007

21:59

To: "Welham Duncan" <Duncan.Welham@networkrail.co.uk>
cc: <barretts@freightliner.co.uk>, <Susan.Nichol@virgintrains.co.uk>, "Janet Jones" <jai@networkrail.co.uk>, <mark.haslam@londonmidland.com>, <Ian.Kapur@gbraifreight.com>, <david.stubbs@drsl.co.uk>, <b: <HassallC@freightliner.co.uk>, <Bevis.Thomas@chilternrailways.co.uk>, <michael.webb@eastmidlandrail.co.uk>, <Andy.Lawton@colasrail.co.uk>, <tim.wileman@ews-railway.co.uk>, <nick.gibbons@ews-railway.co.uk>, "Miller/NTR/VirginTrains@VirginTrains, Ross Spicer/NTR/VirginTrains@VirginTrains, peter.strachan@networkrail.co.uk", <Eddy.Schwartz@networkrail.co.uk>, "Jones Jacqueline (NAU Leeds)" <Jacqueline.Jones@networkrail.co.uk>, <David.Walgate@networkrail.co.uk>, "Alebon June" <June.ALEBON@networkrail.co.uk>, "Dunster Jordan" <Adrian.Thear@networkrail.co.uk>, "McDowell Les" <Les.MCDOWELL@networkrail.co.uk>, "Matthew.ALLEN@networkrail.co.uk, "Steve Banaghan" <Steve.Banaghan@londonmidland.com>
Subject: Week 40 - MD101 - Rugby (Informal Decision)

Duncan,

Further to my email below. I note the stated causes of the additional possession request as being :

*the late approval of Overhead Line design,

*adverse weather conditions preventing crane work in recent weekends,

*failure of infrastructure at Rugby North Jn.

This is the first we've heard of "late approval of the Overhead Line design". It wasn't mentioned eight days ago at the Project Board on 6th December as being a critical issue. If it was critical why wasn't it escalated and dealt with earlier ?

"Adverse weather conditions" : weather over the recent weekends has been what should be expected for November and December. and should have been taken into account in the project planning. as we believe it is being on the TV4 project. Can you comment on the allegation that other factors also delayed recent works, such as the plans the OHLE work was being done from being wrong ?

"Failure of infrastructure at Rugby North Jn". What is the exact nature of this "fault" ? This is the first we've heard of this. Is it safe to run trains now, with no additional ESR in place ? Assuming it is safe at present, can you explain why work to rectify this apparent fault cannot be completed during the possession from 24/12/07 to 30/12/07 ? You have six days to rectify this fault : surely sufficient.

The notification goes on to say the additional possession is proposed to be used "to allow the 'wheels free' Signalling Commissioning to be successfully completed". This is a completely different reason for the additional possession to the three stated at the start of the submission, that I repeat above. What exactly is the reason for the additional possession ?

Please regard this response as part of our formal response to the consultation. We await your comprehensive response at the earliest opportunity.

Finally I note a hint that NR may start to unilaterally amend TSDB schedules without operators' consent : ".....start the timetable re-planning works and inform the public and freight customers of this disruption.". We expressly forbid you from making any unauthorised alterations to VWC schedules for 31st December.

Chris Gibb
Managing Director
Virgin West Coast

----- Forwarded by Chris Gibb/DIR/VirginTrains on 14/12/2007 21:01 -----

Chris Gibb

14/12/2007 18:49

To: "Welham Duncan" <Duncan.Welham@networkrail.co.uk>

cc: Richard Miller/NTR/VirginTrains@VirginTrains, Ross Spicer/NTR/VirginTrains@VirginTrains

Subject: Week 40 - MD101 - Rugby (Informal Decision)

Duncan,

I note we have received the email below.

We take from this that you are determined to go ahead with this possession, regardless of our opposition. Please advise me by what contractual means you intend to do this, so that I may refer the matter immediately to ORR.

On what basis have you judged the longer term impact on passengers - our customers ? It is outrageous to suggest that Network Rail has a clue what our customers interests are, given the cavalier approach to this possession.

Chris Gibb

APPENDIX F



Virgin West Coast Trains Ltd.
North Wing Offices
Euston Station
London NW1 2DS

Mr. Tony Skilton

Access Disputes Committee
Central House
14 Upper Woburn Place
London
WC1H 0HY

20th December 2007

cc: Les McDowell (Network Rail – West Coast)
Nick Gibbons (English, Welsh & Scottish Railway)

Dear Mr Skilton,

West Coast Trains Ltd [WCTL] response to Network Rail's Final Proposal for Week 40 New Year's Eve (31st December 2007) ~ 24 hour extension of Engineering Access between Hanslope Jn and Rugby Trent Valley Jn

With reference to the above Final Proposal, received from Network Rail dated 17th December 2007, (as proposed under section D2.1.10 of the Network Code and Section 3.1 of the National Rules of the Plan), WCTL formally responds with the following comments as required under section 3.5.4 of the National Rules of the Plan and Sections D2.1.11b & 5.1 of the Network Code.

Possession Item (Weeks 37 - 44 MD101 Euston to Armitage Jn Route)
Weeks 39 & 40 - Monday 24th December 2007 to Tuesday 1st January 2008 (PPS 933798)
Hanslope Jn (via Weedon) to Rugby Trent Valley Jn 0330 Mon to 0520 Tue Incremental Possession.

WCTL disputes this proposal.

WCTL disputes this incremental item (Monday 31st December 2007 only), on

The basis that, in view of the short timescales within which it has been imposed and

the impact it will have on our passengers and business, (particularly at this time of year with enhanced levels of reservations and the onerous addition to increasing travel disruption, over that which is already in place), we do not believe that Decision Criteria has been given appropriate due regard by Network Rail, both in terms of the practical reasonableness of amending the working timetable still further in the time available, and balancing the needs of the travelling public (D.6(a) {c} {g} {j} {l} and {o} apply), as well as the inability of Network Rail to have adequately assessed (within two days) the responses of the Industry prior to such imposition;

b) WCTL considers that due to the inadequacies of not conforming to the T-12 Informed Traveller process Network Rail are in breach of their Licence Condition Part 9, in particular sections 9.2 and 9.6.

c) Furthermore WCTL remain currently unclear as to the overall impact this will have on the business in terms of detrimental travel affect – issues that are pertinent to this are:

- i) The inability to robustly advise all passengers (whether reserved or 'walk-on') within the timescales regarding the disruption;
- ii) Around 5360 reservations have already been booked on 'through services' operating on this day prior to suspension, with an expectation that a further 45000 'walk-on' customers will be turning up to travel;
- iii) This day would have been the first since Christmas Eve (7 days) where through services are available between London and the North West / Midlands. The likelihood (as highlighted above), is that the number of walk-on passengers will be considerably high, (as compounded by the leisure market requirements for New Year Holidays) and in linking in with item vi) below increase the risk of overcrowding;
- iv) There is currently no guarantee that bus provision arrangements will completely be put in place to cover those otherwise erstwhile train services, at such short notice; remembering that each train will necessitate on average 6 rail replacement coaches;
- v) The anticipation of the business affect through the complaint process (on the day and after the event) is likely to be extremely high, not only increasing safety concerns for front line staff; but requiring the need for increased refund procedures;
- vi) For those passengers who do make alternative arrangements (especially Anglo Scot flows) it will exacerbate the potential for overcrowding on other days and/or other routes, e.g. ECML, TPE, Chiltern and Cross Country services will already be expecting heavy loadings;
- vii) There is every likelihood that customers turning up for the very last services (especially to long distant destinations) without the realisation of the disruption ahead, will be unable to arrive at their destination

before New Years Day – a particular issue when the majority will be travelling with the intention to arrive before for New Year celebrations. This being an added item in conjunction with item v) above.

- c) WCTL are also concerned as to the possibility (based upon the short notice requirement of the request) of engineering works over-running. The impact of any over-run beyond this current request for New Year's Eve (i.e. potentially into the very busy afternoon and evening service on New Year's Day) is so far unsubstantiated by Network Rail. We currently have no confidence in Network Rail's ability to undertake the Rugby Programme robustly; such view sustained by a lack of evidence from Network Rail based upon their current activities.
- d) In view of previous decision(s) established in accordance with aspects of similar breaches of the Network Code, upheld by the Office of the Rail Regulator under comparable circumstances.

Summary

- a) WCTL therefore submits this response under Network Code conditions D2.1.11b and D5.1 to the Disputes Secretary of the Access Disputes Timetable Panel for determination.
- b) WCTL will attempt to formulate and submit (as directed under ADRR rules part A1.30) a joint response with Network Rail, outlining each party's position including the arguments for and against the relevant disparities.

Yours sincerely

Robert Hodgkinson
Commercial Operations Manager
West Coast Trains Ltd.

APPENDIX G

Susan Nichol

28/12/2007 11:46

To: "Allen Matthew (NAU Leeds)" <Matthew.ALLEN@networkrail.co.uk>
cc: Tony Sadler/PRD/VirginTrains@VirginTrains, Rob Hodgkinson/PRD/VirginTrains@
hodgyr@hotmail.com
Subject: Re: Week 40 - MD101 - Rugby (Decision)

Matt

As per e-mail of 21/12/07 this has been formally disputed with ADRC.

Regards

Susan

Susan Nichol
TSP & ROU Liason Manager
Virgin Trains
07825376138

"Allen Matthew
(NAU Leeds)"
<Matthew.ALLEN@networkrail.co.uk>
28/12/2007 11:35

To: <barretts@freightliner.co.uk>, <Susan.Nichol@virgintrains.co.uk>, "Janet Jones" <jane
<mark.haslam@londonmidland.com>, <Ian.Kapur@gbraillfreight.com>, <david.stubbs@drsl.co.uk>, <bar
<HassallC@freightliner.co.uk>, <Bevis.Thomas@chilternrailways.co.uk>, <michael.webb@eastmidlands
<Andy.Lawton@colasrail.co.uk>, <tim.wileman@ews-railway.co.uk>, "Gibbons, Nick" <Nick.Gibbons@e'
cc: "Smith Ian (PLAN MGR)" <Ian.SMITH@networkrail.co.uk>, "Thompson Paul (Train Pla
Les" <Les.MCDOWELL@networkrail.co.uk>, "Partridge Clive" <Clive.PARTRIDGE@networkrail.co.uk>,
Subject: Week 40 - MD101 - Rugby (Decision)

Week 40 – MD101 – Rugby(Informal Decision)

Dear All,

Further to my e-mail dated Friday 14th December outlined below are the confirmed details for the extension to the Rugbyall lines Christmas/New Year BLOCKADE.

LNW (S) Draft WON Week 40 item 4, amended to read:

PPS Ref:P2007/933798

Week 40 Monday 24th December 2007 to Tuesday 1st January 2008

At/Between:Rugby South Jn and TrentValleyJn

Lines:All BLOCKED

and

At/Between:Hanslope Jn and Rugby South Jn(via Weedon)

Lines:Down and Up MainBLOCKED

and

At/Between:RugbyTrentValleyJn and Brandon

Lines:Down and Up CoventryBLOCKED

and

At/Between:RugbyTrentValleyJn and Shilton

Lines:All BLOCKED

Times:2330 Mon 24/12 to 0520 Tue 1/1

and

At/Between:Hanslope Jn and Rugby South Jn (via Northampton)

Lines:All BLOCKED

Times:2330 Mon 24/12 to 0300 Fri 28/12

and

At/Between:AlthorpeParkand Rugby South Jn

Lines:Down and Up NorthamptonBLOCKED

Times:0300 Fri 28/12 to 0140 Sun 30/12

and

At/Between:Hanslope Jn and Rugby South Jn (via Northampton)

Lines:All BLOCKED

Times:0140 Sun 30/12 to 0915 Sun 30/12

and

At/Between:AlthorpeParkand Rugby South Jn

Lines:Down and Up NorthamptonBLOCKED

Times:0915 Sun 30/12 to 0300 Mon 31/12

and

At/Between: Daventry South Jn and Rugby South Jn

Lines: Down and Up Northampton BLOCKED

Times: 0300 Mon 31/12 to 0520 Tue 1/1

Work: Remodelling works, signal and OLE commissioning

Traffic Remarks: 2330 MON 24/12 - 0600 THU 27/12 CHRISTMAS SHUTDOWN. 2330 MON 24/12 - 0300 FRI 28/12 AND 0140 SUN - 0915 SUN 30/12 NO ACCESS NORTHAMPTON STATION, NORTHAMPTON RIVER SIDINGS, KINGS HEATH DEPOT, NORTHAMPTON CASTLE YARD. 2330 MON 24/12 - 0300 MON 31/12 NO ACCESS DAVENTRY IRFT. 0300 FRI 28/12 - 0520 TUE 1/1 TRAINS TO/FROM THE TO START/TERMINATE AT NORTHAMPTON AND TRAINS TO/FROM THE WEST MIDLANDS AND THE NORTH WEST TO START/TERMINATE COVENTRY OR BIRMINGHAM INTERNATIONAL, RAIL REPLACEMENT ROAD SERVICE TO OPERATE. 0300 MON 31/12 TO 0520 TUE 1/1 ACCESS DIRFT FROM THE NORTHAMPTON DIRECTION ONLY.

If you require further information or if I can help further, please give me a call.

Regards

Matt

Network Access Unit