

IN THE MATTER OF THE ARBITRATION ACT 1996

AND IN THE MATTER OF AN APPEAL AGAINST THE DETERMINATION IN
ACCESS DISPUTE ADJUDICATION NO. 31

AND IN THE MATTER OF AN ARBITRATION PURSUANT TO CHAPTER "F" OF
THE ACCESS DISPUTE RESOLUTION RULES

DISPUTE REFERENCE A34

BEFORE MICHAEL COLLINS Q.C. (SITTING AS SOLE ARBITRATOR)

Between

NETWORK RAIL INFRASTRUCTURE LIMITED

Claimant

and

GRAND CENTRAL RAILWAY COMPANY LIMITED

Respondent

CONSENT AWARD

1 This Consent Award is made in respect of an Appeal brought by the Claimant, Network Rail Infrastructure Limited (**NRIL** or **Network Rail**), against a Determination of Hearing Chair Stephen Murfitt, sitting with Industry Advisors John Boon and Neil Wilson (the **Determination**) in an Access Dispute Adjudication bearing number 31 (**ADA31**) in connection with a dispute arising under a track access contract between NRIL and the Respondent, Grand Central Railway Company (**GCR**), dated 1 August 2014 (**TAC**) which had been referred for resolution pursuant to clause 13 of the TAC in accordance with the Access Dispute Resolution Rules (**ADRR**).

2 As set out in the Determination, the dispute between the parties concerned the claim by GCR for compensation by NRIL in respect of the cancellation of a number of GCR's services which had been scheduled to operate on 27 December 2014.

3 Pursuant to Rule G67 of the ADRR and in the absence of contrary agreement between the parties, this appeal arises as of right by way of arbitration in accordance with Chapter F of the ADRR. By notice served on 28 February 2017, NRIL as claimant/appellant gave notice of appeal by way of arbitration pursuant to Rule G67 (**Notice of Appeal**). The parties thereafter agreed upon the appointment of the undersigned as arbitrator in this appeal, and I was duly appointed by notice dated 22 March 2017.

4 Thereafter, on 9 August 2017 the parties informed me that they had reached terms of agreement as to the resolution of this appeal, and that a draft Consent Award would be placed before me for my review.

5 On 25 September 2017 I received a draft Consent Award from the parties for my review. Having duly considered the terms of the Notice of Appeal and the draft Consent Award, I hereby issue the Consent Award in the following terms (as submitted to me in draft form).

6 NRIL has contended, and GCR has agreed, that the Determination was wrong on the following grounds.

7 The Hearing Chair found that the emergency timetable intended to be operated on 27 December 2014 (the **Emergency Timetable**) had been agreed between Network Rail and GCR (and other train operating companies) prior to 22.00 hours on 26 December 2014 pursuant to the emergency timetabling procedures contained in the Railway Operational Code (**ROC**), which had contractual effect between Network Rail and GCR by virtue of (inter alia) the provisions of Condition D3.8.1 of the Network Code.

8 Having made that finding, the Hearing Chair ought to have gone on to find that the Emergency Timetable was therefore the Applicable Timetable for the purposes of the application of the Schedule 4 and Schedule 8 regimes of compensation between Network Rail and GCR on 27 December 2014.

9 The Hearing Chair refused to make that additional finding in light of the provisions of Clause 8.1 of the ROC which states that "[the] *provisions of the ROC shall have effect without prejudice to any regime established between Network Rail and a Train Operator in or pursuant to their Access Agreements in relation to any incentives and payments associated with the performance of their respective obligations under that agreement.*"

10 However, on its proper interpretation, Clause 8.1 of the ROC was not objectively intended to have, and did not have, the effect of precluding the Emergency Timetable agreed prior to 22.00 hours on 26 December 2014 from constituting the Applicable Timetable for 27 December 2014 for the purposes of the Schedule 4 and Schedule 8 regimes. In so far as presently relevant, the purpose and effect of Clause 8.1 of the ROC was merely to clarify that the incentive and payment regimes, including the Schedule 4 and Schedule 8 regimes, agreed between Network Rail and GCR under their TAC would continue to be applied to any Working Timetable varied in accordance with the procedures contained in the ROC.

11 Thus, in reaching the decisions set out at paragraphs 6.1.4, 6.1.5, 6.1.6 and 6.1.7 of ADA 31, the Hearing Chair misinterpreted the effect of Clause 8.1 of the ROC.

12 In the premises, therefore, in reaching the aforesaid decisions, the Hearing Chair acted in breach of Rules A1, A5 and/or G1, in particular, by failing to determine the matter before him:

- a. on the basis of the parties' legal rights and entitlements (as derived from the proper construction of the relevant contractual provisions);
- b. in accordance with the evidence and argument presented to him; and/or

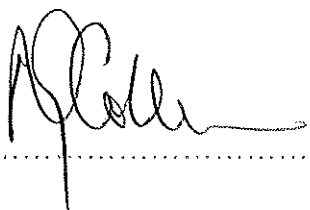
c. in accordance with the law.

13 For all these reasons, I, the undersigned Michel Collins QC, having considered the draft Consent Award do hereby DECLARE AND ORDER as follows:

13.1 The appeal by NRIL by notice of appeal dated 28 February 2017 is hereby allowed, and to that extent, the decision of the Hearing Chair as set out in paragraphs 6.1.4, 6.1.5, 6.1.6 and 6.1.7 is hereby set aside.

13.2 There shall be no order as to costs between the parties themselves, save that my own fees shall be borne equally between the parties.

The seat of this arbitration is London, England.

Signed.....

Michael Collins QC

Dated this 10th day of October 2017.