
ACCESS DISPUTES COMMITTEE

MINUTES of MEETING No. 6 held in London on 8 March 2006

Present:

Tony Holland, Chairman
Bill Davidson (Network Rail)
Tony Deighan (Eurostar (U.K.))
Julia Glenn (Network Rail)
Nigel Oatway (English Welsh & Scottish Railway)
John Thompson (South Eastern Trains)

In attendance:

Chris Blackman (Secretary)
Martin Shrubsole (Clerk)

Apologies:

Lindsay Durham (Freightliner)
Mike Price (First ScotRail)
Alan Wilson (Wessex Trains)

6/1 Approval of Minutes of meeting no.5

The Draft minutes of meeting no.5 were approved subject to minor modification. The Chairman signed a copy of the minutes as a true record of the proceedings.

6/2 Matters arising from the minutes of the previous meeting

5/2 [4/7] Review of Committee's contracts with Officers

The Secretary advised that a revised contract between the Committee and the Clerk had been agreed and signed, and the Deeds of Variation to the contract of other officers had also been signed.

6/3 Change of premises

The Secretary updated Members concerning the new premises at Central House, Upper Woburn Place, the terms of the lease and the requirement for a Rent Deposit Deed. Members authorised the Secretary, acting as the agent of the Committee, to finalise negotiations and sign the lease document, and any associated documents, including the Rent Deposit Deed, for and on behalf of the Committee.

6/4 Budget final outturn for 2005/06

Members noted the paper prepared by the Secretariat and expressed satisfaction that projected costs to the end of the financial year were within overall budget.

6/5 Proposed budget for 2006/07

Members noted the paper prepared by the Secretariat. Mindful of the fact that expenditure on legal advice in connection with the protracted dispute reference ADP09 had exceeded £26,000, Members agreed that the budgetary provision for legal advice should be increased as suggested in the preliminary draft budget. It was also agreed that a contingency should be made for the costs of removal of the Committee's offices to new premises, including the provision and installation of facilities, fixtures and fittings. This would be a one-off element for the 2006/07 budget.

Members then approved the budget for 2006/07 at £315,000.

6/6 RIMAS (Rail Industry Mediation and Arbitration Service)

Members formally noted the paper from Tony Deighan and the draft minutes of the Class Representative Committee, which recorded that the functions of RIMAS (relating to arbitration, mediation and expert determination), proposed by the Office of Rail Regulation as part of the 2005 consultation on the Access Dispute Process, were being discharged by the Secretaries of the Rail Industry Dispute Resolution Committee (RIDR) and the ADC.

6/7 Review of the process issues raised during the handling of reference ADP09

Members noted the paper provided by the Secretariat and in particular that the costs associated with this reference from Midland Mainline and Network Rail amounted to more than £34,000 before the matter was resolved by the parties in December 2005.

The Chairman explained that he had grave concerns about the time that would be taken if it had come to a hearing which might have lasted for as long as two weeks, or more. This would have necessitated a Panel sitting for that period and for further time in deliberation following the hearing. In the Chairman's view the processes prescribed in the ADR Rules had not been designed for a dispute of this nature.

An intrinsic part of the dispute related to disclosure, and one aspect is the necessity to make a case that disclosure is proportionate to the issue at hand. A further issue was that of discovery. The delay had been partly because the Chairman had not been willing to accept a request for unspecific disclosure. In this respect he had taken great care of the need to observe rules of natural justice.

6/8 Future of Annual Review and Handbook

The Clerk explained that for many years the main element of the Handbook had been a description of issues that had been raised. This had been indexed by reference to the relevant clauses in the Network Code and the other Access Conditions, and in template Track Access Agreements. He suggested that, rather than produce a document on an annual basis, the opportunity should be taken to keep an up-to-date version of the Handbook available as a reference source on the Committee's website. The implication is that a Panel should, having signed off a determination at the conclusion of a hearing, agree what consequential amendments should be made to the Handbook. The Secretariat will then arrange for the Committee's website to be updated accordingly.

As to whether the Handbook needs to be amended commensurate with the publication of a new version of the Network Code, Members agreed that in principle this should be done, and, further, that when parts of the Network Code or similar documents were deleted [or became expired] the relevant case law should be removed from the Handbook. A record of expired case law should be held only as an archive.

Members agreed that the Handbook should be a dynamic document, and, if possible, a search facility on the website should be deployed. The Secretary agreed to discuss the feasibility with the website maintainer.

Members agreed that, of the options set out in the paper from the Secretariat, the Review should contain new key issues/headlines only and would direct the reader to the relevant part of the Handbook, minutes and determinations only.

6/9 Update on references

Members noted the list of references in hand but not yet heard or withdrawn. Members were concerned that references on the subject of Local Output Commitments for 2005/06 had not been withdrawn, nor had any papers been provided for a hearing, despite the Secretary writing to the three companies concerned.

6/10 Any Other Business

6.10.1 Costs of Arbitration

Nigel Oatway explained that there was some concern within the industry about the wide variation in terms set by different arbitrators. He proposed that the Committee should consider a standard set of terms for use by an arbitrator who was included on the list of arbitrators a register of which was kept in accordance of Part C of the ADR Rules. Members agreed that this should be done and remitted the Secretary to draw up, in conjunction with the Committee's legal advisors, a set of standard terms; and then to contact all arbitrators on the current register, to advise them of the standard terms and to seek their confirmation that they would be willing to adopt them. In the event that they were unwilling to do so, they should be removed from the register.

6.10.2 Contracts with third parties

Nigel Oatway explained that EWS was in the course of preparing an access contract with Roadways Container Logistics (RCL) for operation of trains on a stretch of line outwith the Network. EWS and RCL wished to use the facilities of the ADR Rules as appropriate to resolve any disputes which might arise. The Committee noted that there were already precedents for this and agreed in principle that it would be willing to hear a dispute arising from such an agreement. The parties should be reminded of Rule E1.44, and in particular that the Committee is entitled to raise a levy on an unlicensed Industry Party, or a licensed Industry Party which is not required to pay a licence fee. Relevant extracts of the Access Agreement should be sent to the Secretary of the Committee to ensure that the interests of the Committee were properly protected.

6/11 Date of next Meeting

The next Quarterly meeting is on Wednesday 7 June commencing at 15.00.

