
ACCESS DISPUTES COMMITTEE

MINUTES of MEETING No. 36 held in London on 25 July 2013

Present:

John Beer (First Capital Connect) (Committee Chair)
John Czyrko (First Greater Western)
Richard Dean (London & South Eastern Railway)
Robin Nelson (Freightliner Heavy Haul)
Nigel Oatway (DB Schenker Rail (UK))
Gavin Panter (Network Rail)
Andy Wylie (Hull Trains)

In attendance:

Tony Skilton (Secretary)
Kathy Couldridge (Assistant Secretary)

Apologies for absence:

Bill Davidson (Network Rail)

36/1 Approval of Minutes of Meeting no.35

The Minutes of Meeting no.35, held on 21 March 2013, were approved. The Chair signed a copy of the Minutes as a true record of the proceedings.

36/2 Matters arising from the Minutes of the previous Meeting

All matters arising from the Minutes were listed as agenda items except:-

35/2 (previous 34/3, 33/2, 32/3, 31/2, 30/2, 29/2 and 28/2) Implementation of the new Access Disputes Resolution Rules – Contract changes

Amendments to Access contracts to align with the choice of dispute resolution forums offered by the August 2010 Rules had now been progressed by the Office of Rail Regulation (“ORR”) through proposals for template agreements except in the case of Light Maintenance Depot Access Agreements. The Committee took the view that the Rule changes were now sufficiently embodied within industry arrangements that there was no further requirement to monitor progress with amending contract templates.

35/2 (previous 34/3, 33/2 and 32/9) Management of funds

Opening of the intended account with The Loughborough Building Society continued to await convenient opportunity for formal certification of signatories’ identification documents.

35/2 (previous 34/7) Dispute resolution process and associated matters

The Secretary reported that 3 October 2013 had been set for a seminar with the Hearing Chairs to provide opportunity to share the learning arising out of the handling of recent dispute cases.

35/4 Volume of Timetable Disputes

Following discussion at the previous meeting regarding the number and nature of Timetabling Disputes being registered but not necessarily progressed to a Panel hearing, Committee members had met on 24 May with relevant senior managers from Network Rail to explore the situation; the Secretary had subsequently participated in discussion at the routine meeting of Operational Planning Steering Group held between Network Rail and operators on 21 June. No suggestions had emerged for amendments to the planning process set out in Part D of the Network Code but Network Rail had taken steps with a view to improving matters.

35/8 Office lease terms

The Secretary reported that negotiations had been concluded regarding the 2014 rent review, restructuring of the terms of the lease arrangements at 1 Eversholt Street to 19 July 2020 without break clauses (except for a “development only” opportunity granted to the landlord in July 2019) and for the assignment of the lease and rent deposit bond to Access Disputes Resolution (GB) Ltd. The necessary documents had been prepared but it had been thought appropriate to defer execution until the Committee had considered the implications of the recently proposed abolition of the Rail Industry Dispute Resolution Committee (a separate item discussed at this meeting).

36/3 Matters determined in correspondence

No matters had been determined in correspondence since Meeting no. 35.

36/4 Financial matters

36/4.1 Accounts for 2012/13

The auditors had indicated satisfaction with the accounts for 2012/13 and the Committee accordingly gave approval to the Chair formally signing the Income & Expenditure Statement. The Balance Sheet as at 31 March 2013 was also approved and signed.

36/4.2 Current financial position

The Committee noted a report from the Secretary regarding the current financial position. One 2012/13 levy payment remained outstanding (involving the sum of £120) and six Resolution Service Parties were yet to pay their levy for 2013/14, the combined total outstanding being £2,764. The financial position was satisfactory for the present point in the Financial Year.

36/5 Internal check arrangements

Nigel Oatway had tabled a report regarding internal check activity which he had carried out since the 21 March meeting and this was noted.

It was agreed that Gavin Panter would undertake internal check until the next meeting.

36/6 Position on references

The Committee noted a report from the Secretary setting out the current position regarding dispute references.

Regarding previous Minute 35/4, the Committee noted that a Timetabling Panel hearing had been arranged for dispute TTP371 (which was notified in July 2010) and subsequent related dispute references. Encouraged by directions from the Hearing Chair, items within the dispute references were now being addressed more effectively through further dialogue between the operators and Network Rail; the Panel hearing meanwhile stood adjourned. The parties' progress was being monitored with a view to making appropriate intervention if any undue delay arises.

Feedback from industry colleagues had given Committee members the impression that procedures associated with development of the December 2013 Timetable had worked better than for previous Timetables and it was pleasing to note that this was borne out by there being only 7 associated dispute registrations.

36/7 Update on the website

The Secretary reported that the website was up to date.

36/8 Appointments

Committee decided that invitation should be extended to Anthony Crabtree to accept appointment as an Industry Advisor for a 2 year contract period; the Committee Chair and the Secretary were authorised together to determine the terms of the new contracts.

36/9 Timetable development process

At the previous meeting the Committee had noted that the determination of Timetabling Disputes TTP493, TTP494 and TTP495 contained remark that key issues were perceived in the structure of the timetable development process as currently contractualized; the Committee had taken the view that there would be merit in commissioning the Hearing Chair to specifically identify the relevant clauses in Part D of the Network Code which gave concern, summarize the issues which arise and indicate the action considered appropriate to improve matters (whether this be in terms of process or simply redrafting to give clarity). The resulting paper from the Hearing Chair was now to hand.

Among suggestions was that the timetabling process and associated objective of maximizing network capacity might usefully be improved by consolidating into Network Rail the roles both of determining the operational aspects of the timetable and deciding the competing economic and competition merits of its customers (and potential customers), with the role of the ORR becoming that of oversight of the fair distribution of access to the monopoly facility. It was recognized that such a reform would require amendment of primary legislation.

On behalf of Open Access operators, Andy Wylie advised that there was a fundamental belief that Network Rail should not be the body which agrees Access Rights applications: Network Rail was too closely connected with the Government and accordingly suffered from

expectation that the policies of the Department for Transport ("DfT") would be carried through. If any change in the timetabling process were to be proposed, Open Access operators were adamant that Network Rail should not be making decisions where there are conflicting demands for use of available capacity. Open Access operators did, however, recognize that the timetabling process was not satisfactorily synchronised and this was to their disadvantage; the appropriate remedy, avoiding need for changing primary legislation, would be for ORR to revise procedures such that Network Rail becomes obliged to try to timetable operators' aspirations into "white space" – it was unreasonable to continue with an arrangement in which Network Rail compresses timetabling late in the process and effectively negates fresh initiatives from operators. For contentious applications, there should be a clear cut-off date for operators to make Access Rights applications and for them to be determined – this would provide certainty regarding which paths would be included in the relevant Working Timetable. Open Access operators therefore regarded the fundamental problem as being that ORR should decide Access Rights much sooner in the timetabling process and issue of the Prior Working Timetable would then be the key to achieving settlement of the New Working Timetable to the desired timescale.

Committee members reflected that the issue as to whether the granting of Access Rights should precede or follow the timetabling of the required paths was one which often arose and thought it appropriate to explore whether it was generally considered that the most recent revision of Part D of the Network Code had delivered a satisfactory process or if there was a systemic issue: the processes of pathing trains and granting Access Rights might not be synchronised, but were they wrong? And was the problem that recent revision of Part D necessitated changed behaviours which had not yet emerged? Regarding paths for franchised operators, the DfT's propensity to only confirm service requirements late in the timetabling process was regarded as an issue and delays now occurring in the refranchising arena were certainly not helping matters.

Freight operator representatives did not believe that the Part D process was necessarily defective because of the problem revealed by the recent disputes raised by Grand Central; from a freight operating point of view, the flexibility currently afforded by Part D was adequate but a perpetual timetable would be a more helpful concept than the Prior Working Timetable. The essential problem for freight operators was that of proposals for Access Rights not being agreed by Network Rail until proved as practicable in the timetable; seeking to have Rights approved formally before development of the Working Timetable was not thought to be a practical proposition. It was thought that the underlying issue in the timetabling process was the pressure of time management, with the industry not resourced for carrying out the processes expected by an otherwise satisfactory Part D: the challenge was for all parties to have people with the time and information to satisfy the requirements.

The Committee anticipated that in due course it might be appropriate to enquire of industry parties whether the determination of disputes TTP493-495 has caused them to change their thinking regarding the timetabling process or the current suitability of Part D, also to ascertain whether ORR might be intending to review its criteria and procedures for the granting of Access Rights. The Committee believed that there was need for action to be taken to provide better certainty regarding Access Rights before commencement of detailed timetabling and thought this might be best achieved through revision of ORR's criteria; such a measure would have the added benefit of providing clear signal to funders of the need to make early commitments in order to place service aspirations firmly into the industry process for securing Access Rights or, at the least, to make clear where there is expectation of Rights. However, noting that a Timetabling Panel hearing regarding similar timetabling considerations (TTP602) had been arranged to take place early in August, the Committee

decided to defer initiating any action until having had opportunity to review the determination of TTP602 to identify any commonality as regards process issues.

To allow more comprehensive review of the detailed paper, the Secretary was asked to arrange an additional meeting of the Committee for September, giving time to digest the TTP602 determination whilst allowing time to prepare for discussion of any aspects with the Hearing Chairs at the seminar on 3 October.

Disputes TTP493-495 had also made it appropriate to consider the position regarding provision of evidence to a Timetabling Panel in circumstances where fresh material emerges after submission of the reference documents. The Committee was of the view that relevant late material should be submitted to the Panel members and the other Dispute Party/ies in order to avoid surprising them at the hearing; further, and again from experience during the TTP493-495 hearing, the Committee considered that an opening statement to the hearing should only reflect salient points of a party's argument and not introduce new material. It was agreed that these aspects of hearing management should be discussed with the Hearing Chairs at the forthcoming seminar.

Bearing in mind that the paper contained detailed suggestions regarding aspects of the timetabling process, the Committee agreed that Gavin Panter could use the paper internally in confidence to relevant colleagues in Network Rail in order to obtain senior practitioner feedback to inform the Network Rail contribution in Committee.

36/10 Proposed abolition of the Rail Industry Dispute Resolution Committee ("RIDRC")

The Committee noted a report from the Secretary which provided briefing regarding proposals being developed for the abolition of the RIDRC.

Whilst recognising the likely impact on its operation and costs, the Committee was generally supportive of facilitating the abolition by particularly arranging for the Allocation Chair to deal with future disputes regarding decisions of the Claims Allocation and Handling Agreement Registrar. Various administrative matters had been identified for consideration and the Secretary was asked to explore such items with the RIDRC Secretary and the Committee's professional advisors.

The Committee did not consider there to be any reason to countermand the proposed removal of break clauses from the office lease, believing that the Committee's continued occupancy at 1 Eversholt Street until July 2020 remained in the best interests of the industry.

Consequential changes which would be necessary in the ADR Rules had been identified and Nigel Oatway undertook for DB Schenker Rail (UK) to sponsor the necessary Proposal for Change for approval by the Class Representative Committee in due course.

36/11 Election of Committee Chair

ADR Rule J19 required election of a Committee Chair at the first meeting after 1 April in each year. The members present decided unanimously to elect John Beer as Committee Chair for the coming year.



12-12-13