
ACCESS DISPUTES COMMITTEE

MINUTES of MEETING No. 39 held in London on 24 July 2014

Present:

John Beer (First Capital Connect) (Committee Chair)
Robin Nelson (Freightliner Heavy Haul)
Nigel Oatway (DB Schenker Rail (UK))
Andy Wylie (Hull Trains)
Peter Craig (Network Rail)
Paul Thomas (Network Rail)

In attendance:

Tony Skilton (Secretary)
Kathy Couldridge (Assistant Secretary)

Apologies for absence:

John Czyrko (First Greater Western)
Dean Warner (Abellio Greater Anglia)

39/1 Committee membership

It was noted that Network Rail had appointed Peter Craig to the Committee, replacing Bill Davidson. Peter was welcomed to his first meeting and the Committee expressed appreciation for Bill's contribution since its inception.

39/2 Approval of Minutes of Meeting no.38

The Minutes of Meeting no.38, held on 20 March 2014, were approved. The Chair signed a copy of the Minutes as a true record of the proceedings.

39/3 Matters arising from the Minutes of the previous Meeting

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

38/2 (previous 37/3, 36/2, 35/2, 34/3, 33/2 and 32/9) Management of funds

The Secretary reported that NatWest Bank had recently advised that its Direct Reserve Account product was to be phased out, transferring on 1 October 2014 to become the Business Reserve Account and offering an inferior rate of interest; it was therefore timely that the 95 Day Notice Business Savings Accounts had been opened with Cambridge & Counties Bank. Subject to the product from Cambridge & Counties remaining available, a 60 Day Notice Business Savings Accounts would be opened with this bank when funds permit.

38/2 (previous 37/3 and 36/10) Proposed abolition of the Rail Industry Dispute Resolution Committee and Rail Industry Dispute Resolution Council ("RIDRC")

It was reported that RIDRC had very recently issued a consultation document to relevant industry parties, with a closing date of 22 August 2014; it was the intention to finalise the necessary proposals for amending the ADR Rules after the results of the RIDRC consultation were known and any issues had been addressed.

The Committee considered that if the new arrangements are implemented, it will be appropriate to invite the CAHA Registrar to attend its meetings occasionally to brief the Committee regarding the claims handling workstream.

38/2 (previous 37/10) Reasons for determinations in Timetabling Disputes

The Secretary reported that most of the Hearing Chairs had responded to the material aimed at securing consensus as to what should constitute a "just reasoned enough" Timetabling Dispute determination; a variety of views had been forthcoming and some Chairs had also provided, for consideration, guideline documents issued by different tribunals in which they sit. The responses were now receiving the attention of the Allocation Chair.

39/4 Matters determined in correspondence

No matters had been determined in correspondence since Meeting no. 38.

39/5 Financial matters

39/5.1 Accounts for 2013/14

The auditors had indicated satisfaction with the accounts for 2013/14 and the Committee accordingly gave approval to the Chair formally signing the Income & Expenditure Statement. The Balance Sheet as at 31 March 2014 was also approved and signed.

39/5.2 Current financial position

The Committee noted a report from the Secretary regarding the financial position as at 17 July 2014 and the Secretary reported verbally regarding subsequent movements. No 2013/14 levy payments were outstanding. Five Resolution Service Parties were yet to pay their levy for 2014/15, the combined total outstanding (including interest) being £11,114.

The financial position was satisfactory for the present point in the Financial Year.

39/6 Internal check arrangements

Paul Thomas had tabled a report regarding internal check activity which he had carried out since the 20 March meeting and this was noted.

It was agreed that Robin Nelson would undertake internal check until the next meeting.

39/7 Position on references

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

It was noted that there was no improvement in the trend of Timetabling Disputes arising in response to “CPPP” decisions and there was justification for concern regarding the industry resources being spent on the continuing high number of Timetabling Dispute references. The Chair reported that he had written to Network Rail requesting some indication of any developments since discussing the matter with Committee members in 2013 but no response had yet been forthcoming. Paul Thomas undertook to seek how Network Rail was viewing the situation.

The Secretary reported that he had been visited by team members from Phase 2 of the Industry Access Programme (“IAP”) on 23 July and it seemed that some issues regarding engineering access planning as identified by IAP were fully aligned with the concerns which the Committee members had articulated to Network Rail previously.

Regarding previous Minutes concerning Timetabling Dispute TTP371 and subsequent related dispute references connected with the Timetable Planning Rules, the Committee was advised that the Hearing Chair was pro-active in case management through use of Directions. The dispute documentation had recently been refined by the Parties, considered by the Hearing Chair with the appointed Panel members and further Directions then issued on 22 July preparatory to arranging a hearing regarding outstanding issues (which had reduced to just three in number); it was hoped that matters would be brought to a conclusion quite soon.

39/8 Update on the website

The Secretary reported that the website (including the Directory) was up to date.

39/9 Dispute ADP48

Dispute ADP48, registered in December 2009 and involving Network Rail, First Capital Connect and First Greater Western, concerned the interpretation of “repair” and “maintenance” in relation to Retail Telecomms at Franchised Stations. The Committee was advised that using legal opinions provided by an Assessor to the Access Disputes Panel which was appointed at the time, there was optimism that discussions between the Parties might now be nearing agreement as to how to settle their issues (and associated financial aspects) without a formal determination of the legal points which had been in dispute.

Suggestion had been received that if the Assessor’s opinions were to be made available to the industry by means of the Committee’s website, it would assist the resolution of outstanding matters between industry parties where differences have arisen out of circumstances similar to those which gave rise to ADP48, providing benefit to the industry in terms of time and cost savings.

Having considered the suggestion in the context of the confidentiality conditions associated with Assessors’ reports in both the former ADR Rules and in the current version, the Committee decided that it was appropriate to authorise publication of the material on the website after receiving confirmation of settlement of dispute ADP48; publication would be accompanied by an explanatory note to indicate that the opinion has not formed the basis for a formal determination of ADP48 and therefore does not constitute precedent or persuasive authority.

39/10 Appointments

It was noted that most appointments to the roles of Allocation Chair, Hearing Chair, Industry Advisor and Assistant Secretary were due to terminate over this summer period. In order to ensure continuity of resources going forward, the Committee decided that invitations should be extended to each of the present consultants to accept re-appointment for a further 2 years at the end of his/her current contract period. The Committee Chair and the Secretary were authorised together to determine the terms of the new contracts.

With a view to ensuring adequacy of resources going forward, the Committee decided the arrangements to be adopted for appointing additional Hearing Chairs.

Whilst the number of contracted Industry Advisors and their various areas of specialist knowledge had proved adequate for the Secretary to be able to arrange Access Dispute Adjudication hearings when desired, the Committee considered that it would be unfortunate not to take opportunity to secure the services of individuals with appropriate up to date specialist knowledge when they leave full time employment in the industry. Accordingly, it was agreed that Bill Davidson, John Boon and Ian Cleland should be invited to accept appointment as Industry Advisors upon leaving Network Rail in coming months, with the Committee Chair and Secretary authorised to determine the terms of their contracts.

39/11 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.



11/12/14