
ACCESS DISPUTES COMMITTEE

MINUTES of MEETING No. 40 held in London on 11 December 2014

Present:

John Beer (Govia Thameslink Railway) (Committee Chair)
John Czyrko (First Greater Western)
Dean Warner (Abellio Greater Anglia)
Andy Wylie (Hull Trains)
Nigel Oatway (DB Schenker Rail (UK))
Robin Nelson (Freightliner Heavy Haul)
Peter Craig (Network Rail)
Paul Thomas (Network Rail)

In attendance:

Professor Richard Butler (Allocation Chair)
Tony Skilton (Secretary)
Kathy Couldridge (Assistant Secretary)

Dean Warner was welcomed to his first meeting of the Committee since election.

40/1 Approval of Minutes of Meeting no.39

The Minutes of Meeting no.39, held on 24 July 2014, were approved. The Chair signed a copy of the Minutes as a true record of the proceedings.

40/2 Matters arising from the Minutes of the previous Meeting

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

39/3 (previous 38/2, 37/3, 36/2, 35/2, 34/3, 33/2 and 32/9) Management of funds

Opportunity was still awaited for the intended opening of a 60 Day Notice Business Savings Account with Cambridge & Counties Bank.

39/3 (previous 38/2 and 37/10) Reasons for determinations in Timetabling Disputes

Professor Butler reminded the Committee that an exercise had been undertaken in an attempt to address the difficulty which could be faced by the legally trained Hearing Chairs in producing determinations from Timetabling Panel hearings and having only a short period of time to do so when their instinct would be to give a fully reasoned exposition requiring greater time than allowed. The intention had been to establish consensus as to what should constitute a "just reasoned enough" determination and then discuss the outcome with ORR to secure support from that appellate body but the exercise had elicited a wide variety of differing ideas from the Hearing Chairs and in the meantime the relevant senior liaison position within ORR had fallen vacant.

In order to progress the matter, it was agreed that by the end of January 2015 Professor Butler would aim to compile a guidance note by way of illustration regarding a reasoned determination, which would be put to the Hearing Chairs for support and then discussed with ORR.

39/10 Appointments

The Secretary reported that one Hearing Chair - Tony Askham - had not sought renewal of his contract with the Committee due to volume of work in his new practice. No urgency had arisen for appointing any further Hearing Chairs, whilst liaison regarding appointment of one new Industry Advisor had yet to be completed.

40/3 Matters determined in correspondence

No matters had been determined in correspondence since Meeting no. 39.

40/4 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, particularly in response to "CPPP" decisions, and the Committee reflected upon the amount of industry resource expended in pursuing the contractual appeal process before - in the majority of cases - resolving the issue.

Committee members understood that the disappointing CPPP situation was arising because of "surprises" emerging frequently in CPPP decision documents such that operators did not have certainty before that stage as to what access might be available for them; the quality of engineering access planning dialogue with the Routes was understood to vary considerably and the Engineering Access Statement process was also reported as unsatisfactory on some Routes.

Although the disputes situation had been discussed with Network Rail quite some while ago - in 2013, no proposals for amendment of the Network Code had been forthcoming if Part D was considered to be defective. The Committee was largely of the view that the key challenge for Network Rail and operators is to avoid disputes arising in the first place; with little perceived to be amiss with Part D, the issue was whether the processes were being followed properly and whether there was sufficient dialogue taking place between Network Rail and operators so that disputes are only raised when it is imperative to do so.

The Committee was also concerned that given the nature of the workbank for Control Period 5, the dispute situation might be indicative of Network Rail and operators not having secured the necessary additional resources to apply the contractual procedures efficiently.

The Committee noted that Network Rail's Head of Capacity Planning had recently written to the Committee Chair suggesting some joint work between Network Rail and the Committee to help gain insight into the engineering access planning problem. The Committee felt that a case study of disputes which had been notified for the London North Eastern Route would be informative, perhaps with another Route studied to provide opportunity for comparison regarding application of process and associated behaviours. It was agreed that Paul

Thomas, as a member of the Committee and also being an experienced practitioner within Network Rail, would take matters forward for the Committee with support from other Committee members as considered appropriate.

Regarding previous Minutes concerning Timetabling Dispute TTP371 and subsequent related dispute references connected with the Timetable Planning Rules, the Committee was pleased to learn that a determination had been issued on 8 December 2014 in which aspects of principle were addressed.

40/5 Update on the website

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

40/6 Internal check arrangements

Robin Nelson had tabled a report regarding internal check activity which he had carried out since the 24 July meeting and this was noted.

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

40/7 Outturn for 2014/15 and preliminary budget for 2015/16

The Committee noted a report setting out the outturn projections against the current year budget; it anticipated that income would comfortably exceed expenditure. All Resolution Service Parties were up to date with levy contributions. The Committee particularly welcomed achievement of a sizable rating reduction following appeal against uplift in the Rateable Value of the office premises with effect from the 2010 Rating List Assessment.

Strategy was discussed in relation to replacement of meeting room furniture, administrative support and the securing of professional advice - both legal and accounting - in relation to future arrangements.

In considering the preliminary budget for 2015/16, the Committee considered as a principle that existing reserves together with surplus expected to be available out of 2014/15 income should enable the 2015/16 finances to be constructed to produce the same overall levy requirement as for 2014/15.

40/8 Review of dispute resolution process

ADR Rule J3(h) requires the Committee to satisfy itself that the Principles (as set out in Rules A5 to A10) are being observed in the way in which disputes are being managed and determined.

Based on personal observation during the past year and feedback canvassed from the Hearing Chairs, Prof Butler was content to advise from a professional perspective that the Principles were being observed. The Committee noted this advice.

The feedback from Hearing Chairs had included reports regarding recent case management experience which the Committee considered appropriate for sharing between all the Chairs at a discussion seminar; in view of anticipated changes to Part J of the Network Code and to the Rules during the coming year, the Secretary was asked to arrange a seminar for an

appropriate point in 2015 and to again invite representation from ORR for relevant areas of discussion.

Hearing Chairs had mentioned that guidance in the downloadable template submission documents provided on the Committee's website tended to encourage substantial duplication of information being provided to hearings and in some instances leading to confused arguments being presented. In the light of this feedback and experience generally, the Secretary undertook to review the templates.

40/9 Annual Report for 2014

Subject to any appropriate adjustments to reflect discussions at this meeting and factual changes arising in the remainder of the month, the Committee approved the draft for the 2014 Annual Report for issue in January 2015.

40/10 Proposed abolition of the Rail Industry Dispute Resolution Committee and Rail Industry Dispute Resolution Council ("RIDRC")

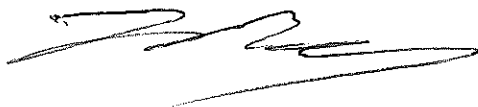
It was reported that following industry consultation, the enabling formalities for the abolition of RIDRC were not far away, although one CAHA-related issue had arisen which will demand the attention of the RIDR Committee as currently convened and might slightly delay completion of the abolition process. Nevertheless, it was considered timely that proposals for consequential amendments to the ADR Rules should be progressed, with implementation to be at a date to be advised. The Committee endorsed a draft Proposal for Change and Nigel Oatway kindly undertook that DB Schenker Rail (UK) would sponsor the item for consideration by the Class Representative Committee.

40/11 Committee and Timetabling Pool membership

It was noted that the annual round of elections had not yet been conducted at Class Representative Committee.

40/12 Meetings in 2015

The Committee agreed the schedule of routine business meetings to be held during 2015.

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