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## **ACCESS DISPUTES COMMITTEE**

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### **MINUTES of MEETING No. 47** held in London on 16 March 2017

#### **Present:**

Nigel Oatway (DB Cargo (UK)) (Committee Chair)  
John Czyrko (First Greater Western)  
Dean Warner (Abellio East Anglia)  
Helen Cavanagh (Arriva Rail North)  
Andy Wylie (Hull Trains)  
Peter Craig (Network Rail)  
Richard Parsons (Network Rail)

#### **In attendance:**

Tony Skilton (Secretary)

#### **Apologies for absence:**

Ian Kapur (GB Railfreight)

It was noted that the meeting was quorate and Richard Parsons was welcomed to his first meeting since being appointed by Network Rail to replace Paul Thomas.

#### **47/1 Approval of Minutes of Meeting no.46**

The Minutes of Meeting no.46, held on 6 December 2016, were approved. The Chair signed a copy of the Minutes as a true record of the proceedings.

#### **47/2 Matters arising from the Minutes of the previous Meeting**

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

##### 46/2, 45/2 Seminar for Hearing Chairs

It was noted that the 2017 seminar was being arranged for 26 April.

##### 46/4 Constitution of Timetabling Panels

Following discussion at the previous meeting, Nigel Oatway tabled a draft for a proposal which DB Cargo (UK) would sponsor to the Class Representative Committee with a view to reducing the size of a Timetabling Panel to become the Hearing Chair plus three members selected from the Timetabling Pool. The Committee endorsed the proposal for progression.

#### 46/6 Website costs

The Secretary reported that preliminary research into the likely expense of maintaining the Committee's website into the future was indicating a minimum cost of approx. £3,862 plus VAT for the services of a UK-based individual but even so reliable availability of covering support in the event of incapacity or extended holiday was a risk. It was desirable to engage a UK contractor because otherwise there could be a problem with time differences when requiring same-day updates or when urgent e-mail exchange or telephone discussion becomes necessary. Being aware of the situation with the present contractor, the Committee asked for research to continue and for a paper to be tabled in due course with a view to a change of contractor in during the next couple of years.

#### 46/9 Annual Report for 2016

The Secretary reported that the Annual Report had been published on 17 January 2017. No comments had been received.

#### **47/3 Matters determined in correspondence**

No matters had been determined in correspondence since Meeting no. 46.

#### **47/4 207/18 Committee and Timetabling Pool membership**

The Committee noted changes within its membership and that of the Timetabling Pool which had resulted from recent elections. Also, Paul Thomas of Network Rail had recently left the industry.

Committee members expressed appreciation for the contributions made to the Committee's work by John Czyrko and Paul Thomas during their periods of membership.

Three long-serving members - Peter Warhurst, Robert Holder and Nick Gibbons - were leaving the Timetabling Pool; the Committee asked the Secretary to specially thank them for their contributions to Timetabling Panels over the years.

It was noted that forthcoming staffing changes within DB Cargo (UK) would lead to a by-election becoming necessary in Non-Passenger Band 1 very shortly.

#### **47/5 Position on references**

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

Thirteen Timetabling Disputes had been registered in relation to Version 2 of Network Rail's decisions regarding the Timetable Planning Rules for 2018, seemingly with shared underlying issues; it was noted that arrangements were being made for these disputes to be heard by the Timetabling Panel as soon as practicable.

## Timetabling Disputes

The Secretary reported that working group initially organised by Paul Thomas had met four times. After examining the reasons for the high number of disputes relating to CPPP ("Confirmed Period Possession Plan") decision notices, a Code of Practice had been drafted and this was awaiting sign-off by the working group members and support from Network Rail's Head of Capacity Planning Controls because of an additional work commitment required from Network Rail. It was also intended to discuss the proposal at Operations Planning Steering Group to gain support from practitioners across the industry before being put to the Committee for endorsement. The document - which would set out sensible timescales for undertaking the actions associated with a CPPP-related dispute and bringing it to a Timetabling Panel - would then be put in place as a recommended (but not contractual) Code of Practice from the Committee and Network Rail. It was hoped that the proposal would be put before the Committee at its next meeting.

The Secretary had broached with Network Rail's Head of Capacity Planning Controls the subject of the reasonable timescale within which a Timetabling Panel ought to be hearing a dispute regarding an Engineering Access Statement and it had also been considered in passing by the working group; it was thought appropriate to defer further consideration until the CPPP Code of Practice is embedded as that would impact upon perceptions of there being benefit in having "holding disputes" over the Engineering Access Statement. The CPPP Code of Practice would make clear that disputed items in the Engineering Access Statement fall away progressively when the CPPPs are issued.

### **47/6 Update on the website**

The Secretary reported that the website listing of disputes was up to date. The Directory was also up to date except for elements reflecting determinations of recent Access Dispute Adjudications which had been appealed.

### **47/7 Internal check arrangements**

John Czyrko had tabled a report regarding internal check activity which he had carried out since the 6 December 2016 meeting and this was noted. The Committee was pleased to note that John had been accompanied by Helen Cavanagh to give some introduction to internal check processes.

It was agreed that Nigel Oatway would undertake internal check until the next meeting. Subject to availability, Nigel agreed to take the opportunity to give some introduction to internal check processes to Dean Warner or Richard Parsons, who both have not previously had experience in the activity.

### **47/8 Outturn for 2016/17 and budget and levy proposals for 2017/18**

The Committee noted a report from the Secretary setting out the final outturn projections against the current year budget, together with the final budget proposal for 2017/18. When taking into account recovery of Costs awarded to the Committee in connection with dispute ADA30, it was anticipated that 2016/17 income would comfortably exceed expenditure. Four Resolution Service Parties had yet to pay their levy contributions for 2016/17. The budget proposal for 2017/18 was approved, noting costs sharing contributions to be requested from the Delay Attribution Board and the CAHA Registrar towards office expenses which together with application of accumulated surplus would enable the overall levy

demand upon Resolution Service Parties for 2017/18 to be the same as the overall 2016/17 demand. In adopting this strategy, the Committee was satisfied that its position as an ongoing concern would nevertheless remain protected.

The levy charges for 2017/18 were discussed in the context of the arrangements set out in the ADR Rules and, together with other funding aspects, decided.

The Secretary reported that application of the arrangement in Rule J51(c) to newly emerging operators which start paying Railway Safety Levy can result in lesser contribution to the Committee than when the new operator is paying the "fair and reasonable" price fixed by the Committee under Rule J51(a). Looking to 2017/18, one charge was hardly worthwhile for the Committee to collect when taking into account the associated administration costs. The Committee asked the Secretary to review the charging rules with a view to proposing a de minimis arrangement for clauses (a) to (c) of Rule J51 which remains fair and reasonable to the Resolution Service Parties whilst being economic for the Committee to collect.

#### **47/9 CAHA Registrar's budget for 2017/18**

The Claims Allocation and Handling Agreement requires the Registrar to obtain the approval of the Access Disputes Committee for its costs and expenses for each financial year. Lesley Stephenson of CAHA Registrar Ltd attended for this agenda item to discuss the Registrar's budget for 2017/18, which the Committee approved.

#### **47/10 Bank account signatories**


The Committee noted that the departure of John Czyrko would leave the Cambridge & Counties Bank accounts with three single signatories, being Nigel Oatway, Andy Wylie and Tony Skilton (although, by direction of the Committee, the Secretary is not authorised to make withdrawals). Following discussion, it was decided that there was no requirement to appoint any further signatories for the time being.

#### **47/11 Directors of Access Disputes Resolution (GB) Ltd**

The Committee noted that the departure of Paul Thomas left Access Disputes Resolution (GB) Ltd with three directors, being Nigel Oatway, Andy Wylie and Tony Skilton. Following discussion, it was decided that there was no requirement to appoint any further directors for the time being.

#### **47/12 Appointment of Committee Secretary and Office Administrator**

The Committee noted that the consultancy contracts with Mrs Regina Emery as Office Administrator and Tony Skilton as Committee Secretary would shortly be terminating and authorised renewal of both contracts for 2 years on terms to be decided by the Committee Chair having due regard to the budget.

  
14/12/17