
ACCESS DISPUTE RESOLUTION COMMITTEE

Determination No. 12

(following a hearing at Kings Cross on 11th February 1997)

The Access Dispute Resolution Committee was asked to determine whether Railtrack had been entitled, under the terms of the Track Access Agreement with South Wales & West Railway, and given the terms of Schedule 10 of the Track Access Agreement with CrossCountry Trains, to accept bids for Through Trains to operate between Manchester/Liverpool and Portsmouth/Penzance.

The appeal was made by CrossCountry Trains, whose interest stemmed from their acknowledged right to operate trains between Manchester or Liverpool and Southampton or Penzance; CrossCountry Trains further contended that Railtrack's freedom to grant future rights to other operators to operate services between these end points was curbed by the terms of Schedule 10 of the CrossCountry Trains Track Access Agreement, together with the force of Stage 1 of the Moderation of Competition policy as approved by the Office of the Rail Regulator.

The Committee, at its meeting on 18 September 1996 (Minute 15/8), had resolved that a similar matter should be addressed in stages; likewise in this case the first stage should be a judgement on the content of the South Wales & West Railway Track Access Agreement, and whether that demonstrated the existence of a firm contractual right for South Wales & West Railway to run the disputed services. This question of interpretation of an existing contract is the subject of this determination.

The Committee, having heard representations from CrossCountry Trains, Railtrack and South Wales & West Railway, concluded that, under the terms of its Track Access Agreement (effective from 11th December 1995), the Firm Contractual Rights of South Wales & West Railway to run Through Trains (that is linking rights in more than one service group) were only such as were explicitly defined in the section "Through Trains" in Table 2 "Service Requirements" of Schedule 5. The Committee was satisfied that the agreement did not confer any other pre existing rights for Through Trains.

The Committee acknowledged that Railtrack and South Wales & West were both of the view that other linkings had been practised in the past, could be desirable, and might be agreed between the parties. The Committee ruled that such linkings could operate subject to the following understandings:

- a) the Train Operator has no firm entitlement to such arrangements when they do not appear clearly and unambiguously expressed on the face of the Agreement.
- b) such arrangements are subject to tests of reasonableness in relation to the rights that can reasonably be deduced from what does appear on the face of the Agreement.

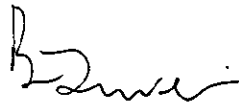
- c) Railtrack has no right to concede any such new arrangements when they conflict with any commitments given in existing Track Access Agreements with other Train Operators, including in particular Schedule 10 of such Agreements.

For the avoidance of doubt the Committee ruled that the linking of Manchester/Liverpool to Cardiff rights with Cardiff to Portsmouth/Penzance rights in order to operate Through Trains with effect from the Summer 1997 timetable was not acceptable. The Committee was further of the opinion that any such linkings that had operated on previous timetables could continue to operate provided that the parties continued to acknowledge the force of a) and b) above.

In relation to the specific Through Trains for which bids had been accepted for the Summer 1997 timetable, the Committee, recognising the point reached in the Timetabling process, the degree of ambiguity in the South Wales & West Railway Track Access Agreement, and the potential attractiveness of the proposed service to the travelling public, considered that

- i. the disputed trains should be operated in the Summer 1997 timetable, and agreement should be reached between the three parties to ensure that CrossCountry Trains are not commercially disadvantaged by the operation of these trains, and
- ii. the disputed or similar trains should not be incorporated into future timetables (i.e. starting with the Winter 1997 Timetable) unless or until their status has been clarified by the ratification by the Regulator of an appropriate Section 22 amendment to the South Wales & West Railway Track Access Agreement.

The Committee in making this determination recognised that it might require Railtrack to rescind an offer in relation to the Winter 1997 Timetable that had previously been made. Railtrack was directed to act in this way and the Committee acknowledged that, in giving this direction, it was explicitly not placing any restriction on the rights of South Wales & West Railway in relation to the operation of Part D of the Track Access Conditions and the opportunity to be heard before the Timetabling Committee in accordance with Track Access Condition D5.1.



Bryan Driver
Chairman of the Committee
11th February 1997