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## **ACCESS DISPUTES COMMITTEE**

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(on behalf of the Disputes Chairman)

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cc: Panel Members appointed to hear ADP31  
Sir Anthony Holland, Disputes Chairman  
Martin Shrubsole, Clerk to the Panels

**Ref:** ADC/ADP31  
**Date:** 22<sup>nd</sup> January 2008

### **CONFIDENTIAL**

#### **ADP31: First Greater Western ("FGW") vs Network Rail:**

#### **Operation of Network Code Part F (and related provisions), in respect of the introduction of Class 142 trains for services in Devon**

1. Given the delay that was requested in bringing this matter to hearing, I have sought to bring out any further questions that Panel members might wish to have addressed in advance of the Hearing, so that, on Friday 1<sup>st</sup> February, we do not need to carve our way through any unnecessary "undergrowth" to get to the central issues.
2. The responses to my directions of 21<sup>st</sup> December were generally full and helpful, and most of the following points are by way of further clarification. That said it is not clear from either the joint submission, or the responses to my previous letter, why annexes g) and h) are apparently required to be read in totality. Moreover, i) is clearly part of a larger document and, it would appear, depends for its significance very much upon its larger context. Would the parties please supply the Panel members with a simple statement showing why they have supplied those particular annexes, which precise elements/references within each document they wish to draw to the Panel's attention, and what it is asserted that each reference demonstrates.
3. In addressing these annexes, would the parties please confirm their joint, or varying, understandings of
  - 3.1. What in practical terms is meant by the statement that compliance with the Network Rail specification on lubricators (annexe h)) is mandatory; and

- 3.2. What the implications are of the second paragraph in the Specification under the heading "Compliance" for areas where no project is in progress?
4. It has not so far been made clear why, when FGW only concluded its Track Access Contract in late 2006, it has found it necessary, or beneficial, to introduce rolling stock that it had not previously contemplated it would require, and why it specifically elected to introduce Class 142s to a set of routes from which they had long been absent. Having clarified that issue (that is directly relevant to the applicability of Part F, Vehicle Change), can FGW confirm
  - 4.1. how long it expects to operate Class 142s on the routes in question, and whether that period of operation will carry beyond the current CP4 charging regime; and
  - 4.2. that it acknowledges that operating Class 142s on these routes will increase the rate of rail wear, and that that rate of increase will can be reduced, but not eliminated, by the use of flange lubricators?
5. In view of its answers to my previous letter, does FGW concede that
  - 5.1. this change to the Specified Equipment within its Track Access Contract has correctly been dealt with thus far as a matter of Vehicle Change,
  - 5.2. that whilst compliance with the provisions of the Sectional Appendix is an obligation stemming from any right to track access, it does not have any bearing on whether the operation of a particular class of vehicle (not previously included as Specified Equipment in the Track Access Contract), will involve a vehicle change, and therefore does not place Network Rail under any obligation to grant an access right; and that in consequence -
  - 5.3. the matter in dispute can only be addressed as a matter of rights under a contract, to be resolved using the provisions of Part F of the Network Code?
6. Will both parties please confirm that progressing a Vehicle Change under Part F of the Network Code
  - 6.1. is a mandatory contractual condition where there is to be a change to the Specified Equipment; but
  - 6.2. only commits the parties to consider whether or not some element of compensation might be payable, and does not imply that this IS the case, or that compensation should be payable for any specific cause, or in any particular amount?
7. Would Network Rail please advise whether, prior to receiving FGW's notice of Vehicle Change, it had any plans to install additional flange lubricators on the lines in question? What does Network Rail construe that it was, or in future is, obligated to provide in the way of flange lubrication equipment on these routes if there were no prospect of their being used by Class 142s?
8. In the context of the provisions of the Specification (annexe h));
  - 8.1. In the last paragraph on p.5 of the Joint Reference, Network Rail says that Class 142s "can now only operate on the Specified Routes" if lubricators are installed: what does it mean by "can"?

- 8.2. are lubricators to be installed on curves with a radius of less than 1500 metres whether or not there is evidence of wear?
- 8.3. is it the case that the excess wear caused by Class 142s arises only where the radius is less than 900 metres (Appendix B to Annex b)? Is Network Rail requiring FGW to pay for lubricators on all curves with a radius of less than 1500 metres? If so, how does Network Rail justify this?
- 8.4. what is the expected useful life of a lubricator?
- 8.5. In relation to Annex i), and the reference to 1500m: is this part of a practical direction, or is it a premise in relation to a mathematical exercise aimed at calculating a tariff element within the VTU charges to apply in CP4?
9. Before it proposed the installation of flange lubricators on these routes, did Network Rail quantify the extra cost to it of track maintenance and renewal resulting from FGW operating Class 142s? If so, how was the calculation made and what was the result?
10. Is it the case that fitting lubricators will reduce track wear by other vehicles as well as by Class 142s?
11. Have flange lubricators actually been installed? If not yet, when will they be installed? What course of action will Network Rail adopt if it is determined that the TOC is not liable to pay for the flange lubricators in question?

### **Next Step**

12. I have no doubt that you will already have ready answers to most of these questions. Please, either jointly or individually, submit written responses to them in advance of the hearing and kindly ensure that your responses are received by the Secretary no later than 10 00 on Tuesday 29<sup>th</sup> January 2008.

**George Renwick**

Panel Chairman

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