
TIMETABLING SUB-COMMITTEE

DETERMINATION No. 12

(Hearing held at Euston House on Monday 20 May 1996)

The Committee was asked to hear a reference by North London Railways Limited in relation to a claim that the offer received in the first iteration for the Winter 1996 Timetable does not satisfy the terms of the Train Operator's bid, and does not accord with the terms of their Track Access Agreement.

The Committee considered that the reference fell within its jurisdiction.

When the parties made their oral representations the Committee noted that the points at issue had changed materially since the date of the preparation of the original written submissions. The Committee expressed its displeasure that there had not been any appropriate supplementary written brief to forewarn the Committee.

The Committee noted that the position in relation to the reference was now that Railtrack had devised a solution that was capable of meeting the needs of the North London Railways Track Access Agreement. Railtrack furthermore advised that the solution, which had been discussed with all interested parties, could be represented as meeting the aspirations of all other affected Train Operators, or at least their Contractual Rights. However, Railtrack advised the Committee that it could not implement its solution because two affected Train Operators - Regional Railways North East, and Central Trains Limited, were not prepared to agree that 2 and 3 paths respectively be flexed, in accordance with the contracted rights within their Track Access Agreements, subsequent to their having accepted first offers.

Railtrack therefore asked the Committee to give such a general direction as would allow it to exercise flexing rights in accordance with Track Access Condition D3.3.5(c), and D3.2.2(b).

The Committee determined that it would give Railtrack a general direction to implement the solution that would meet the terms of the North London Railways agreement, and satisfy the aspirations of European Passenger Services, with the following provisos:

- a) where services are to be flexed, the amount of flex should not exceed any flex that would have been allowed by the relevant Track Access Agreements at the first offer, had the solution been devised by then, unless the TOC affected has otherwise duly agreed the flex, and
- b) the details of all proposals are included in the second iteration offers for Winter 1996 Timetable.

For the avoidance of doubt, the Committee made clear that this Determination applied solely to the Winter 1996 Timetable, and that the Committee's general direction does not take away any affected Access Parties' rights in relation to further reference to the Committee, or appeal to the Regulator, nor does it remove any obligation on the parties to respect due process, if there is a requirement for a Track Access Agreement to be amended.

Bryan Driver
Chairman
20th May 1996