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## ***TIMETABLING SUB-COMMITTEE***

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### **Determination No. 32**

(following a hearing at Kings Cross on 4th March 1997)

The Timetabling Committee was asked to rule on a reference brought by South Wales & West Railway, challenging the rejection by Railtrack of bids for services that would create through trains between Manchester/Liverpool and Portsmouth/Penzance/Waterloo.

The Committee noted that the contractual rights associated with these services had already been considered by the Access Dispute Resolution Committee (ADRC) at its meeting on 11th February, when the determination (ADR12) had been made that

“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 Timetabling Committee noted that, in making this direction, ADRC had specifically acknowledged the right of South Wales & West Railway, and the authority of the Timetabling Committee, by stipulating that

“The [ADR] 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.”

The Timetabling Committee took note of representations made by South Wales & West Railway, and supported by Railtrack, that the parties had exchanged bid and offer in relation to the services concerned on the basis that both parties were of the view that there were, in South Wales & West’s Track Access Agreement in addition to the Firm Contractual Rights, implied Contingent Contractual Rights. The Committee noted that the parties considered that these Contingent Contractual Rights had not been given full consideration by the ADRC.

The Committee decided that, on these grounds, it was appropriate for the Committee to consider the matter on the basis that the only way in which Railtrack could carry out the decision given in ADR12 would be for Railtrack to reject South Wales & West Railway’s bid on the grounds that it was “non-compliant”, and that a judgement on a contested issue of non-compliance was properly within the jurisdiction of the Timetabling Committee.

Having considered all the representations the Committee determined that Railtrack, irrespective of the proceedings recorded in ADR12, acted correctly in rejecting South Wales & West Railway's bid. The bid was non-compliant, i.e. "is not within or is inconsistent with the rights of the Bidder" - insofar as the South Wales & West Railway's Track Access Agreement contains a specific entitlement to Through Trains in Table 2 of Schedule 5, and that the services bid for are not consistent with that entitlement.

The Committee did not accept that the agreement conferred or implied any contingent rights to other Through Trains. The Committee therefore determined that before the Through Train Services sought by South Wales & West Railway could be incorporated in the Winter 1997 Working Timetable South Wales & West Railway should seek additional Contractual Rights by the submission, to the Regulator, of a Section 22 amendment proposal.

**Bryan Driver**  
**Chairman of the Committee**  
**4th March 1997**