**JOINT SUBMISSION BY NETWORK RAIL, ENGLISH WELSH AND SCOTTISH RAILWAY Ltd AND FREIGHTLINER HEAVY HAUL Ltd TO THE ACCESS DISPUTES COMMITTEE**

**IMPOSED LATE DISRUPTIVE POSSESSIONS LNE 06-325-GN and LNE 06-326-GN Brancliffe East Jn and Maltby Colliery, Week 23**

**ADC Ref No. [Unknown]**

**1. PARTIES**

| Network Rail  National Access Unit  [address in here]  Contact: Mark Pawson | English Welsh and Scottish Railway Ltd  McBeath House  310 Goswell Road  Islington  LONDON  EC1V 7LL  Contact: Nick Gibbons |
| --- | --- |
|  | Freightliner Heavy Haul Ltd  Basford House  Basford Hall  Off Gresty Road  Crewe  CW2 7LB  Contact: Michael Leadbetter |

**2. PARTIES RIGHT TO BRING THIS REFERENCE**

This matter is referred to the Access Disputes Panel in accordance with Condition D5.1.2(a)

Network Rail (NR), English Welsh and Scottish Railway Ltd (EWS) and Freightliner Heavy Haul Ltd (FHH) wish to bring to dispute the imposition of two late disruptive possessions as listed below.

LN758 BRANCLIFFE EAST JN TO KIRK SANDALL JN

Week:                      23

NAU Reference:        LNE06-325-GN

PPS Reference:        P2006/831072

Date:                       Wednesday 6 to Thursday 7 September

Locations:                Dinnington Jn and Maltby Colliery

Lines Affected:         Single BLOCKED T3

Times:                      2200 Wed to 0300 Thu

Traffic Remarks:        TRAINS DIVERTED VIA BECKINGHAM, GAINSBOROUGH AND RETFORD

NAU Reference:        LNE06-326-GN

PPS Reference:        P2006/831087

Date:                       Thursday 7 to Friday 8 September

Locations:                Brancliffe East Jn and Dinington Jn

Lines Affected:          Down and Up BLOCKED T3

Times:                      2200 Thu to 0200 Fri

Traffic Remarks:        TRAFFIC DIVERTED VIA BECKINGHAM, GAINSBOROUGH AND RETFORD

**3. CONTENTS OF REFERENCE**

The proposals for these possessions were issued in an e-mail on the 25th August at 15:39 [Appendix A] and were reiterated in an e-mail on the 30th August [Appendix B]. They were disputed by FHH in an e-mail at 13:00 on the 30th August and by EWS in an email on the 29th August at 09:20 [Appendices C and D].

**4. SUBJECT MATTER OF DISPUTE**

This dispute arises as EWS and FHH believe that having disputed these items which are for a rail drop and as such do not constitute safety critical work then these items should not go ahead. Both EWS and FHH have a number of trains affected on each night, 18 each night for EWS and 9 each night for FHH, these services have Level 2 access rights and have been offered for next week. There will also be consequential effects to onward services.

Network Rail argues that the rail drop is to allow safety critical work to take place in a possession on Saturday 9th September and as such should go ahead.

**5. CORRESPONDANCE BETWEEN THE PARTIES**

The following correspondence has taken place between the parties:

From Mark Pawson – 3rd Sept – 16:49

Dear All

I am concerned that on this issue Network Rail may have used the emotive word imposition before furnishing the Freight operators with the full detail of these safety of the line issues and why these possessions are required at such short notice. Therefore I have attached a PDF file of the track engineer's and the fault report following the Ultrasonic examination of The line between Brancliffe East and Maltby on the 2 August 06.

You will note amongst the defects, 10 defects were classified as Category 1A, requiring them to be replaced immediately. Given the number and location of the defects it was also necessary for the existing rail to be replaced with CWR.

The first availability for the CWR train was midweek nights during week 23. I am aware that the freight operators are concerned that Network Rail did not re-prioritise existing CWR rail drops to provide the CWR train at weekends when no trains are running. Whilst in isolation this seems a sensible option there are a limited number of CWR trains, and these are fully programmed with rail drops across the network. Short notice, re-prioritising of the CWR trains would have had a knock on effect across the network with a corresponding requirement for further short notice disruptive possessions at other locations, or conversely have last minute cancellation of disruptive possessions due to no rail having been dropped at

site.

Having spoken with the track engineer he advises that given the severity of the defects, engineering standards require that new rail is installed immediately it is delivered to site. However, conscious of the level of traffic over this route, a pragmatic decision was made to install the rail at weekends in non-disruptive possessions, even though the rail may have been at site for several days. Accordingly a dispensation was signed allowing these defects to remain until the 10th Sept. Given that the line speed is 25mph a further dispensation has been given so that a 5mph TSR need not be imposed, which would have had a severe performance and capacity impact on the single line.

The intent of this email and attachment is to advise operators – given that the requirement for the possessions could not have be foreseen as they were a direct result of ultrasonic detection on the 2nd August - that the subsequent actions by Network Rail did consider the impact on train operations, and decisions were made to mitigate overall disruption.

Mark Pawson

Network Access Unit Manager

Leeds.

From Nick Gibbons (EWS) 3rd Sept – 19:39

Mark,

Whilst I thank you for this email and its contents I remain unconvinced that Network Rail has properly considered the options available to it. I am also concerned as to the actual use of the phrase 'safety of the line issues'. There are some very fundamental issues which have not been addressed either in this email or in previous exchanges regarding these possessions. As a consequence I would like to see answers to the following questions:

1. My understanding of Category 1A defects is that they fall into two areas, those that require action within 36 hours and those that require action within 7 days. These Category 1A defects are governed by Industry Group Standards and are subject to referral to HMRI to ensure these Standards are maintained. If this is the case why is it that it took 23 days to first propose these possessions and then a further 12 days before the possessions are taken?
2. Both EWS and FLHH are fully cognisant of the needs to rectify defects of this kind as they arise across the network with monotonous regularity. Whilst these tend to be disruptive to our business we will always work with Network Rail to ensure the rectification work is achieved within the required timescales, recognising that the safety of the network is paramount. It is therefore surprising that Network Rail was able to receive derogation on the required timescales. EWS and FLHH would like to understand how this derogation was granted as we have pressed before in this area only to be told by Network Rail that the timescales must be adhered to.
3. If these defects had been discovered on a part of the network which involved the operation of passenger trains there is no doubt in the minds of EWS and FLHH that heaven and earth would have been moved to enable rail to be dropped and the defects rectified. Why, if these defects are so important, has this not happened? I acknowledge the issue surrounding the limited number of CWR trains available, but both EWS and FLHH can quote many instances where resources have been prioritised to ensure such defects are removed.
4. Since the discovery of the defects there have been 5 weekend opportunities to drop rail and undertake the main possession, yet it would appear that nothing has been attempted. If the defects are so severe so as to classify them as 'safety of the line issues', why has nothing been done to rectify them even if this did not involve the replacement of the current rail with CWR?
5. To propose these possessions during the periods of normal railway operation, over a route that is key to the delivery of coal to the Generators, is far from customer focused. If you proposed these to a passenger operator I am sure of the response you would get. Why have you not proposed dropping the rail immediately prior to the main possession and then asked if both EWS and FLHH are prepared to see this possession extended further into the Sunday to permit this to happen?
6. Both EWS and FLHH have an agreed volume of business with their customer for next week and the train plan to ensure this delivery has been formulated and bid to Network Rail. Offers to these bids have been validated by Network Rail and accepted by the operators. You are not proposing that these offers are withdrawn by Network Rail are you? Not only do both operators not agree to their withdrawal, it is also against the Network Code to do so without the operators expressed agreement.

As you will be aware Chris Blackman, as secretary to ADRR, has asked for Joint Submissions by 16.00 tomorrow, Monday 4th September. I would urge Network Rail to consider the option expressed in item 5 above which could lead to a resolution to the Dispute at hand. Failure to do so will leave all parties in the unenviable position of trying to provide comprehensive papers to ADRR in extremely limited timescales.

Nick

From Mark Pawson – 4th Sept – 14:32

Nick

In response to your questions,

1. The defects when originally found were classed has 1B defects

requiring rectification within 7 days. However because of the number of

defects it was not practicable to clamp them all, therefore the defects

were raised to the next level i.e. 1A defects requiring repair with in

36 hours. At this stage the engineer had to use his engineering

judgement and compliance with relevant standards, to decide if and how a

dispensation should be applied. Bearing in mind that there was a

requirement to use CWR the dispensation inevitable had to accommodate

the resourcing availability of the long welded rail train.

2. Dispensations are signed by the Area Track Engineer based on the type

of fault the overall condition of track, location and the engineer's

judgement.

3. Decisions are made purely on engineering judgements regarding the

fault and local infrastructure conditions not on the type of traffic

running.

4. The number, the location and the type of defects necessitated the use

of CWR.

5. The constraint is the availability of the rail train which is an

extremely scare resource. The preference for the engineer would be to

install the rail asap after the rail is dropped and it is accepted that

a weekend scenario would be welcome by all. However the rail train is

not available at the weekend.

6. I can only reiterate that the requirement for the possessions is a

result of the identification of track defects on the 2 August that need

to be rectified by the 10th September.

I have been speaking to the track engineer and he is willing to address

any points by telephone, would a teleconference conference be useful in

seeking resolution of this dispute.

Mark

**7. CHRONOLOGY**

| 02/08/2006 | Ultrasonic Examination of the Line |
| --- | --- |
| 04/08/2006 | Engineers Report produced identifying that CWR was required to dropped and installed, earliest opportunity identified as being Week 23. [Appendix G] |
| 25/08/2006 | Initial Possession Request to operators from NR [Appendix A] |
| 29/08/2006 | Possession request declined by EWS [Appendix D] |
| 30/08/2006 | Possession request reiterated to operators [Appendix B] |
| 30/08/2006 | Possession request declined by FHH [Appendix C] |
| 30/08/2006 | Possession request further declined by EWS [Appendix E] |
| 01/09/2006 | Possession request IMPOSED by Network Rail [Appendix F] |

**8. DECISION SOUGHT FROM THE COMMITTEE**

## Network Rail seek a direction from the committee to direct EWS and FLHH to allow the possessions on Wednesday 6th and Thursday 7th nights for the CWR train to drop rail for the forthcoming weekend possessions. The rail is required to replace defective rail with 10x 1a defects that must be repaired by the 10th September. On this date the dispensation to run traffic over the route ceases. The Area Engineer will then after consider whether it is appropriate to extend the dispensation.

EWS and FHH seek a direction from the committee to direct Network Rail to rearrange the CWR train to be available at the beginning of the possession scheduled for Saturday 9th September and to withdraw the two scheduled possessions as listed in Section 2 of this Joint Submission. EWS and FHH are willing to consider an extension of this possession in order to accommodate this change. EWS and FHH asks Network Rail to provide full justification for any reasons why it might not be able to reschedule the CWR train as currently EWS and FHH believe this has not been provided.

**JOINT SUBMISSION BY NETWORK RAIL, ENGLISH WELSH AND SCOTTISH RAILWAY Ltd AND FREIGHTLINER HEAVY HAUL Ltd TO THE ACCESS DISPUTES COMMITTEE**

**IMPOSED LATE DISRUPTIVE POSSESSIONS LNE 06-325-GN and LNE 06-326-GN Brancliffe East Jn and Maltby Colliery, Week 23**

Signed for EWS: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAME: NICK GIBBONS Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For FHH: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAME: MICHAEL LEADBETTER Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

For Network Rail: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

NAME: MARK PAWSON Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**Appendix A**

From: **Noble S (Network Rail)**Sent: **25 August 2006 15:39**To:[email addresses removed]Subject: **Late Disruptive Possessions LNE06-325-GN and LNE06-326-GN, Brancliffe East Jn and Maltby Colliery, Weeks 23**

REQUEST

**Dear All,**

**Please consider the following late disruptive possessions:-**

NAU Reference:                                   **LNE06-325-GN and LNE06-326-GN.**

PPS Reference:                                   **P2006/831072 .**

Week:                                                  **23.**

Line Of Route:                                     **LN758 BRANCLIFFE EAST JN TO KIRK SANDALL JN**

Date:                                                    **Wednesday 6 to Thursday 7 September**

Locations:**Dinnington Jn and Maltby Colliery**

Lines Affected:**Single BLOCKED T3**

Times:                                                  **2200 Wed to 0300 Thu.**

Traffic remarks:                                    **TRAINS DIVERTED VIA BECKINGHAM, GAINSBOROUGH AND RETFORD.**

Date:                                                    **Thursday 7 to Friday 8 September**

Locations:**Brancliffe East Jn and Dinnington Jn**

Lines Affected:**Down and Up BLOCKED T3**

Times:                                                  **2200 Thu to 0200 Fri**

Traffic remarks:                                    **TRAINS DIVERTED VIA BECKINGHAM, GAINSBOROUGH AND RETFORD.**

**These possessions are required to unload rails in preparation for the future removal of rolling contact fatigue (Gauge Corner Cracking) and rail defect sites.**

**Please let me know in writing** within THREE working days **if you agree to or have any objections to these possessions.**

**Regards**

***Steve Noble***

***Network Access Planner London North Eastern***

***Tel: 085 32229/0113 341 2229***

This email is in accordance with Access Condition D2.1.8 and relates to Section 3.1 of National Rules of the Plan being the Procedure for Altering Rules of the Route or Rules of the Plan other than through the Twice-Yearly Process Having Effect from a Passenger Change Date

**Appendix B**

From: **Patrick Toby**Sent: **30 August 2006 12:32**To:[email addresses removed]Subject: **COMMENTS FOR ; Late Disruptive Possessions LNE06-325-GN and LNE06-326-GN, Brancliffe East Jn and Maltby Colliery, Week 23**Importance: **High**

**Dear all,**

**Please see the below Late Disruptive Possession request distributed by Steve Noble on the 25th of August at 15:39.  Steve is currently on Annual Leave, and therefore is not available to process your comments regarding this possession.  If you have sent comments to Steve, can I please request that you forward them to me, so I can ensure that they are processed in the correct time scale.  If you have not responded to Steve, can I please urge you to send me any comments you have as soon as possible, so we can process this possession for week 23.**

**Regards,**

**Toby Patrick**

**\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**REQUEST**

**Dear All,**

**Please consider the following late disruptive possessions:-**

**NAU Reference:        LNE06-325-GN and LNE06-326-GN**

**PPS Reference:        P2006/831072**

**Week:                      23**

**Line of Route:           LN758 BRANCLIFFE EAST JN TO KIRK SANDALL JN**

**Date:                       Wednesday 6 to Thursday 7 September**

**Locations:                Dinnington Jn and Maltby Colliery**

**Lines Affected:         Single BLOCKED T3**

**Times:                      2200 Wed to 0300 Thu**

**Traffic Remarks:        TRAINS DIVERTED VIA BECKINGHAM, GAINSBOROUGH AND RETFORD**

**Date:                        Thursday 7 to Friday 8 September**

**Locations:                Brancliffe East Jn and Dinington Jn**

**Lines Affected:          Down and Up BLOCKED T**

**Times:                      2200 Thu to 0200 Fri**

**Traffic Remarks:        TRAFFIC DIVERTED VIA BECKINGHAM, GAINSBOROUGH AND RETFORD**

**These possessions are required to unload rails in preparation for the future removal of rolling contact fatigue (Gauge Corner Cracking) and rail defect sites.**

**Please let me know in writing within THREE working days if you agree to or have any objections to these possessions.**

**Regards**

***Steve Noble***

***Network Access Planner London North Eastern***

***Tel:  085 32229 / 0113 341 2249***

**This email is in accordance with Access Condition D2.1.8 and relates to Section 3.1 of National Rules of the Plan being the Procedure for Altering Rules of the Route of Rules of the Plan other than through the Twice-Yearly Process Having Effect from a Passenger Change Date.**

**Appendix C**

From: **David Brooke**Sent: **30 August 2006 13:00**To: **Patrick Toby**Subject: **RE: COMMENTS FOR ; Late Disruptive Possessions LNE06-325-GN and LNE06-326-GN, Brancliffe East Jn and Maltby Colliery, Week 23**

**Fl decline this possn ,can't accept midweek closure of the south yorks branch**

**thanks**

**Dave**

**Appendix D**

From: **Scott, Christine**Sent: **29 August 2006 09:20**To: **Noble S (Network Rail)**Subject: **RE: Late Disruptive Possessions LNE06-325-GN and LNE06-326-GN, Brancliffe East Jn and Maltby Colliery, Weeks 23**

**Steve,**

**Declined.**

**Too disruptive for our services.**

**Regards,**

**Christine**

**Appendix E**

From: **Scott, Christine**Sent: **30 August 2006 15:53**To: **'Patrick Toby'**Cc: **Gibbons, Nick; Lewis, Richard**Subject: **RE: COMMENTS FOR ; Late Disruptive Possessions LNE06-325-GN and L NE06-326-GN, Brancliffe East Jn and Maltby Colliery, Week 23**

**Hi Toby,**

**I have looked at your second request for possessions on route LN758.**

**We understand FLHH will also be declining this possession.**

**The week 23 coal plan is already well advanced and trains are required during the proposed times**

**of the rail drop. The suggested diversion via Gainsborough Central (RR) which also means a**

**(RR) at Worksop for trains to/from Cottam P.S. will present route knowledge and time loss situations**

**of which we are unable to accept, especially at this late stage.**

**Furthermore we believe that any retimings of this magnitude would be unable to be undertaken by OPSU.**

**There is of course a possession on this route this weekend items 47/48 in LNEC WON 23.**

**It is of concern to note that the possessions as requested have already been advised to our**

**Infrastructure colleagues for progression as though they have been agreed. This could lead to waste**

**of resources being committed to something that will not happen.**

**It is understood that the last train from Harworth will be on Monday 4th September. If you consider rail drops**

**could be done between trains using the Harworth "branch" as the refuge we could further evaluate this, but**

**for now EWS again decline the possession as requested.**

**Regards**

**Christine**

**Appendix F**

From: **Bulman Julie**Sent: **01 September 2006 10:36**To:[email addresses removed]Subject: **IMPOSED Late Disruptive Possessions LNE06-325-GN and lNE06-326-GN, Brancliffe East Jn and Maltby Colliery, Week 23**

Fault No; 199262

**Dear All**

**Due to safety of the line, the following late disruptive possessions have been IMPOSED by Network Rail.**

**These possessions are required to unload rails in preparation for the removal of Gauge Corner Cracking and rail defects.**

**Due to getting the rails delivered and Rail Train availability it has not been possible to plan this work over weekends.  The track engineer has given dispensation for these rail replacements until 10/09/2006.  However, if the work is not completed by then the line will need to be red flagged.**

**These defects will be removed 1530 Sat 9th to 1400 Sun 10th.  The possession reference is P2006/761546.**

LN758 BRANCLIFFE EAST JN TO KIRK SANDALL JN

**Week:                      23**

**NAU Reference:        LNE06-325-GN**

**PPS Reference:        P2006/831072**

**Date:                       Wednesday 6 to Thursday 7 September**

**Locations:                Dinnington Jn and Maltby Colliery**

**Lines Affected:         Single BLOCKED T3**

**Times:                      2200 Wed to 0300 Thu**

**Traffic Remarks:        TRAINS DIVERTED VIA BECKINGHAM, GAINSBOROUGH AND RETFORD**

**NAU Reference:        LNE06-326-GN**

**PPS Reference:        P2006/831087**

**Date:                       Thursday 7 to Friday 8 September**

**Locations:                Brancliffe East Jn and Dinington Jn**

**Lines Affected:          Down and Up BLOCKED T3**

**Times:                      2200 Thu to 0200 Fri**

**Traffic Remarks:        TRAFFIC DIVERTED VIA BECKINGHAM, GAINSBOROUGH AND RETFORD**

**Regards**

**Julie Bulman**

***Network Access Planner LNE***

# ***Tel:  085 32226 / 0113 341 2226***

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Appendix G

Please see separate attached file