
ACCESS DISPUTES COMMITTEE

To: DB Cargo (UK) Ltd
GB Railfreight Ltd ("GBRf")
Network Rail Infrastructure Ltd ("Network Rail")

From: Hearing Chair
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Ref: ADC/TTP
Date: 2 May 2017

Dear Sirs

Directions relating to Timetabling Disputes TTP1065 and TTP1069

The issues of law which I am required to specify under Access Dispute Resolution Rule H18(c) are sufficiently inter-woven with further Directions which I think will assist the Panel and the Parties to prepare for the next hearing day (on 8 May 2017) that I am incorporating them into one document.

Direction 1 (re TTP1065)

Will Network Rail please be prepared to clarify **at the hearing** the proposed timetable for the Event Steering Group ('ESG') first referred to in paragraph 23 of its Response to Issue 1 of the DB Cargo Sole reference Document, and also explain the relationship between the ESG and the TPR forum referred to in paragraph 44 of the same document.

Issue of law 1 (re TTP1069, Part 1)

Is Network Rail correct in saying in paragraph 13 of its Response to the *1st GBRf Sole Reference Document* that the requirement to use Freightliner's values as the basis of consultation was a 'non-binding' direction in the Determination of Disputes TTP625/685/733/872?

Issue of law 2 (re TTP1069, Part 1)

What is the status of the agreement between the Parties recorded in paragraph 4.4 of the Determination of Disputes TTP625/685/733/872?

In posing this question the Parties may wish to note that within these conjoined Disputes TTP1065 and TTP1069, for the avoidance of any possible doubt, I shall be stating expressly that the agreement reached between DB Cargo, GWR, TfL and Network Rail relating to GW103 forms part of the Determination of the current Disputes and binds the Parties reaching that agreement.

Continued....

Direction 2 (re TTP1069, Part 1)

At paragraph 18 of *Appendix NR2 to Network Rail's Response to the 1st GRBf Sole Reference Document* Network Rail states that an agreement was reached with GRBf on 23 March 2017 on the issues in dispute relating to Network Services Trains, which was after GRBf had served all parts of its Sole Reference Document. Network Rail comments that the response from GRBf was that as the Sole Reference document had already been submitted it would have to stand, as GRBf felt that a determination would be useful.

GRBf is to confirm as soon as possible, and in any event by no later than 12 00 on Friday 5 May 2017, whether Network Rail is correct in submitting that an agreement has been reached. In that event, what determination is GRBf still seeking, and why?

Issue of law 3 (re TTP1069, Part 3)

In paragraphs 13 and 14 of its *Response to the 3rd GRBf Sole Reference Document* Network Rail quotes from the ORR's Appeal Determinations on Disputes TTP570/571 and TTP807/808, going on in paragraph 15 to say:

'The effect of these ORR Determinations is that a TPR change which relates (or is alleged to relate) solely to a Network Change may be implemented even if the associated Network Change has not been established and implemented. There may be a relationship between the two changes, but Network Rail may consider and propose timetabling changes separately from Network Changes. A Timetable Participant may not object to a TPR change simply on the grounds that any associated change has not yet been made'.

Is Network Rail's interpretation correct in law?

In asking this question I draw attention to paragraphs 49/50 of the ORR's Determination of the appeal against TTPs807/808.

But see Direction 3 below.

Direction 3 (re TTP1069, Part 3)

In paragraph 19 of its *Response to the 3rd GRBf Sole Reference Document* Network Rail states that the Network Change at South Tottenham East Junction was established on 1 November 2016.

GRBf is to confirm as soon as possible, and in any event by no later than 12 00 on Friday 5 May 2017, whether Network Rail is correct in making this statement.

If GRBf contests Network Rail's statement then it is to identify **in the same timescale set out above** any documents on which it relies to contradict Network Rail's statement.

If GRBf agrees that Network Rail is correct it is to explain **in the same timescale set out above** what remains in dispute under paragraph 5.1 of its Sole Reference Document for Part 3.

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Direction 4 (re TTP1069, Part 3)

In relation to GBRf's claims relating to Mossend North Junction (paragraph 5.3 of its Part 3 Sole Reference document) and approach control and deceleration at Coatbridge Central (paragraph 5.4) the Panel will be assisted by the provision **at the hearing** of diagrams showing the location of the signals referred to under both these heads. Signalling diagrams may be over-complicated, and the Panel does not want too much time spent on this task, so long as it has information before it to understand the issues raised.

Network Rail is invited to provide this material. It would be helpful if it can be shown to GBRf before the hearing to ensure that there is no challenge at the hearing to its accuracy.

Direction 5 (re TTP1069, Part 3)

In relation to the Network Change issue referred to in paragraph 5.5 of GBRf's Part 3 Sole Reference Document, **Network Rail** is to clarify **as soon as possible, and in any event by no later than 12 00 on 5 May 2017** the current status of this Network Change proposal.

Issue of law 4 (re TTP1069, Part 3)

What is the status of Route Opening Hours (see paragraph 5.7 of GBRf's Part 3 Sole Reference Document)?

Direction 6 (re TTP1069, Part 3)

Network Rail is to confirm **as soon as possible, and in any event by no later than 12 00 on Friday 5 May 2017** what were the original Route Opening Hours for GW915 and what are the revised opening hours now in dispute.

Direction 7 (re TTP1069, Part 3)

Network Rail is to have copies of the relevant Level Crossing Order available **at the hearing**.

Issue of law 5 (re TTP1069, Part 3)

If for any reason of safety it is necessary to change Route Opening Hours, and this situation continues for a period of more than 3 months, does this amount to Network Change and should the procedure envisaged in Network Code Condition G1.10 therefore not be commenced?

(This question does not suggest that there is any contractual link between Part D and Part G of the Network Code).

Issue of law 6 (re TTP1069, Part 3)

In quoting from the relevant Level Crossing Order *in paragraph 12 of Appendix 6 to Network Rail's Response to the 3rd GBRf Sole Reference Document* the word 'normally' is used in connection with the restriction to that the level crossing shall only be used between 09 30 and 15 00 between Mondays and Fridays. How is 'normally' in a Level Crossing Order to be interpreted?

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Direction 8 (re TTP1069, Part 3)

GBRf is to confirm **as soon as possible, and in any event by no later than 12 00 on Friday 5 May 2017**, whether agreement has been reached with Network Rail in relation to paragraph 5.8 of its Part 3 Sole Reference Document.

Yours faithfully

Clive Fletcher-Wood
Hearing Chair

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Committee Secretary