

IN THE MATTER OF PART D OF THE NETWORK CODE

AND IN THE MATTER OF THE ACCESS DISPUTE RESOLUTION RULES

AND IN THE MATTER OF TIMETABLING DISPUTES: TTP: 1064; 1065; 1066; 1069; 1071; 1073

BETWEEN:

(1) ABELLIO SCOTRAIL LIMITED ("ASR")
(2) DB CARGO (UK) LIMITED ("DBC")
(3) FIRST GREATER WESTERN LIMITED ("GWR")
(4) XC TRAINS LIMITED ("XCT")
(5) GB RAILFREIGHT LIMITED ("GBRf")
(6) EAST COAST MAIN LINE COMPANY LIMITED ("VTEC")

Claimants

v

NETWORK RAIL INFRASTRUCTURE LIMITED ("NR")

Defendant

NR'S RESPONSE TO
THE 3rd GBRf SRD

Introduction

1. Abbreviations as used in GBRf's third SRD are adopted in this Response. References to Paragraphs are to Paragraphs in GBRf's third SRD.

Overview of NR's response to GBRf's third SRD

2. NR denies that GBRf is entitled to the relief it seeks, or to any relief, for the reasons set out in this Response to GBRf's third SRD. NR will also rely as appropriate on "NR's Response to Heads A and B Issues" ("**NR's Principal Response**") which sets out NR's overall position in particular on issues relating to: the extent to which there are common issues of principle; consultation; the application of Decision Criteria; the scope of the Timetable Panel's ("the TTP") powers; and the appropriateness and availability of the relief being sought by the Claimants in general and GBRf in particular. This response incorporates NR's Principal Response. Further, particular regards should be had to: Appendix 1 to NR's Principal Response (the witness statement of Matthew Allen); and Appendix 6 to NR's Principal Response (NR's Response to the Substantive Parts of the (2nd) GBRf SRD).
3. NR's response is structured as follows. This document responds to GBRf's complaints in the order in which GBRf presents them in its SRD. For those issues which GBRf raises in the paragraphs 5.1 to 5.8 that require detailed analysis of the consultation process, NR has prepared a chronology of relevant actions by which NR consulted with GBRf and other

Network Participants. Those chronologies are appended to this document as Appendices NR3 to NR7.

Response to Section 4 of GBRf's third SRD

4. The nature of the dispute in Section 4 of GBRf's third SRD is noted. It is accepted that this is a timetable dispute, but for the reasons set out below and in NR's Principal Response, it is denied that GBRf is entitled to the relief sought or any relief.
5. GBRf does not raise any issue in relation to consultation or the application of the Decision Criteria. NR consulted with GBRf according to the obligations in Part D and GBRf does not allege otherwise. GBRf's Notice of Dispute of 23 February 2017 states that GBRf disagrees with a number of decisions NR made in the Timetable Planning Rules for the 2018 Timetable, Version 2.0.
6. GBRf does not argue that NR has failed to consult with Timetable Participants as required by Part D of the Network Code.
7. NR is obliged under Part D to consult with Timetable Participants in respect of any proposed changes. NR demonstrates in its chronologies below for each relevant matter in this dispute how it consulted with GBRf at the appropriate stage of the Timetable Revision Process.
8. When required to decide any timetabling matter NR was obliged to make decisions according to the Decision Criteria at D4.6. NR demonstrates in its narratives below and in the attached appendices for each item in this dispute how it decided timetabling matters in accordance with the Decision Criteria.

NR's Response to GBRf's claims on Network Changes

9. GBRf's claims at paragraphs 5.1, 5.5, 5.6 and 5.7 proceed upon a flawed premise. GBRf asserts in each of these items that, to quote 5.1, NR's proposal "was not permissible as the associated network change had not been established."
10. GBRf's argument is that a TPR change which relates to a Network Change may not be put into effect before the associated Network Change is established. The argument is that NR, and the TTP, may not proceed on the basis of NR's proposal due to a binding rule.
11. GBRf's signatory to its SRD, Mr Bird, made this argument in two recent determinations on behalf of his previous employer, Freightliner. These were TTP Determination TTP371/513/514/570/571 and TTP Determination TTP807/808.
12. The panel in TTP Determination TTP371/513/514/570/571 held as follows at paragraph 5.1 (using the language GBRf uses at paragraph 5.1 of the current Reference):

"a Timetable Planning Rule change related solely to a Network Change should not be put into effect before the associated Network Change is implemented"

13. The ORR held in its Determination of the appeal in TTP570/571 that:

"ORR determines that the express link as set out in paragraph 5.1 of the Determination should be overturned."
14. The ORR held in its Determination of the appeal in TTP807/808, that (point 54):

"...ORR remains satisfied that there is no explicit link in the Network Code between Part D and Part G which requires that a TPRs change related solely to a Network Change should not be implemented if the associated Network Change has not been established and implemented. ORR further remains satisfied that it would not be appropriate to introduce such a link without thoroughly considering all the implications of doing so"
15. 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 NR 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 Network Change has not yet been made.

Paragraph 5.1: Item 1: NR's proposal to reduce the Down direction standage limit at South Tottenham East

16. NR made this proposal in version 1.0 of the 2018 TPRs. GBRf contends that TPRs that relate to changed infrastructure should not be implemented prior to the conclusion of the associated process under Part G of the Network Code.
17. GBRf argues that the extent of the network is not contractually changed until a Network Change establishment is achieved, and as a result there would be a disjoint between network capability and what the TPRs suggest was the case if NR proceeded with its proposal.
18. GBRf proposed that the TPRs are reverted to the situation prior to version 1.0 of the 2018 TPRs until the Network Change has been established.

NR's response:

19. This Network Change was established on 1 November 2016. NR relies on the ORR Determination that there is no link between Parts D and G, but in this case a Network Change has been established, which fully meets GBRf's objection. Nevertheless, NR will explain the process by which it consulted this proposal.

20. NR's proposal has the effect that the down direction (towards Stratford) standage limit is reduced from 65 SLU to 57 SLU¹. Due to the infrastructure in place, if this was not the case then it would in practical terms lead to an overhang of the preceding junction, which would stop other trains passing and would lead to delays to wider services.
21. The infrastructure can only support 57 SLUs and GBRf's proposed timetable planning rule allowing in excess of that would introduce a safety and performance risk. It would introduce signalling problems in one of two ways. Trains would need to be taken out of ARS (Automatic Route Signalling) to avoid them being held at a signal where the back of the train would overhang the preceding junction, putting extra workload on the signallers. Alternatively trains could remain in ARS but they would overhang the junction which would prevent other services from passing and therefore have a negative impact on the operation of the railway.

Consultation

22. NR sets out the material dates and actions of the chronology of this proposal in Appendix NR3. Of that chronology, the critical dates and actions which support NR's proposal which is the subject of this challenge are as follows:
23. On 15 October 2015 the ORR gave its determination TTP807/808, which NR introduces at paragraph 11 above which rejected the link between TPR changes and Network Changes.
24. On 21 October 2016 NR published version 1.0 of the Anglia TPR, with the reduced SLU.
25. On 20 November 2016 GBRf provided its response to Version 1.0 with an objection over loop length. GBRf's objection was that the associated Network Change had not been established, despite this reasoning for an objection having been expressly rejected by the ORR in October 2015.
26. GBRf provided no technical objection to this proposal, merely the procedural objection reliant on the connection with the proposed Network Change. NR consulted with GBRf and other operators and maintains the proposals on timetabling and safety grounds and for the reason that the new value will reflect what is actually in place on the railway.
27. NR properly consulted the relevant TOCs and FOCs as can be seen in the record of the Version 1.0 and Version 2.0 forum minutes which NR introduces in its chronology in Appendix NR3.
28. NR refutes GBRf's case in its SRD as it relies on an interpretation of the rules that has been explicitly rejected by the ORR. GBRf argues that NR's proposal was not permissible. NR has

¹ This is the maximum length of the trains – SLU = standard length unit.

applied the ORR Determinations introduced above which make it clear that NR's proposal is permissible and must be addressed like any other proposal.

29. Whilst not specifically raised by GBRf, NR considered the Decision Criteria in the context of this change.²

Conclusion

30. NR made a proper proposal in Versions 1.0 and 2.0 of the 2018 TPRs and consulted as required. GBRf has made no argument and provided no evidence to support any claim that NR failed to take the Decision Criteria into account.
31. GBRf requests that the situation revert to that prior to Version 1.0 of the 2018 TPRs. NR sets out its response to GBRf's proposed relief below. Further, GBRf has not demonstrated how or why NR's proposal is flawed or in any way in breach of the requirements of the Network Code.

Paragraph 5.2 - Item 2: NR proposal to increase the headway between Finnieston Junction and Hyndland East

32. GBRf argues at paragraph 5.2 that NR's proposal required a revision to the definition of headway in the National TPRs before a change could be implemented.
33. GBRf's complaint seems to be that further detailed assessment of the application of different headways needs to take place. It argues that it is inappropriate for NR to make its proposal without assessing different scenarios and comparing the difference.
34. GBRf propose that the TPRs for headways revert to the position in Version 4.0 of the 2017 TPRs, and that all affected parties should convene to assess the correct TPRs for the line.

NR's response:

35. NR will withdraw this change.
36. NR will defer the introduction of revised headways on Sc123 between Finnieston Jns - Hyndland East Jn until the May 2018 New Working Timetable. A proposal will be brought to the next Scotland TPR Forum for discussion.

Conclusion

37. No direction is required from the Panel but it may want to record that NR agrees to withdraw this change.

² Criteria: (a); and (c), were given high weighting and NR considers these to be the main driving force behind the proposed changes. Criterion (e) was also material. Criteria: (d); (f); (g) and (l) were all considered to have a lower priority. Criteria: (b); (h); (i); (k) and (l), were considered as not relevant.

Paragraph 5.3 Item 3: NR proposal to add a new restriction at Mossend North Jn.

38. GBRf argues at paragraph 5.3 that no prior consultation was received before NR's proposal was received. NR discussed this change to the TPRs at the Scotland TPR forum on 5 January 2017, at which GBRf were in attendance. No minutes were recorded at this forum. GBRf propose that this item should be removed from the TPRs.

NR's response:

39. NR's Scotland Timetable Production team became aware of this signalling restriction during a meeting on the development of the ARS Operating Specification.
40. NR sought clarification from their internal Route Operations team, who confirmed that a signal box special instruction exists which states that the reduced overlap ("ROL") facility is only available when signalling a train not conveying passengers (so two freight trains or one freight train and one empty coaching stock train). Any scenario with a train carrying passengers would therefore prevent the ROL facility being used, and necessitate the application of the rule in question.
41. NR accepts that it did not publish this proposal in v1 2018 TPRs, but it did discuss this change as described in paragraph 40 above, on 5 January 2017. NR accepts that the value was not consulted in full by the proper Part D process ahead of inclusion in v2 2018 TPRs.
42. Whilst NR have not satisfied the requirements of D2.2.2, as this is a safety of the line issue, NR do not propose to remove this item from v2 2018 TPRs but will instead be consulting on this issue through D2.2.7.
43. The practical effect of this signalling rule is that, even without this change, the signalling system would in effect enforce this rule on the operation of the network, meaning that the effect on the network will be the same, albeit in an unplanned manner.
44. Whilst not specifically raised by GBRf, NR considered the Decision Criteria in the context of adding a new restriction at Mossend North Jn.³

Conclusion

45. NR did not properly consult GBRf on this proposal as set out in D2.2.2 and regrets that GBRf has had to argue this point in the reference. NR argues that its proposal should be accepted as:

³ Considerations: (a); and (c) were given high weighting and NR considers these to be the main driving force behind the proposed changes. Consideration (f) was also material. Considerations: (b); (d); (e); (g); (i); and (j), were all considered to have a lower priority. Considerations: (h); (k); and (l), were considered as not relevant

- 45.1 The practical effect of the rules and the infrastructure are that signallers would impose this restriction regardless of its existence in the timetable;
- 45.2 Had NR consulted properly, it would have made the same proposal due to safety considerations and the practical effect of the rules.
46. Operators who will be directly affected by this rule have accepted the changes published in version 2 of the TPRs.

Paragraph 5.4 - Item 4: NR proposal to increase the approach control and deceleration allowance at Coatbridge Central

47. GBRf argues at Paragraph 5.4 that the line is being re-signalled in April and May of 2017 and one of the approach controls is being removed so NR's proposal appears to be out of date.
48. GBRf proposes that this item should be removed from the TPRs and for there to be a review of the area affected by the Motherwell re-signalling.
49. GBRf is incorrect in this assessment. The NR Sponsor for the re-signalling project has confirmed that the commissioning is agreed for Easter 2018. GBRf's proposal is not correct and NR cannot accept it. NR's proposal is only effective for the period until the re-signalling project is completed, at which point revised values will apply. NR have carried out the proper reviews and will continue to consult on this change through the next Scotland TPR forum, which is supported by information which NR has shared.
50. NR's Scotland Timetable Production team became aware of this issue upon the commencement of the Glasgow Queen Street blockade in March 2016. As Glasgow Queen Street High Level station was closed, long distance services were diverted instead to Glasgow Central High Level. To access Glasgow Central from the north, services were routed via Coatbridge Jn – Langloan Jn. This is a route that was very rarely used by any traffic other than freight trains, and for which there was consequently little detailed knowledge. From the commencement of the blockade timetable, the TRUST system⁴ used by NR recorded a time loss in running of 1 minute for all passenger trains which traversed this section, even though services were planned in accordance with the existing TPRs which required a 2 minute allowance for an approach control.
51. NR carried out investigations which confirmed that the M238 & M254 signals are approach controlled for the route which GBRf is concerned about. The current SRTs are however as follows:

⁴ A computer system used to monitor the progress of trains and track delays on the rail network.

- 51.1 The SRT from Gartsherrie South Jn to Coatbridge Central Jn (Pass/Pass) for Classes 158, 170, 185, 221 is 01:00 (1 minute).
- 51.2 The SRT from Gartsherrie South Jn – Coatbridge Central Jn (Pass/Pass) for Class 156, all Class 66 timing loads and 75mph EMUs⁵ is 01:30.
- 51.3 All these SRTs are based on a train routed from Gartsherrie South Jn – Coatbridge Central – Mossend.
52. NR's analysis has concluded that, at Coatbridge Jn, when a train is routed to Langloan Jn, all timing loads should be subject to the same allowance due to the speed profile of the route. Linespeed on the Up Fast (the move that this allowance applies to) is 75mph, reducing to 40mph 460yds before Coatbridge Jn, reducing to 20mph across the junction. NR's conclusion, based on the time loss in running described in paragraph 50 above is that the existing 2 minute allowance for passenger trains requires to be increased to 3 minutes and GBRf has provided no evidence to challenge this value.

Consultation

53. NR sets out the material dates and actions of the chronology of this proposal in Appendix NR4. Of that chronology, the critical dates and actions which support NR's proposal which is the subject of this challenge are as follows:
54. On 21 October 2016 NR published version 1.0 of the Scotland TPR, with increased approach control and deceleration allowance from 2 to 3 minutes.
55. GBRf objected to the proposals on 20 November 2016 and 23 February 2017. They provided no evidence or analysis of timings to support their objections.
56. Whilst not specifically raised by GBRf, NR considered the Decision Criteria in the context of increasing the approach control and deceleration allowance at Coatbridge Central.⁶

Conclusion

57. In consultation, GBRf made the same objections it makes in its SRD: that NR should wait until the M238 signal is removed before making any changes. However, this is at least 18 months away and NR have concluded from their analysis that the change should not be delayed as the evidence shows that the proposed timing is accurate. The TRUST modelling data supports this.

⁵ Electrical Multiple Units

⁶ Considerations: (a), (c), and (f) were given high weighting and NR considers these to be the main driving force behind the proposed changes. Considerations: (b); (d); (e); (g); (i); and (j), were all considered to have a lower priority. Considerations: (h); (k); and (l), were considered as not relevant.

Paragraphs 5.5 and 5.6: Items 5 and 6: NR proposal of an amendment to the station working at Leamington Spa and other locations on the line to Coventry

58. GBRf argues at Paragraphs 5.5 and 5.6 that NR is pre-empting the effect of a future Network Change. These changes should not be included in the TPRs until the Network Change has been proposed and established.

NR's response:

59. NR repeats its response to Item 1 in this submission – NR consulted fully and GBRf relies upon an interpretation of the rules that has been explicitly rejected by the ORR. Further, the ORR finding for TTP 807/808 expressly states that NR should be able to propose TPR changes in advance of Network Changes in order to allow flexibility and the opportunity to take full and prompt advantage of Network Changes (paragraph 47). That is precisely what NR seeks to do here, for the benefit of all network operators, and in accordance with the Decision Criteria
60. NR's proposal which GBRf complains about at Paragraph 5.5 relates to a proposed new Kenilworth shuttle service to be run by London Midland which London Midland hoped to have operating by December 2017. NR were clear that if the project did not proceed at the timescales advised, a revision to the Rules would be made (although it is considered likely that the Network Change will proceed). It was considered prudent to have Rules proposed and published that would enable validation of the timetable in the expectation that it would commence in December 2017. If Rules had not been in place and the new service had started as scheduled there was the possibility that NR would not be able to offer a valid timetable for operation of the new service. At present, it appears unlikely that the service will be ready to commence running in December 17. As soon as NR knows whether the service will be ready, it will inform all operators. If it is not ready, NR will withdraw the proposal.
61. As can be seen from the chronology in Appendix NR5 NR's proposal which GBRf complains about at Paragraph 5.6 relates to proposed changes to the Rules made by Network Rail which were discussed through TPR Forums at which GBRf were either present or invited to attend. Some of the changes were made for presentational reasons and did not represent a material change to the Rules – all were consulted on. The material changes made were based on a report undertaken by Tracsis⁷ which was discussed at TPR Forums held in October and December 2015. All operators including GBRf and NR appeared to have come to a clear consensus as to the Rules that were to be proposed to enable the operation of the new Kenilworth shuttle service. GBRf has now raised objections that are not supported by any analysis.

⁷

Tracsis are a contractor who were employed by NR to model the SRTs and TPRs using the Railsys modelling system.

Consultation

62. NR sets out the material dates and actions of the chronology of this proposal in Appendix NR5. Of that chronology, the critical dates and actions which support NR's proposal which is the subject of this challenge are as follows:
63. NR started consultation on this issue on 12 October 2015 at the LNW South TPR Forum. There followed forum meetings and consultation led by NR and London Midland, who are to be the operators of the new service.
64. NR published version 1 of the TPRs on 21 October 2016.
65. The proposal for MD401 - Leamington Spa junction margins – was revised in version 1 and published to match the agreement reached at October and December 2015 TPR Forums.
66. NR published Version 2 of the TPRs on 3 February 2017. On 17 February 2017 NR train planning received the final confirmed scheme plan for Kenilworth Loop and associated changes.
67. On 23rd February 2017 GBRf formally responded to version 2 of the 2018 Rules with objections which have been repeated in their SRDs.
68. Whilst not specifically raised by GBRf, NR considered the Decision Criteria in the context of the new values at Kenilworth Loop.⁸ In applying the Decision Criteria NR prioritised the decision against D4.6.1, 'the Objective.' If the new junction margins were not published in V2 of the Timetable Planning Rules then NR would fail to meet the Objective, as if the Network Change is established and the new shuttle service is bid to operate in the December 2017 timetable, the rules would not be in place to allow this to be planned and offered compliantly.

Conclusion

69. GBRf's objection to MD401 Leamington Spa station working (at Paragraph 5.5 of the SRD) is based solely upon a misunderstanding of the relationship between Network Changes and TPR changes – it is unsustainable and must be rejected.
70. GBRf's objection to the MD 405 whole line of the route (at Paragraph 5.6 of the SRD) is made on the same basis and likewise unsustainable.
71. In both instances, NR has consulted fully, and it has provided sufficient detail for GBRf to understand the extent of the changes, which have been agreed by other operators. GBRf's objection, set out in the extract above, but not copied in the SRD, appears to be a complaint

⁸ Criteria: (a); and (e), were given high weighting and NR considers these to be the main driving force behind the proposed changes. Considerations: (b); (c) (d); (g); (h); (i); (j); (k); and (l), were considered as less relevant or not relevant.

about Tracsis modelling. If GBRf seeks to attack the modelling, it must provide a reasoned analysis rather than a few lines of objections which are not particularised.

Paragraph 5.7: Item 7: NR's proposal to the Route opening hours on line GW915

- 72. NR made this proposal in Version 1.0 of the 2018 TPRs. GBRf contends that TPRs that relate to contractual as opposed to actual opening hours of signal boxes and can only be varied by an established Network Change.
- 73. GBRf argues that the extent of the Network is not contractually changed unless NR proposes and establishes a Network Change.
- 74. GBRf proposed that the TPRs are reverted to the situation prior to Version 1.0 of the 2018 TPRs until the Network Change has been established.

NR's response:

- 75. This is a safety issue and NR's proposal, on which it has properly consulted, is necessary for ongoing safe operation. Further, GBRf again relies upon an interpretation of the rules that has been explicitly rejected by the ORR.
- 76. NR's proposal relates to the operating hours of a crossing on line GW915. NR has found that there is a local instruction recorded in the National Electronic Sectional Appendix that says that the crossing must only be used between 09.30 and 15.00 Monday to Friday during daylight hours. This instruction is taken directly from the ORR approved level crossing orders. As such, this is a binding direction mandating the permitted hours of train operations on this line of route. The ORR specified these timings which were designed to reduce the likelihood of a conflict between trains and peak periods of level crossing use around school times. As such this is a safety issue.
- 77. The Route Opening Hours before this change suggested that the crossing could be used from 8.30am and the purpose of this change is to clarify the situation, and to include it for the first time in a TPR.

Consultation

- 78. NR sets out the material dates and actions of the chronology of this proposal in Appendix NR6. Of that chronology, the critical dates and actions which support NR's proposal which is the subject of this challenge are as follows.
- 79. The local instruction recorded in the National Electronic Sectional Appendix for operation between 09.30 and 15.00 dates from 16 January 2010.
- 80. On 26 August 2016 NR received an email from the Train Running Controller alerting Capacity Planning that the crossing can only be used between 09.30 and 15.00 during daylight hours.

81. On 21 October 2016 NR published the Western Train Planning Rules Version 1 which contained the proposed new amendment to GW915 Opening Hours.
82. GBRf objected to this in its 20 November 2016 response. The reason given was that an associated Network Change had not been established, despite this reasoning having been expressly rejected by the ORR in October 2015. GBRf did not address NR's technical reasons relating to safety and signalling.
83. GBRf has maintained this objection despite the Level Crossing Order requiring the acceptance of the proposal, as is shown by the 3 April 2017 instruction to NR that the crossings:
- "shall normally only be used by trains between 0930 and 1500 hours Monday to Friday."*
84. Whilst not specifically raised by GBRf, NR considered the Decision Criteria in the context of NR's proposal to the Route opening hours on line GW915.⁹

Conclusion

85. NR refutes GBRf's case in its SRD as it relies on an interpretation of the rules that has been explicitly rejected by the ORR. GBRf argues that NR's proposal was not permissible – this is not an argument that NR failed apply the appropriate Decision Criteria, but that it was not permissible. NR applied the ORR Determinations introduced above which make it clear that NR's proposal is permissible and must be addressed like any other proposal.
86. NR might have been criticised for not properly addressing of the Decision Criteria had it simply accepted GBRf's argument that its proposal was not permissible. It was obliged to carry out the normal balancing exercise, which it duly has carried out. As can be seen from the email from Mr Ronnie Gallagher, it would be an offence not to make this change to the TPRs. Furthermore, the Level Crossings Regulations 1997 provide the ORR with specific enforcement powers in respect of level crossing orders and where breached this may lead to a breach of section 3 of the Health and Safety at Work Act 1974, which is a criminal offence.
87. NR made a proper proposal in Versions 1.0 and 2.0 of the 2018 TPRs. GBRf has made no argument and provided no evidence to support any claim that NR failed to take the Decision Criteria into account.

⁹ Considerations: (a) and (c) were given high weighting and NR considers these to be the main driving force behind the proposed changes. Consideration (f) was also material. Considerations: (b); (d); (e); (g); (h)¹; (i); (j); (k); and (l), were considered as not relevant.

88. GBRf requests that the situation revert to that prior to Version 1.0 of the 2018 TPRs. GBRf has not demonstrated how or why NR's proposal is flawed or in any way in not meeting the requirements of the Decision Criteria.
89. Further, GBRf do not run any services in the current timetable over the section of line. DBC are the only operator and they operate one train each way per day.

Paragraph 5.8 - Item 8. NR proposal to change the platform-end margins at London Waterloo

90. NR proposes changes to the platform end margins at London Waterloo. GBRf argues at paragraph 5.8 that NR's proposal is "entirely lacking in merit and that it is wholly inappropriate for a timetable participant to be a governing body in the allocation of capacity."
91. GBRf assert that this proposal should be removed from the TPRs and that the Panel determines that the existing TPRs are adequate, on the basis of NR's own report.

NR's response:

92. NR accepts that it did not introduce this proposal in version 1.0 of the TPRs – it arises as a consequence of consultation with all users of London Waterloo, in particular South West Trains, who have the highest usage of this station. It should also be noted that GBRf, by contrast, run two charter services from London Waterloo each year, which would be planned to this 4 minute margin in any event.
93. No other operator has disputed the value of 4 minutes which NR proposes, following its acceptance of South West Trains' original consultation response.
94. In version 2.0 of the 2018 TPRs NR increased the platform end technical margins from 3 minutes to 4 minutes for platforms 1-19. This was to facilitate the development that some of the trains using the platforms (which are trains operated by South West Trains) will from (Dec 17 Short term planning and Dec 18 Working Timetable) be 40 metres longer than is currently the case.
95. NR introduced this change after the publication of TPR Version 1 on 17/10/16 by which time it had consulted with the impacted operator, South West Trains. This consultation took place during D54-D44, which was before NR included the change and published it in the final version of the TPRs on 25 January 2017.
96. NR do however accept that the change was not consulted under Part D with the other operators, but is now in the process of consulting under D 2.2.7.
97. It now appears that, following further consultation, GBRf and NR have agreed a position such that GBRf may withdraw this dispute.

Consultation

98. In the event that GBRf does not withdraw this dispute, NR sets out the material dates and actions of the chronology of this proposal in Appendix NR7. Of that chronology, the critical dates and actions which support NR's proposal which is the subject of this challenge are as follows.
99. On 17 October 2016 NR published the Wessex TPR Version 1 without the London Waterloo changes that concern GBRf in this dispute.
100. From 30 November 2016 to 26 January 2017 NR and South West Trains consulted by email over the rules for London Waterloo. NR did not extend this consultation to other users.
101. On 3 February 2017 NR published Version 2.0 of the Wessex TPR, including the change to Waterloo.
102. GBRf objected by asserting that no evidence had been provided as to why the change was necessary. NR responded on 21 March 2017 with a detailed consultation email. GBRf's position has remained that the proposal was not acceptable as there had been no proper consultation as no other access beneficiary has been consulted. Only GBRf is taking this position.
103. Whilst not specifically raised by GBRf, NR considered the Decision Criteria in the context of Waterloo.¹⁰

Conclusion

104. The Version 2 change was in response to South West Trains' (the impacted operating company) representation on this issue. The change was therefore made in Version 2 under Network Code Part D 2.2.5 (this part of the Code does not state that **all** participants need/require to be consulted at this stage) after South West Trains' representation from Version 4.1, NR having worked collaboratively with SWT during the process of consulting version 1.
105. GBRf are in the process of being consulted under Network Code Part D 2.2.7. However GBRf would not accept this as a consultation as it did not consult all Timetable Participants. GBRf would not be impacted by this proposal, and in any event, they have not proposed any alternative values for the interim period that this change relates to, as detailed in Appendix NR7.

Decision sought from The TTP

¹⁰ Considerations: (a); and (c), were given high weighting and NR considers these to be the main driving force behind the proposed changes. Considerations: (b); (d); (g); (j) and (k); were all considered to have a lower priority. Considerations (e) (f),(h); (i); and (l), were considered as not relevant

106. NR requests that the TTP determine that in relation to issues 5.1 and 5.4 to 5.8 NR has properly complied with its obligations in all respects and that no further measures be taken. Accordingly, NR requests that the TTP directs that NR's decisions stand.
107. In relation to issue 5.3, whilst NR has not properly complied with the requirements of D2.2.2, as this is a safety on the line issue, NR do not propose removal of this item from V2 2018 TPRs. Accordingly, NR requests that the TTP directs that NR's decisions stand.
108. In relation to issue 5.2, NR will withdraw the change and the Panel may want to record this proposal.
109. GBRf has failed to set out what relief it seeks. NR's position is as follows:
- 109.1 For the reasons outlined in NR's Principal Response and which were amplified at the hearing on 20 April 2017, the TTP does not have power to grant declarations. To the extent that GBRf seeks declarations, therefore, the TTP should not grant them;
- 109.2 To the extent that GBRf seeks that the TTP substitute its own decision for that of NR: Such a step can only be taken in exceptional circumstances. No allegation is made that there are any such exceptional circumstances and there are none. Accordingly it is not in any event open to the TTP to grant any such relief.

Signature

For and on behalf of *Network Rail*
Infrastructure Limited

Signed



Print Name

MARK SLEET

Position

TIMETABLE PRODUCTION MANAGER

