

1 DETAILS OF PARTIES

1.1 The names and addresses of the parties to the reference are as follows:

- (a) GB Railfreight Limited ("GBRf") whose Registered Office is at 3rd Floor, 55 Old Broad Street, London, EC2M 1RX; and
- (b) Network Rail Infrastructure Limited ("NR") whose Registered Office is at 1 Eversholt Street, London, NW1 2DN.

1.2 Third parties to this dispute may include Virgin Trains East Coast, Cross Country Trains, Arriva Rail Northern, TransPennine Express, and other freight and open access operators.

2 THE CLAIMANT'S RIGHT TO BRING THIS REFERENCE

2.1 This matter is referred to a Timetabling Panel ("the Panel") for determination in accordance with Condition D2.2.8 of the Network Code. GBRf is dissatisfied with the decision made by NR in respect of the inclusion of a 9-day possession at Newcastle in the Engineering Access Statement ("EAS") for the 2018 Timetable, Version 2.0, and the disproportionate level of disruption this would involve.

3 CONTENTS OF REFERENCE

This Sole Reference includes: -

- (a) The subject matter of the dispute in Section 4;
- (b) A detailed explanation of the issues in dispute in Section 5;
- (c) In Section 6, the decisions sought from the Panel in respect of
 - (i) legal entitlement, and
 - (ii) remedies;
- (d) Appendices and other supporting material.

4 SUBJECT MATTER OF DISPUTE

- 4.1 On 23 February 2017 GBRf notified a dispute with Network Rail in relation to Network Rail's decisions regarding possession P2017/2289940, which was published in Version 2.0 of the 2018 EAS (for the Principal timetable starting 10 December 2017) [Appendix 1]. The dispute was brought under Condition 2.2.8 of the Network Code as applicable at the time and the Secretary registered it as TTP1086 [Appendix 1.2]. In notifying the dispute, GBRf indicated its intention to work with Network Rail in the hope of resolving all the issues without a Timetable Panel hearing to be necessary.
- 4.2 It is GBRf's belief that Network Rail has reached a decision for a disruptive possession without adequate consultation, as required by Condition D2.2, and that it has applied the Decision Criteria incorrectly in reaching its decision.
- 4.3 The proposed possession, reference P2017/2289940, for planning weeks 41/42, involves a 9-day blockade of all lines at Newcastle South Junction, from 06/01/18 to 15/01/18, thereby preventing any access on a section of the East Coast Main Line for any traffic.
- 4.4 The possession was first proposed at D-64 in the EAS Version 0 document [Appendix 2.1]. The EAS version 0 document is not an official document, and operators are not expected to respond formally, as usually at this point there is a lack of detail, however, in this instance, GBRf advised Network Rail (at a meeting held on 5 August 2016 to go through the Version 0 possessions) that it could not agree to a 9-day blockade at Newcastle South Jn.
- 4.5 GBRf advised Network Rail that a new-to-rail flow of biomass traffic between Port of Tyne and Lynemouth Power Station was due to commence before the start of the possession. This meant that GBRf would be greatly affected and would have no realistic alternative means of being able to serve the end customer.
- 4.6 The reasons for this are due to the large additional operational and resource implications of using the suggested diversionary route. The diversionary route would require reversal in Newcastle Central station, thereby limiting the length of the trains that could still be operated, necessitating "top-and-tail" operation or turnover locomotives, and additional train crew resource and route knowledge.

- 4.7 The suggested diversionary route is also normally prohibited to freight trains due to the condition of High Level Bridge and would require all of the biomass trains to be carry just under half of their normal payload and operating under special dispensation over this structure. Owing to the level of disruption for all operators, GBRf requested in this meeting that there would be a requirement for regular updates on progress and further meetings, as our new customer had major concerns about this blockade.
- 4.8 On publication of the EAS Version 1.0 at D-59 [Appendix 2.2], the possession was shown in exactly the same form as in Version 0. GBRf responded to version 1.0 at D-54 (25 November 2016) in accordance with Condition D2.2.4(b) with a request for an alternative method of work that would allow it to run with fully-loaded services, and also requested a capacity study due to the severity of the disruption this blockade would have on all affected operators [Appendices 2.3 and 2.3.1].
- 4.9 Following its version 1.0 response, GBRf attended a post-version 1 meeting with Network Rail and other operators in the London North East (LNE) area. When possession P2017/2289940 was discussed, GBRf was very clear that it could not accept a 9-day blockade as proposed by Network Rail as there was no realistic alternative means of operating a service. Overall, there were many concerns from all operators regarding this possession. Network Rail organised a further meeting on 12 December 2016 with the delivery team and affected operators to discuss this possession, as well as other types of switch-and-crossing and plain-line track renewals to be delivered within the LNE area. Due to the amount of other works to be delivered during 2018, the amount of time allocated to discuss the 9-day possession and the amount of information available meant that there was no further progress in resolving the issues concerning this possession [Appendix 3.1]. It was pointed out during this meeting that the offered diversionary route would not be available for freight trains due to the weight restrictions on it (the limit is RA5 and the biomass trains are RA8) [Appendix 4.1] and it was said again that GBRf could not accept a 9 day blockade without a workable plan that permitted running via the normal route
- 4.10 On the 9 January 2017 Network Rail arranged an internal meeting specifically to discuss the blockade – Network Rail had not yet appointed a project manager, or someone to carry out a timetable study at this stage. It is worth noting that following our meeting on the 12th December 2016 that Network Rail continued to pursue diverting

trains via a route that was restricted after they were advised 4 weeks ago that freight trains were not permitted over High Level Bridge [Appendix 3.2].

- 4.11 On 3 February 2017 (D-44) Network Rail published EAS Version 2.0, its decision document in respect of the 2018 EAS. Possession P2017/2289940 was again shown exactly how it was in Versions 0 and 1.0 [Appendix 2.4].
- 4.12 On 20 February 2017 Network Rail arranged another meeting specifically to discuss the blockade; Network Rail had now appointed a project manager, but not anyone to carry out a timetable study. GBRf did not receive an invitation to this meeting, although this is believed to be an unintentional error. Following the meeting, GBRf received the meeting notes [Appendix 3.3]; included in this communication was a presentation [Appendix 5.1, pp.11 and 17-21], which included further possible options. Due to not being present at the meeting, GBRf was requested to advise which option it would prefer, and on 21 February 2017 Network Rail was advised that options 3A or 3B would be suitable [Appendices 3.4].
- 4.13 These options involved weekend-only working and, at this stage, there was still no operational route for freight via High Level Bridge. GBRf believes an alternative option, which uses a number of weekends for work, needs to be considered in far more detail not least because such a plan also had agreement from GBRf and other operators.
- 4.14 It is important to note this request (in paragraph 4.11) to GBRf was made over two weeks *after* the publication of EAS 2018 version 2.0. An invite for a further meeting, to be held on the 20 March 2017, was received and accepted.
- 4.15 GBRf's response to Version 2.0 was sent on 24 February 2017, disputing the possession as it was published exactly the same in previous publications [Appendix 2.4], and again requesting a capacity study. This indicated that discussions should continue [Appendices 2.5 and 2.5.1].

5 EXPLANATION OF EACH ISSUE IN DISPUTE AND THE CLAIMANT'S ARGUMENTS TO SUPPORT ITS CASE

- 5.1 Network Code D2.2.6 requires Network Rail to provide details of how it has come to its decision to justify its decisions in respect of Version 2.0; no such details were provided.

At this point, Network Rail should also have produced a capacity study to back up its decision in respect of this possession, and again no such details were provided. It is clear that Network Rail has failed to consult properly in respect of this possession.

- 5.2 In the first instance, only one option was suggested and, despite its unsuitability to affected operators, further options were not tabled until much later in the process, and indeed after its decision was already made. It is therefore apparent that Network Rail cannot have applied the Decision Criteria correctly at the point at which it made its published decision in the form of EAS Version 2, as it was not fully apprised of the options available to it, was not aware of what capacity was available over its suggested diversionary route and could not confirm that the diversionary route could in fact be used by freight trains.
- 5.3 GBRf, however, had indicated in its response that it would continue to work with Network Rail to come up with a workable solution. On 16 March 2017, GBRf attended a post Version 2 EAS meeting with Network Rail. All affected operators were in attendance and all raised concerns about possession P2017/2289940, the options available and the feasibility of a train plan. At the end of this meeting, all attendees were advised there was to be an emergency phone conference for Network Rail on the next day, with the expectation that a decision was going to be made about which strategy Network Rail was going to apply to deliver this work. Network Rail did not make a decision at this point; the decision actually followed 5 weeks later and occurred without involving GBRf to reach a level of understanding the impact.
- 5.4 On 21 April 2017 GBRf received confirmation from Network Rail that it had made the decision to carry on with the most disruptive option of the 9-day blockade; it must be added that this confirmation was again not supported with details of how, if at all, the Decision Criteria had been applied. However, some notes were received on 15 May 2017 [Appendix 3.5].
- 5.5 GBRf was served with a Decision Criteria document (but only for the potential allocation of capacity during the blockade) on 17 May 2017 [Appendix 6.1], a further 3½ weeks after Network Rail made its decision. GBRf is still waiting to receive a Decision Criteria document to justify the reasoning behind the blockade option, over three months after Network Rail made its official decision 3 February 2017

- 5.6 Published in the National Train Planning Rules (TPRs) is an Access Impact Matrix in section 6.2 [Appendix 2.6], which categorises disruptive possessions and what actions should be taken to mitigate issues operators might have.
- 5.7 GBRf is certain that possession P2017/2289940 falls into the Severity 4 category, given the high level of disruption; GBRf believes this process has not been followed, especially given the time it has taken to reach an “unsupported” decision.
- 5.8 As a consequence of not applying the correct consultation process, GBRf continues to face a blockade that severely impacts its customer, operations and resources. GBRf believes the Decision Criteria cannot have been applied correctly, simply because the decisions made to date to continue with the 9-day blockade have not been adequately explained, alternative options have not been pursued and the full extent of the impact to GBRf has not been taken into consideration.
- 5.9 The consultation guidelines and content are key to understanding what the impacts are to every affected operator, and what the options are. GBRf feels that Network Rail has made a decision to proceed with a 9-day blockade without hearing all the operational constraints and risks to GBRf and this has been exacerbated by the very late appointment of a project manager to oversee a complex and heavily-disruptive possession. Bearing that in mind, GBRf believes Network Rail would have approached the possession strategy differently had it considered the concerns raised and in a timely manner.
- 5.10 The Decision Criteria document, received on 16 May 2017 [Appendix 6.1], is entitled “Network Rail’s application of Network Code Part D, 4.6 - Decision Criteria in determining the Capacity Allocation for Section 7 Access for P2289940 Week 41/42 Newcastle S&C”, but is not supported with details of a capacity study; this has been requested throughout the whole consultation process.
- 5.11 Taking the Decision Criteria in turn, with respect to Decision Criteria (a) and (c), GBRf believes that Network Rail has fallen short here: there has been no sight of any suggestion in at least the last 3 years that the asset is reaching a point of renewal, and a time-critical one at that. GBRf fails to understand why this asset is suddenly in urgent need of renewal unless it has been inadequately maintained. Network Rail asserts that it must be renewed due to its frequent unreliability and higher demand for maintenance

[Appendix 3.6]. GBRf believes the urgency for the renewal works are not merited and conceivably the assets should have been renewed earlier.

- 5.12 Network Rail may feel the work will deliver improved performance but this is only because it has been maintained to keep it ticking over until it has reached the point it has where maintenance is insufficient to keep the infrastructure reliable. GBRf's view is that this work could have happened sooner in readiness for future growth and improving reliability.
- 5.13 In respect of Decision Criteria (b), (d), (e), (f) and (j), while it has now been conceded that freight trains can run over the diversionary route, there are such punitive restrictions on operation that this proposal is really an unfeasible proposition.
- 5.14 Whilst Network Rail is providing a diversionary route to run via the High Level Bridge [Appendices 8.1 – 8.4], freight traffic is subject to very significant weight restrictions [Appendix 4.1] due to the condition of High Level Bridge, and also length restrictions because of the need have to change direction in Newcastle station. The length of the train is therefore restricted to the maximum that can fit in between the possession itself and the signal controlling departure towards the High Level Bridge. Together this means that only 47% of the normal biomass load can be conveyed on any one diverted service.
- 5.15 Having to operate much lighter and shorter services would therefore mean having to run many more trains to deliver the required biomass tonnage. Also, because of the need to use a lighter locomotive than a Class 66 over High Level Bridge, far more additional resources are required.
- 5.16 There are also additional shunt moves for light engines around Newcastle Central station [Appendices 7.1 – 7.3], but it is still unknown if this can be accommodated as the declared allocation of capacity is unsupported with a capacity study.
- 5.17 GBRf's concern is that it will simply not be possible to adequately supply the end customer with the volumes of biomass it will need at this time of the year. Diverted services will be planned around requirements for remaining passenger services, so therefore it is fair to assume we will not meet the optimum timings set out in

Appendices 7.1 and 7.2, and that any additional time will, as a consequence, affect terminal time and the ability to load and unload.

- 5.18 The effect will be most dramatic in numbers of train crew required. Network Rail's LNE Route Freight Manager and GBRf have worked out some high-level plans and, even with favourable validated timings, it is clear that GBRf is likely to need an additional 12 drivers and 2 ground staff each day, which just cannot reasonably be resourced.
- 5.19 Reduced loadings will greatly impact GBRf's operations and the end customer. Lynemouth Power Station will most likely be operating at full usage as the possession is timed to be in mid-winter (starting on 9 February 2018). Network Rail has requested that GBRf finds out what the storage capacity is at Lynemouth, to work out if there is an option to stockpile biomass prior to the possession. Lynemouth Power Station cannot yet confirm whether or not it will have all of its silos fully commissioned in time to allow the maximum planned storage of 50,000 tonnes (which equates to 9 days' burn); the silos should be commissioned by the end of November 2017 (5 weeks prior to the commencement date of the block).
- 5.20 The delivery of the product is also dependent on the wagon sets we have at the time prior to the blockade; GBRf is unable to commit to having the capability of moving additional tonnage prior to the block even if the silos are indeed fully commissioned by the planned date. This would also drive a requirement for additional paths, and it is unknown if these would be available. There is simply too much risk agreeing a blockade with so much uncertainty [Appendices 3.7 and 3.8].
- 5.21 For GBRf and its customer, the 9-day blockade is potentially a commercial disaster: the customer is new-to-rail and will be operating in its first high-burn period; it is critical to it that it has minimal risks added to the start-up of a new operation. Unfortunately, all the risks Network Rail add to GBRf will inevitably cascade to being risks to the end customer.
- 5.22 Because of the condition of the High Level Bridge, the class of locomotive (66) which GBRf intends to use is not permitted over the suggested route [Appendix 4.1]. The diversionary route means a requirement to source a type of locomotive that fits the axle load rating of RA5. Class 47 locomotives have been suggested, but these are rated at

RA6 and GBRf would also need to find a reliable source for such engines as there is no guarantee of their use at the present time.

- 5.23 This presents quite a few problems to GBRf, forcing resourcing issues due to the additional operating elements (different class of locomotive, additional shunt moves, additional paths and continuous movement of wagons). Ordinarily our base plan is for 30 fully loaded services over 6 days per week (5 trains per day), and is resourced using 2 wagon sets of 24 wagons each, 2 class 66 locomotives and 4 Train Managers.
- 5.24 The possession strategy means that we will have to split our trains to make 3 trains of 16 wagons; this increases the required number of Train Managers to 16 owing to the number of services and the additional shunt moves. It is still not yet confirmed where RA5 or RA6 locomotives will be sourced from and if they will be available for this blockade. Different traction from our base plan will also mean that all of the Tyneside Train Managers (drivers) will require traction knowledge training. Sourcing additional Train Managers, to the extent that it is even possible, means that they will need route refreshing or possibly full route learning. GBRf has no confidence that the resourcing issues can be addressed in the time available and be confident the operational requirements can be met. There will be amended Method of Work practices in place which have to be briefed to all Train Managers and ground staff.
- 5.25 It is worth noting, too, the proposal of a blockade will mean that we are heavily reliant on third parties (if they are available) to deliver our service. GBRf believes the decision to pursue a blockage strategy has fallen very short of understanding the usage and availability of resources.

6 DECISION SOUGHT FROM THE PANEL

- 6.1 The Claimant is requesting that the Panel determine:
- (a) That under Condition D2.2 Network Rail has failed to consult adequately;
 - (b) That under Condition D2.2.6 Network Rail has failed to comply, has not applied the Decision Criteria for the possession reasonably and has not justified its reasons for its decisions; and

(c) Under Condition D5.3.1(a), that the blockade at Newcastle South Junction is withdrawn and re-consider, with appropriate industry involvement, a new plan that can be delivered in accordance with due process, contractual obligation and commercial sensibility.

7 APPENDICES

1 - Dispute Notices

- 1.1 GBRf's Notice of Dispute to EAS 2018 version 2
- 1.2 Reference letter from ADC

2 - 2018 Engineering Access Statement (EAS) Production Process

- 2.1 2018 EAS version 0 publication
- 2.2 2018 EAS version 1 publication
- 2.3 2018 EAS version 1 GB Railfreight response
 - 2.3.1 2018 EAS version 1 GB Railfreight response email
- 2.4 2018 EAS version 2 publication
- 2.5 2018 EAS version 2 GB Railfreight response
 - 2.5.1 2018 EAS version 2 GB Railfreight response email
- 2.6 Access Impact Matrix (Published in National TPRs)

3 - Meeting Notes and Emails

- 3.1 S&C and PLTR Meeting Notes 12th December 2016
- 3.2 Network Rail Internal Meeting 09th January 2017
- 3.3 Newcastle South Junction Meeting Notes 20th February 2017

- 3.4 Email to Network Rail confirming our preference of possession strategy
- 3.5 Network Rail Meeting Internal Notes received 15th May 2017
- 3.6 Notes showing the performance and maintenance of Newcastle South Junction

4 - Operational publications

- 4.1 Sectional Appendix over High Level Bridge

5 - Presentations

- 5.1 Newcastle South Junction Presentation (pp.11 and 17-21)

6 - Decision Criteria

- 6.1 Decision Criteria Received 17th May 2017 for Allocation of Capacity During the Blockade

7 - Amended Planning Principles

- 7.1 Class 6 timings from Port of Tyne with shunt move at Newcastle
- 7.2 Class 4 timings from Lynemouth with shunt move at Newcastle
- 7.3 Planning Principles for amended plan

8 - Maps

- 8.1 Normal route of the biomass flow
- 8.2 Diversionary route of the biomass flow
- 8.3 Newcastle station showing highlighted route of trains and shunt moves
- 8.4 North of Newcastle station showing highlighted route of trains and shunt move

8 SIGNATURE

For and on behalf of GB Railfreight Limited

A handwritten signature in black ink, appearing to read 'DP', is written over a horizontal line.

Signed

DARREN PELL
Senior Planning Manager