
ACCESS DISPUTES COMMITTEE

GB Railfreight Limited ("GBRf")

Network Rail Infrastructure Ltd ("NR")

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Dear Sirs

Directions relating to Timetabling Dispute TTP1127 and Issues of Law arising

Directions

Directions are given in a Dispute to be determined by a TTP for reasons which include attempting to clarify the issues and eliciting information which will assist the Panel and the Parties to prepare for the hearing, to avoid wasting time at the hearing dealing with questions that can be answered beforehand. It is therefore important that a Party to whom Directions are given should address them specifically and in full.

It is a matter of regret, therefore, that Network Rail's Sole Reference Document ('SRD') appears to have been drafted without any reference to the Directions of 17 August 2017, which set out issues which I saw as necessary for Network Rail to address in its Defence. This is the first occasion in my experience in which a Party has simply ignored Directions addressed to it. To the extent that avoidable costs are incurred as a result, including by the Access Disputes Committee, a costs award is likely to be regarded as appropriate.

As a result of this failure I have had to rely on my interpretation of Network Rail's SRD as saying that the original reason for rejecting the Bid (adopting earlier defined terms) was solely because of its failure to comply with the MoW, although Network Rail is now raising safety concerns which have not previously been given as a reason.

Network Rail's concerns about performance in the Tonbridge area are set out in general terms and using examples which do not relate to the Bid.

I DIRECT Network Rail to identify whether the Bid actually conflicts with any existing Train Slot in the current WTT.

The simple – and important – question as to whether a GBRf train leaving Tonbridge West Yard in an easterly direction can reach Platform 1 or 2 at Tonbridge station directly has not been answered. On examining the material provided by both Parties, the answer to this question is still not clear.

Appendix 8 to Network Rail's SRD (GBRf's Location Operations Manual (the 'LOM') submitted by Network Rail) appears to suggest that from Platforms 1 and 2 access into the Yard is only available to the South Fan (Lines 0 – 8) and not into the North Fan. (The references to the Up and Down Tonbridge Lines in this paragraph refer to signals not shown on the diagram provided, for example, as the final page of Network Rail's Appendix 9 (GBRf's Method of Working for Tonbridge West Yard), although I assume that this refers to accessing the Yard from the west).

Paragraph 6.3.6, however, refers to GBRf trains being hauled out via Ground Position Signals AD2059 or AD2061. Without seeing Lease Drawing 4603 it is not possible to determine whether it is within GBRf's power to present a departing train to either AD2059 or AD2061 without it having to leave the Yard and then set back into it.

Further, however, I note that in referring to trains being propelled out of the Yard the LOM only envisages a departure via AD2059, with the country end signal on Platform 1 or 2 (AD159 or AD161) having been cleared to permit (or more likely to protect) the move.

I DIRECT GBRf:

- to confirm whether any service is scheduled in the current WTT to propel out Tonbridge West Yard to the Down Slow Line, reversing beyond AD2032;
- if not, to confirm whether GBRf has a record of any such moves taking place under short-term arrangements; and
- in any event to comment on the safety objections raised in Network Rail's SRD.

My attention has been drawn to two GBRf services from Tonbridge West Yard to Grain which appear in the WTT, these are 6Y71 and 6Y88. Both are shown as being propelled out of the Yard. 6Y88 enters Platform 2 and reverses there, being shown in the WTT as PRRM. 6Y71 enters Platform 1. Although it obviously reverses there (as the next timing point is at Sevenoaks) it only carries the designation PR. Whilst I recognise that in Appendix 6 to Network Rail's SRD 6Y71 is twice referred to because of poor performance issues, it is not clear that these relate to its movements at Tonbridge. 6Y71 is scheduled to leave Tonbridge Station 8 minutes after leaving the West Yard; 6Y88 is given 9 minutes to achieve the reversal from leaving the Yard.

The Bid proposes that 6Y41 should be propelled across the Up Slow, Up Fast and Down Fast Lines to reach the Down Slow beyond AD2032. 6Y41 would then have to cross at least the Down Fast Line again to proceed towards Sevenoaks. The Panel is likely to want to examine why a move which crosses quite so many lines is envisaged in the Bid and why it is not possible for 6Y41 to achieve a similar time from leaving the Yard to departing from Tonbridge Station as 6Y71 and 6Y88 by using the same route as these services.

I DIRECT both Parties to explain their understanding of the route followed by 6Y71 and 6Y88 from Tonbridge West Yard to the Up Main Line towards Sevenoaks and to explain why 6Y41 could not do likewise.

In paragraph 4.2 (iii)(c)(iii) of its SRD Network Rail refers to amendments to the TPRs which would address the problems arising in this Dispute having been consulted for the May 2018 timetable change date. It is not clear from this paragraph, or from the reference in Andrew Robinson's e-mail of 0905 on 7 August 2017 (at Appendix 1), whether these proposed amendments have been agreed by TOCs/FOCs concerned.

I DIRECT Network Rail to explain the current status of these proposed TPR amendments and whether the Bid would comply once they come into effect.

These Directions are to be complied with as soon as possible, and in any event no later than by 1600 on 01 September 2017.

Issues of Law

I am required by Rule H18(c) of Chapter H of the ADRR to identify issues of law arising from the Parties' SRDs. I interpret this as setting out issues which I think might arise, rather than limiting myself to those which definitely will arise. The issues which I have identified are numbered below.

Issue 1 – How is a compliant bid defined?

Issue 2 – Whether Network Rail is correct to say (at 3(b)(iv) of its SRD) that a bid cannot be compliant if there are no rules (in this case governing propelling moves) 'to be compliant with'. (If that is the case, the question has to be asked as to how the WTT has been constructed, given that it includes such moves)?

Issue 3 – The status of a Train Operator Variation Request and the way in which Network Rail is required to decide on such Requests.

Issue 4 – What degree of persuasive authority is to be accorded to the conclusions of TTP834 cited by GBRf, given the explicit requirement that in exercising its power under D3.3.3 Network Rail should act in accordance with D4.3, which requires Network Rail to apply the Decision Criteria (except where it conflicts with an existing Train Slot, which must lead to a refusal)?

Issue 5 – Whether a TTP does have the power to order Network Rail to accept a Train Operator Variation Request 'purely on the basis that it is compliant with the Timetable Planning Rules'? (These are not the actual words used by Network Rail in 5(b) of its SRD, which initially refers to the Bid and then to bids in more general terms. As this Dispute is determining a Train Operator Variation Request, rather than any other kind of bid, I think it more appropriate to use this phrase to enable Parties and the Panel to focus on the appropriate procedure).

Issue 6 – The extent to which Network Rail may rely in its SRD on factors which did not form part of the original decision.

A reminder to the Parties

To assist the Parties to prepare for the hearing I hope that it will be helpful to remind them that it is more productive to devote the limited time available for an opening statement to highlighting key points as they stand once SRDs have been exchanged and Directions complied with, than recounting the history of the Dispute and advancing arguments that may have been affected by subsequent events.

Yours faithfully



Clive Fletcher-Wood
Hearing Chair