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Clive Fletcher-Wood  
c/o Tony Skilton, The Secretary  
Access Disputes Committee  
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Email: sec.adc@btconnect.com

By Email

01<sup>st</sup> September 2017

Dear Clive,

Part D Claims Ref: TTP1127

Apologies if we have not clearly answered your directions in our Sole Reference Document (SRD). We believe the SRD should provide adequate responses to your directions, but in case they do not we have provided some further answers below.

Directions from email dated 17<sup>th</sup> August 2017:

1. Network Rail's initial reason for rejection of the Bid was based on the conclusion that the movement requested in the Bid would have a negative impact on performance, and does not comply with the Method of Working (MoW) Document submitted by GBRf as Appendix D2. The MoW was created in response to repeated delays caused by a train completing similar movements in the Tonbridge area, and stipulates reverse/propelling movements from Tonbridge West Yard should occur in either Platform 1 or Platform 2. The movement requested in the Bid requires a different propelling movement which is not permitted in the MoW. We refer to paragraph 3 (b) ii, iii and iv of Network Rail's SRD, which further clarifies this.
2. Network Rail has subsequently identified safety concerns regarding the specific propelling move at Tonbridge included in the bid, and believes this provides further grounds for rejection. An overbridge at the country end of Tonbridge Station prevents the shunter from being able to control a propelling move beyond the platform limits, and is in contravention with the operational Rule Book. This is further clarified in Section 3 paragraph (b) vi and Section 4.3 paragraph ii and iii of Network Rail's SRD, which provides additional explanation.
3. Network Rail's understanding of GBRf's current MoW is that the move requested in the Bid is not included in the GBRf MoW, which is attached as Appendix 8 'GBRf MoW Tonbridge West Yard current' in Network Rail's SRD. The GBRf MoW makes reference to trains requiring to propel out of the Sidings from signal AD2059, requesting that either signal AD159 or AD161 are cleared at the country end of platforms 1 or 2 depending on which platform the train will be routed to. No consideration is given to any other movement out of Tonbridge West Yard. This point is discussed in more detail in Section 4.2 paragraph viii and x of Network Rail's SRD.
4. The Tonbridge Performance Improvement Team was made up of representatives from Network Rail, Southeastern and GBRf, as noted in Section 3 paragraph (d) iii of Network Rail's SRD. A full list of attendees can be found in Appendix 6 'TPIG Agenda Action Log', of Network Rail's SRD. The forums and meetings were consultative in nature, and the group also undertook joint site visits to observe movements in and out of Tonbridge West Yard.
5. The powerpoint presentation version of the MoW referred to in GBRf Appendix D2 was created to "advise planners [of] the preferred planning moves and to identify moves which are not possible to prevent future delays". It reflects GBRf's current MoW attached as Appendix 8 of Network Rail's SRD.
6. The powerpoint presentation version of the MoW was created to "advise planners [of] the preferred

planning moves and to identify moves which are not possible to prevent future delays”.

7. It is only possible to access Platform 1 or 2 from Tonbridge West Yard when leaving from the South Fan of the Yard.

Directions from letter dated 29<sup>th</sup> August 2017:

1. An assessment has been undertaken by local operations staff of the potential impact of the move requested in the Bid, and it suggests a risk of conflict with three other services (2W48 Ramsgate – Charing Cross Southeastern service, 2H40 Charing Cross – Tunbridge Wells Southeastern service, and 6Y21 East Peckham – Tonbridge GBRf service) and a projected 20 minute late departure for 6Y41 if it is regulated to avoid conflict with other trains. This is further expressed in Section 4.2 paragraph(c) iv and Appendix 7 ‘NR local operations assessment of propelling issues at Tonbridge’ in Network Rail’s SRD.
2. Network Rail understands that the routes followed by 6Y71 and 6Y88 from Tonbridge West Yard to the Up Main Line towards Sevenoaks depart from the South fan of the yard. We understand 6Y41 has been bid to depart from the North fan of the yard and is therefore unable to access the Up Main Line.
3. Network Rail has established new TPRs for propelling movements between Tonbridge and Tonbridge West Yard in 2018 V4 Kent TPRs. There is no consideration given to the movement requested in the Bid as this extends beyond the country end of the station, therefore and irrespective of any of the other considerations above, the Bid does not comply with the TPRs that have been established for the May 2018 Timetable.

Issues of Law:

1. A Train Operator Variation Request shall contain a full description of the variation sought and, where it relates to the addition or amendment of any Train Slot to be included in the Working Timetable, shall provide the same information in respect of the variation as would be contained in an Access Proposal (save that where a proposed Train Slot amendment does not involve revision of any information previously supplied to Network Rail in an Access Proposal for that Train Slot, the Train Operator Variation Request need not repeat that information), as defined in Network Code Part D 3.3.2. The minimum required contents of an access proposal is documented in Network Code Part D 2.5.1 (a) – (k).
2. Network Rail does believe that a bid cannot be compliant if there are no rules to be compliant with. If there are no rules by which a train movement can be planned, it is not possible to bid a compliant path because we do not consider that Network Code Part D 2.5.1 (d) can be met.
3. Network Code Part D 3 contains the process by which the Working Timetable may be varied. Timetable Participants are entitled to request a variation to the Working Timetable through the submission of a written request to Network Rail, as per Network Code Part D 3.3.1. Providing this request is compliant with the requirements set out in Network Code Part D 3.3.2, Network Rail will begin to decide whether the request can or cannot be accommodated and accepted into the Working Timetable.

Network Code Part D 3.1.4 states that in considering or making any Timetable Variation, Network Rail shall be required and entitled to act in accordance with the duties and powers set out in Conditions D 4.3 and D 4.4. Network Rail shall have the power to accept, reject or modify the request, acting in accordance with Condition D 4.3 and shall apply the Decision Criteria in accordance with Condition D 4.6.

Where Network Rail is required to decide any matter in Part D, paragraph 4.6.1 provides that:

*“...its objective shall be to share capacity on the Network for the safe carriage of passengers and goods in the most efficient and economical manner in the overall interest of current and prospective users and providers of railway services (“the Objective”)”*

In achieving the Objective, Network Rail is to apply “any or all of the considerations” in D 4.6.2(a)-(k).

4. Network Rail appreciates the determination reached in TTP834 and does not disagree with it. There is a factual distinction between the two cases though; the basis for TTP834 was in relation to the inclusion of Train slots into the Working Timetable, whereas TTP1127 is based on a request for an additional Train Slot to be included in the Working Timetable through the Train Operator Variation Request process. In this case, Network Rail believes that it has a valid reason for rejecting the Bid due to it not aligning to The Objective as the route requested is specifically not permitted in the Method of Working document irrespective of the presence of Rules, and through the application of the other considerations listed in Network Code Part D 4.6.2.
5. Network Rail does not believe that a TTP has 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 (TPRs)’. Compliance with the TPRs is not the only factor Network Rail takes into account

when deciding whether or not to accept a Train Slot into the timetable; The Objective and Decision Criteria set out in Network Code Part D 4.6 also form key considerations in the decision making process.

Network Code Part D 4.3.1 (b) states that Network Rail shall not accept a Train Operator Variation Request if to do so would give rise to any conflict with any Train Slot already scheduled in the Working Timetable or the Rules. Therefore, Network Rail may not accept a bid where the Train Slot is in conflict with the TPRs and Part D 4.6 is invoked to decide what Train Slots will be included

6. Network Rail believes that the provisions set out in Access Disputes Resolution Rules (ADRR) Chapter G paragraph 16 (b)(ii) enables the defendant party to rely in its SRD on factors which were not communicated as having formed part of the original decision. The provision says that the defence document shall include "the reasons for the disagreement including any further references to provisions of the Underlying Contract or other contract(s) not dealt with in the reference" which allows for the inclusion of other factors which were considered in forming the decision not to accept the Bid. Likewise, ADRR Chapter G paragraph 16 (a)(iv) enables the claimant party to rely in its SRD on factors not originally espoused.

Yours faithfully

Andrew Robinson



KATHERINE MCMAUS 01/09/2017  
(COUNSELLOR of Andrew Robinson)

Amended Schedule Planning Manager

