

**Defendant's Response to a Sole Reference to a
Timetabling Panel in accordance with the provisions of
Chapter H of the ADR Rules effective from 1 August 2010
(and as subsequently amended)
Dispute TTP1197**

1 DETAILS OF PARTIES

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

- (a) Freightliner Heavy Haul Limited whose Registered Office is at 90 Whitfield Street, London W1T 4EZ ("FLHH") ("the Claimant"); and
- (b) Network Rail Infrastructure Limited whose Registered Office is at 1 Eversholt Street, London NW1 2DN ("Network Rail") ("the Defendant").

2 CONTENTS OF DOCUMENT

This Response to the Claimant's Sole Reference includes:-

(a) Confirmation, or qualification, that the subject matter of the dispute is as set out by the Claimant in its Sole Reference, in the form of a summary schedule cross-referenced to the issues raised by the Claimant in the Sole Reference, identifying which the Defendant agrees with and which it disagrees with.

(b) A detailed explanation of the Defendant's arguments in support of its position on those issues where it disagrees with the Claimant's Sole Reference, including references to documents or contractual provisions not dealt with in the Claimant's Sole Reference.

(c) Any further related issues not raised by the Claimant but which the Defendant considers fall to be determined as part of the dispute;

(d) The decisions of principle sought from the Panel in respect of

(i) legal entitlement, and

(ii) remedies;

(e) Appendices and other supporting material.

3 SUBJECT MATTER OF DISPUTE

3.1 Network Rail being unable to make a Formal Offer to FLHH for a number of schedules in the Subsidiary New Working Timetable Publication for 2018.

- 3.2 Network Rail will outline why Schedules for 6J34 1057 [EWD] Folly Lane to Brindle Heath RTS were not included in the Subsidiary New Working Timetable Publication for 2018 Formal Offer received by FLHH from Network Rail on Friday 17th November 2017 despite being included in the Schedule 5 Rights Table [Extract]. This is discussed in paragraphs 4.1, 4.4, 4.5, 4.6 and 4.7
- 3.3 Network Rail will outline why Schedules for 6M08 1810 [SX] West Burton PS to Hope Earles Sidings were not included in the Subsidiary New Working Timetable Publication for 2018 Formal Offer received by FLHH from Network Rail on Friday 17th November 2017 despite being included in the Schedule 5 Rights Table [Extract]. This is discussed in paragraphs 4.1, 4.8, 4.9, 4.10 and 4.11
- 3.4 Network Rail will outline why Schedules for 6M91 1100 [SX] Theale Lafarge to Hope Earle Sidings were not included in the Subsidiary New Working Timetable Publication for 2018 Formal Offer received by FLHH from Network Rail on Friday 17th November 2017 despite being included in the Schedule 5 Rights Table [Extract]. This is discussed in paragraph 4.1, 4.12, 4.13 and 4.14
- 3.5 Network Rail outline why Schedules for 6M91 0900 [SO] Theale Lafarge to Hope Earle Sidings were not included in the Subsidiary New Working Timetable Publication for 2018 Formal Offer received by FLHH from Network Rail on Friday 17th November 2017 despite being included in the Schedule 5 Rights Table [Extract]. This is discussed in paragraph 4.1, 4.15, 4.16, 4.17 and 4.18.
- 3.6 Network Rail will outline why a schedule was included in the Subsidiary New Working Timetable Publication for 2018 Formal Offer received from Network Rail on Friday 17th November 2017 with the status Rejected 6M92 1230 [EWD] West Thurrock Sidings (FHH) to Tunstead BI despite being included in the Schedule 5 Rights Table [Extract]. This is discussed in paragraph 4.1, 4.19, 4.20, 4.21, 4.22 and 4.23.
- 3.7 Network Rail will address why it was unable to complete outstanding items in FLHH May 18 WTT Response Spreadsheet. This is discussed in paragraph 4.24 and 4.25.

4 EXPLANATION FROM THE DEFENDANT 'S PERSPECTIVE OF EACH ISSUE IN DISPUTE

- 4.1 Despite the claimant having Section 5 Access Rights, the claimant failed to exercise rights for the following train slots 6J34 [EWD], 6M08 [SX], 6M91 [SX], 6M91 [SO], 6M92 [EWD], in their

Subsidiary 2018 Priority Date Notification of Statement in accordance with D2.4.1. (a), (b) and (c).

4.2 Network Rail provided a template for completion to all Operators. (Appendix A) Network Rail used the template to give priority status to the PDNS Network Code 4.2.2 (a), (b) and (d) i.

4.3 FLHH did not submit a template therefore Network Rail believe they complied with Network Code 4.2.2 (d) i for:

6J34 1057 [EWD] Folly Lane to Brindle Heath RTS

6M08 1810 [SX] West Burton PS to Hope Earle Sidings

6M91 1100 [SX] Theale Lafarge to Hope Earle Sidings

6M91 0900 [SO] Theale Lafarge to Hope Earle Sidings

6M92 1230 [EWD] West Thurrock Sidings (FHH) to Tunstead BI

4.4 6J34 1057 [EWD] Folly Lane to Brindle Heath RTS. FLHH did not include an amendment or additional to this schedule in their PDNS submission or summary (Appendix B). Network Rail offered FLHH their Dec 17 WTT paths for 6J34 1057 [EWD] Folly Lane to Brindle Heath RTS Network Rail, which were 1058 Thursday only and 1058 Saturday only. (Appendix C). Therefore Network Rail feel it has met its obligation in accordance with Network Code D2.7.1

4.5 FLHH sent Network Rail a Train Operator Variation request after D26 which was offered back to FLHH to run 6J34 1057 [EWD] Folly Lane to Brindle Heath RTS in May 18 WTT for THSX to run every weekday from 05 February 2018 to 18th May 2018 by Network Rail on 26th January 2017 (Appendix D)

4.6 After further review and discussion with FLHH Network Rail have offered FLHH a path for 6J34 1057 [EWD] Folly Lane to Brindle Heath RTS for every working day on February 22nd 2018 leaving 14 minutes later than the requested time of 1058 but within the time window specified in Schedule 5 Rights Table, improving overall journey time by 7 minutes with a 1517 arrival at Brindle Heath RTS. (Appendix E)

4.7 Network Rail believes they have satisfied Network Code D2.7.2 in providing the paths requested at PDNS and D2.7.3 by amending the paths as requested by FLHH in their two TOVR's.

4.8 Schedules for 6M08 1810 [SX] West Burton PS to Hope Earles Sidings, was originally rejected as Network Rail believed an RT3973 form was required. FLHH were approached to provide a RT3973 and advised one was not required. (Appendix F)

4.9 Due to the changes to the May 18 WTT the original path that 6M08 1810 [SX] West Burton PS to Hope Earles Sidings were not available. The schedule was amended twice in the Full timetable to make it Train Planning Rule Compliant which then impacted the schedules Sectional Running Times. Network Rail could not offer this schedule to FLHH.

4.10 Network Rail believes it correctly applied the Network Code section 2.4.6 (b)

Where a timetable participant has

(b) a Train Slot in the Prior Working Timetable which cannot be accommodated in the New Working Timetable.

to not offer 6M08 1810 [SX] West Burton PS to Hope Earles Sidings to FLHH. .

4.11 Network Rail believes it has satisfied Network Code 2.4.6 (b), Network Code 2.7.3 and 3.1.1 (a) and (b)

4.12 Network Rail has worked with FLHH so they are in a position to offer an acceptable path to FLHH.

4.13 Schedules for 6M91 1100 [SX] Theale Lafarge to Hope Earle Sidings were not offered by Network Rail to FLHH for Period E as these paths were foul of Section 4 blocks between Sharnbrook and Wellingborough on the LNE route (Appendix G)

4.14 Network Rail believes it correctly applied the Network Code section 2.4.6 (b)

Where a timetable participant has

(b) a Train Slot in the Prior Working Timetable which cannot be accommodated in the New Working Timetable.

to not offer 6M91 1100 [SX] Theale Lafarge to Hope Earle Sidings to FLHH.

4.15 FLHH were advised they would not be offered this path during this Period on xx/xx/xx (Appendix H).

4.16 Schedules for 6M91 0900 [SO] Theale Lafarge to Hope Earle Sidings were not offered by Network Rail to FLHH for Period E as these paths were foul of Section 4 blocks between Sharnbrook and Wellingborough on the LNE route (Appendix G)

- 4.17 Network Rail believes it correctly applied the Network Code section 2.4.6 (b)
- Where a timetable participant has
- (b) a Train Slot in the Prior Working Timetable which cannot be accommodated in the New Working Timetable.
- to not offer 6M91 0900 [SO] Theale Lafarge to Hope Earle Sidings to FLHH.
- 4.18 FLHH were advised they would not be offered this path during this Period on xx/xx/xx (Appendix H).
- 4.19 Schedules for 6M92 1230 [EWD] West Thurrock Sidings (FHH) to Tunstead BI were rejected by Network Rail for Period E as these paths were foul of Section 4 blocks between Sharnbrook and Wellingborough on the LNE route (Appendix G)
- 4.20 Network Rail believes it correctly applied the Network Code section 2.4.6 (b)
- 4.21 Where a timetable participant has
- (b) a Train Slot in the Prior Working Timetable which cannot be accommodated in the New Working Timetable.
- 4.22 to reject 6M92 1230 [EWD] West Thurrock Sidings (FHH) to Tunstead BI to FLHH.
- 4.23 FLHH were advised of the rejection of this path during this Period on xx/xx/xx (Appendix H).
- 4.24 Network Rail believes that they have applied the principles of Network Code 2.7.3 when offering FLHH the May 18 WTT, however given the size of the response document submitted by FLHH it was not clear which schedules were of higher priority for FLHH. As highlighted by the Panel
- "...are difficult for the Panel members to handle on account of the size of spreadsheets (in terms both of the numbers of columns and the numbers of rows)..." Extract
- "..but it is not easy to identify how many bids fall into which category." Extract
- 4.25 Network Rail believes that they have complied with the Network Code with regards to the train slots referred to (See section 4.2 and Section 4.1). Network Rail also believes that they been reasonable as FLHH have part offered paths (excluding period E see section 4.1) for the schedules in dispute as they are aware that the paths are part of the core FLHH business and run on a regular basis.

- 4.26 The LNE route have advised there has not been a request for an easement of the Period E Section 4 times to the LNE route to enable 6M91 [SX], 6M91 [SO], 6M92 [EWD] to run.

5 DECISION SOUGHT FROM THE PANEL

- 5.1 That the panel uphold the decision of Network Rail to reject 6J34 FH and 6M92FH and not offer 6M08FA, 6M91FH (SX dated) and 6M91FH (SO dated).
- 5.2 The panel uphold the decision that Network Rail fulfilled its obligation to Network Code D 2.4.1 (a) D 2.4.6 (b) during the preparation of the Subsidiary Working Timetable 2018 WTT

Matters of principal:

- 5.3 There is no decision for the panel to review (or for the operator dispute) if the schedule is missing

6 APPENDICES

The Defendant confirms that it has complied with Access Dispute Resolution Rule H21.

Extracts of Access Conditions/ the Network Code are included where the dispute relates to previous (i.e. no longer current) versions of these documents.

All appendices and annexes are bound into the submission and consecutively page numbered. To assist the Panel, quotations or references that are cited in the formal submission are highlighted (or side-lined) so that the context of the quotation or reference is apparent.

Any information only made available after the main submission has been submitted to the Panel will be consecutively numbered, so as to follow on at the conclusion of the previous submission.

7 SIGNATURE

For and on behalf of Network Rail Infrastructure Limited



Signed

Print Name

Maria Lee

Position

Timetable Production Manager [Anglia]

APPENDIX A