

# Statement in response to a request from the Hearing Chair concerning a preliminary issue regarding the validity of the dispute notice issued by DB Cargo (UK) Limited for Timetabling Dispute TTP1198

## Introduction

This statement is provided by DB Cargo (UK) Limited ("**DB Cargo**") in response to a request from the Hearing Chair dated 14 June 2018. This request required further information and explanation concerning the status of a dispute relating to an objection by Network Rail Infrastructure Limited ("**Network Rail**") to a notice of dispute submitted to the Secretary by DB Cargo on 1 December 2017 pursuant to Conditions D2.7.2 of the Network Code in respect of the 2018 Subsidiary New Working Timetable ("**the notice of dispute**") ("**TTP 1198**").

## DB Cargo's views

DB Cargo submitted a Statement of Defence in respect of TTP1198 to the Secretary on 22 December 2017 responding to Network Rail's objection to the notice of dispute (see Annex 1). At the same time, DB Cargo also informed the Secretary that it had written separately to Network Rail proposing a way forward for this matter to be resolved amicably between the parties without the need for the Timetabling Panel Hearing that was then arranged for 9 January 2018. The wording of DB Cargo's proposal to Network Rail was as follows:

*"I am writing with regard to the above dispute reference as I understand that Network Rail has challenged the validity of DBC UK's initial Notice of Dispute dated 1 December 2017 in the following respects (1) as regards the timing of receipt of the notice by Network Rail and (2) that there is insufficient detail provided on the issues in dispute.*

*Whilst DBC UK remains fully prepared to contest Network Rail's dispute at the Timetabling Panel Hearing already arranged for Tuesday 9 January 2018, to avoid the time and expense of such proceedings and without acknowledging that its Notice of Dispute was deficient in any way, DBC UK is willing to resubmit to Network Rail its Notice of Dispute to Network Rail to provide further details of the actual issues remaining in dispute concerning the 2018 Subsidiary New Working Timetable and ensure that such enhanced level of detail is provided with any future Notices of Dispute in respect of similar matters.*

*DBC UK hopes that its proposal may offer a pragmatic resolution of this matter and is based on the following considerations:*

*(a) DBC UK has in the past always sought to ensure that Network Rail is copied its relevant Notices of Dispute at the same time that these are lodged formally with the ADC Secretary and would expect this to continue to be the case for all future relevant Notices of Dispute. In respect of this particular Notice of Dispute, however, regrettably Network Rail was not copied in at the same time due to an oversight by the person concerned who is new to the roll of dealing with matters concerning the New Working Timetable and the dispute resolution process. However, as soon as this oversight was realised, the Notice of Dispute was submitted to Network Rail along with DBC UK's apologies. DBC UK would not have thought that Network Rail would have suffered any particular prejudice as a result of receiving the Notice of Dispute three working days after it was lodged with the ADC Secretary.*

*(b). DBC UK has submitted its relevant Notices of Dispute in the same format for a number of years without challenge from Network Rail but, as indicated above, it is willing to include further detail for all future Notices of Dispute.*

*(c). DBC UK submitted its formal response to Network Rail's New Working Timetable for the 2018 Subsidiary Timetable Change (covering the period May 2018 – December 2018) on 1 December 2017 which set full detail of all of the issues with which it was concerned and stated that all of these, unless resolved between the parties, will be referred for determination by a Timetabling Panel in accordance with the Access Dispute Resolution Rules. Therefore, whilst the Notice of Dispute did not include the same level of detail, Network Rail was already in possession of the full detail as it was set out in DBC UK's formal response to the 2018 Subsidiary New Working Timetable. Consequently, DBC UK would again have thought that Network Rail would not have suffered any particular prejudice as a result.*

*If Network Rail is willing to accept DBC UK's proposal set out above, DBC UK will resubmit its Notice of Dispute with further details of the actual issues remaining (i.e. those set out in its formal response to the 2018 Subsidiary New Working Timetable that have not already been resolved through the ongoing discussions between the parties). Both parties could then jointly approach the ADC Secretary advising him of the approach adopted and thus avoid the need for a hearing.*

*I look forward to your reply."*

Network Rail responded positively to DB Cargo's proposal and, following the receipt of the further information promised, wrote to both the Hearing Chair and the Secretary on 4 January 2018 confirming that it was withdrawing its objection to the notice of dispute.

Consequently, DB Cargo is of the firm view that this preliminary matter was resolved and that, therefore, there is no longer any need to address Network Rail's earlier objection to DB Cargo's notice of dispute as a precursor to whether or not a substantive hearing on the issues concerning 1Y46 10:58 [THO] London Victoria to Folkestone West (via Canterbury East) (arr. 13:05) can be proceeded with. However, if this view is not accepted by the Timetabling Panel, then DB Cargo submits that the matter should be dealt with by the Hearing Chair pursuant to ADR Rule A16(c). That is to say that as DB Cargo considers that Network Rail would not have suffered any particular prejudice from a lack of information in the notice of dispute, the matter concerning 1Y46 can be proceeded with to determination despite any procedural default.

Although DB Cargo submits that there are no matters left to determine in respect of whether the notice of dispute was defective in any way, during the exchanges of correspondence between DB Cargo and Network Rail concerning this issue, both parties indicated that, if possible, they would welcome any observations and guidance from a Timetabling Panel on what should be included to create a 'valid' notice of dispute. Whilst Network Rail considered the notice of dispute to defective due to a lack of information, it also considered that the information subsequently provided by DB Cargo allowing it to withdraw its objection may have been overly detailed. This, coupled with the perceived misalignments between the requirements of ADR Rules B2 to 4 and the template notice of dispute published on the ADC's website and that DB Cargo also considered that Network Rail's notice of dispute objecting to the notice of dispute was also invalid, all indicate that observations and guidance in this area may be of benefit to the industry as a whole.

DB Cargo, therefore, considers that the Hearing Chair's note issued pursuant to ADR Rule H18(c) is very helpful in this respect as it provides such relevant observations and guidance. DB Cargo, therefore, considers that this note should be published (as indeed it has been) on the ADC's website for the benefit of the industry as a whole.

Conclusion

In summary, DB Cargo submits that the Timetabling Panel arranged for 2 July 2018 to hear the matters concerning 1Y46 should proceed despite the earlier issue concerning whether or not the notice of dispute was valid. This is because that earlier matter has been resolved between the parties and is no longer an issue in respect of TTP1198. Furthermore, even if that were not to be the case, DB Cargo considers that as Network Rail would not have suffered any particular prejudice from insufficient information in the notice of dispute, that the matter concerning 1Y46 should proceed to determination despite any procedural default pursuant to the powers available to the Hearing Chair under ADR Rules A16(c).

For and on behalf of DB Cargo (UK) Limited

Signed



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Print Name

**NIGEL OATWAY**

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Position

**ACCESS MANAGER**