
ACCESS DISPUTES COMMITTEE

To:
GB Railfreight Limited ("GBRF")
DB Cargo (UK) Ltd ("DBC")
Freightliner Ltd ("FL")
Freightliner Heavy Haul Ltd ("FLHH")
Network Rail Infrastructure Ltd ("Network Rail")

From: Hearing Chair
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Dear Sirs

Directions relating to Timetabling Disputes concerning Network Rail's failure to offer Variations at TW-14 for Week 8 of 2018/19 and subsequent Weeks

This letter is issued to confirm my conclusions following the Directions Hearing held this morning at which your companies were represented. The relevant dispute registrations numbers are TTP1233, TTP1237, TTP1240, TTP1270, TTP1278, TTP1288, TTP1291, TTP1293, TTP1297 and TTP1304 from GBRF; TTP1236 from DBC; TTP1234, TTP1238, TTP1241, TTP1271, TTP1274, TTP1276, TTP1286, TTP1290, TTP1294 and TTP1296 from FL; and TTP1235, TTP1239, TTP1242, TTP1273, TTP1275, TTP1277, TTP1285, TTP1289, TTP1292, TTP1295 and TTP1303 from FLHH.

I am grateful to all Parties for the preliminary Notes that they provided at my request to prepare for the Directions Hearing.

In summary, the case of the four freight operating companies - as explained in a preliminary without prejudice discussion - is that they are in dispute with Network Rail because Network Rail is failing to meet its contractual obligations as set out in Part D of the Network Code to offer Variations at TW-14 currently and until the full Part D procedure can be restored.

Network Rail's primary submission is that in fact there is not yet a Dispute between any of the four companies and Network Rail which is capable of being determined by any Forum under the Access Dispute Resolution Rules. Without prejudice to that submission, Network Rail also submitted that any contractual issues which might arise are not appropriate for determination by a Timetabling Panel; that said, Network Rail recognises that an unsatisfactory situation exists and that there would be value in having commercial discussions with the freight operators in an attempt to resolve it.

Network Rail's submission that there is no Dispute which can be determined, by whatever Forum, was one raised for the first time at the Directions Hearing. (This is not a criticism of Network Rail's legal advisers, who I understand were instructed at very short notice). As a result, the freight operators were not in a position to respond to this submission. Having considered the points put forward, but not having had the benefit of receiving full legal submissions from any

Party, I am clearly unable to say at this juncture that there is no dispute in law. Further, although I can envisage routes by which detailed elements of each registration might be progressed to a Timetabling Panel hearing, I recognise that a Timetabling Panel would not necessarily have the jurisdiction to address all aspects of the case. There seems little point, therefore, in progressing these issues to a full Timetabling Panel as there are other remedies available which would avoid the legal arguments on the jurisdiction of a Timetabling Panel and which might in any event offer more appropriate remedies were the freight operators to succeed in any aspect of their claims.

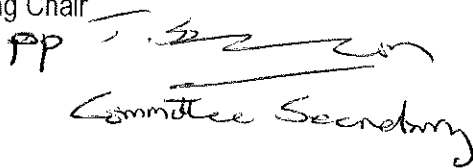
On that basis, and as provided for in Chapter H of the Access Dispute Resolution Rules, I am therefore remitting these dispute registrations for allocation in accordance with Chapter B of the Rules.

On an administrative point, I am of the opinion that as Chapter H of the Rules provides for allocation to another Forum following initial service of a Notice of Dispute for referral to a Timetabling Panel, the operators now enjoy protection against any limitation periods or provisions which might relate to associated claims which they may wish to put forward.

On a further administrative point, I do not consider that there is anything to be gained through these four operating companies serving Notices of Dispute for any further future Weeks concerning the general principle of failure to offer Variations at TW-14. I do, however, consider that in the current situation the right remains for any Access Beneficiary to object to and raise further disputes (which shall properly be Timetabling Disputes) regarding individual decisions which Network Rail issues at TW-6. It is to be hoped that any such appeals will be capable of being heard by a Timetabling Panel expeditiously and that the process will prove to be of value even at such a late stage.

Yours faithfully

Clive Fletcher-Wood
Hearing Chair



Committee Secretary