**1 DETAILS OF PARTIES**

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

(a) DB Cargo (UK) Limited whose Registered Office is at Lakeside Business Park, Carolina Way, Doncaster, South Yorkshire, DN4 5PN (“DBC”) (“The Claiment”); and

(b) Network Rail Infrastructure Limited whose Registered Office is at 1 Eversholt Street, London NW1 2DN (“Network Rail”) (“The Respondent”).

(c) Contact details for DB Cargo: Graham White, Access Manager South, Lakeside Business Park, Carolina Way, Doncaster, South Yorkshire, DN4 5PN.

(d) Contact details for Network Rail: Richard Turner

**2 DETAILS OF REFERENCE**

2.1 This matter is referred to a Timetable Panel (“the Panel”) for determination in accordance with Condition D5 of the Network Code

2.2 This Dispute arises from a decision of Network Rail in respect of Network Rail variations made pursuant to Condition D3.5 of the Network Code

**3 CONTENTS OF REFERENCE**

This Sole Reference includes:-

1. The subject matter of the dispute in Section 4;
2. A detailed explanation of the issues in dispute in Section 5;
3. In Section 6, the decision sought from the panel in respect of legal entitlement and remedies in Section 7.

**4 SUBJECT MATTER OF DISPUTE**

4.1 This dispute arises from for Late Notice Restrictions of Use taken by Network Rail between Uffington and Wootton Bassett Jn on 5 consecutive nights between Monday 3rd September and Friday 7th September 2018.

4.2 Copied and annexed to this Reference are:

* **Appendix A: Request W18-769-WC**
* **Appendix B: DB Cargo (UK) Ltd response to W18-769-WC**
* **Appendix C: Decision W18-769-WC**
* **Appendix D: Further correspondence from Network Rail**

**5 DETAILED EXPLANATION OF THE DISPUTE**

5.1 Network Rail, on Wednesday 29th August 2018 at 1526 proposed 5 additional Restrictions of Use between Uffington and Wootton Bassett Jn on the Western route for the following week as shown in 4.1. The request is attached as appendix A. The justification for this request is given as ‘to support critical construction activities ahead of dynamic testing in week 24’. Given the short notice of this request the response from operators was required by 1500 on Thursday 30th August 2018; a response period of less than 24 hours. The EAP reference is W18-769-WC and the Restrictions of Use in question are as follows:

 P2018/2540646, P2018/2540652, P2018/2540653, P2018/2540654 and P2018/2540656

5.2 DB Cargo’s response was sent at 1037 on Thursday 30th August 2018 stating that ‘At this late stage we cannot agree to this possession as it is out of our Informed Traveller timescales’ and suggesting that the ‘control team’ would be the way forward as is the case when Restrictions of Use at such a late stage are proposed; this response is shown in appendix B. The deadline for Informed Traveller is 1000 on Wednesdays for the following week; prior to the proposal being issued.

5.3 DB Cargo would only expect Restrictions of Use to be proposed at this late stage for Emergency Safety of Line works rather than to ‘support critical construction activities’.

5.4 At 1617 on Thursday 30th August 2018 Network Rail issued the Decision Notice for these Restrictions of Use as shown in appendix C. Whilst issuing the decision at this time is within the A for C deadline (1000 Friday for the following Monday); issuing after 1600 effectively means that our plans for the following week have been finished and our customer orders have been confirmed. Also, given the lateness there
would be no staff to rework the plans.

5.5 DB Cargo has accepted Restrictions of Use of this route including many additional Restrictions of Use for Electrification in the past and has formally agreed similar Restrictions of Use in EAP timescales in the future it is the lack of effective planning time that is of issue here. Operators have 5 working days to appeal Network Rail Decisions as detailed in Condition D3.5.3 of the Network Code; that right has been denied us in this instance as 5 working days is after the majority of the Restrictions of Use had been taken.

5.6 At 1009 on Friday 31st August 2018 DB Cargo (only) received a further e-mail from Network Rail as shown in Appendix D contained the following statements ‘As discussed the issuing of a decision yesterday means Network Rail intend to take the access in that decision’ and ‘ …the situation is currently under review at Route MD/ COO level and we expect developments in which may yet result in this access being withdrawn’. This statement now gives no idea as to whether trains will be diverted via the Berks & Hants or in their WTT paths via Swindon. The Berks & Hants diversion not only requires additional train crew but different route knowledge. This is now after the A for C deadline and any changes are VSTP.

5.7 We received verbal confirmation on Friday afternoon that the Restrictions of Use were being taken and the affected trains were then bid VSTP. Network Rail seems to operate a ‘no schedule / no train’ policy so this imported a huge risk to ourselves and for our customers in that we had train orders that had been accepted and confirmed by ourselves for which we had no schedules.

5.8 Network Rail was able to find an additional timing resource and we received timings for our diverted services throughout Monday 3rd September. Train Crew changes were dealt with by our Control and we were able to run the trains and serve our customers.

 **6 DECISION SOUGHT FROM THE PANEL**

6.1 The Panel is asked to determine:

(a) Whether or not the timescales adopted by Network Rail in respect of these Restrictions of Use were ‘reasonably practicable’ for the purposes of Condition D3.5.2 of the Network Code and; if not what timescales should be considered as ‘reasonably practicable’.

(b) That Restrictions of Use which were described by Network Rail as being to ‘support critical construction activities’ were not reasonable ‘emergency’ Restrictions of Use as DB Cargo considers that they were imposed as a result of Network Rail’s own requirements to meet an Internal Project Deadline rather than restoring the functionality of the network and so should not have been imposed effectively denying operators a reasonable mechanism with sufficient time to appeal any relevant Network Rail decisions under Condition D3.5.3 of the Network Code.

**Appendix A**

**REQUEST - W18-769-WC - WEEK 23 - GW105 GW1 AT UFFINGTON TO FORDGATE VIA BOX**

**WEEK 23 – GW105  GW1 AT UFFINGTON TO FORDGATE VIA BOX**

EAP Reference: W18-769-WC

Dear All,

I have been approached by my colleagues in West Country Planning regarding a request for the following possessions. This submission is to support critical construction activities ahead of dynamic test train running in week 24.

I look forward to receiving your formal response to the above proposal by ***1500 Thursday 30th August 2018.*** Apologies for the shortened response timeframe but this is to allow a decision to be issued.

**Monday 3rd September – Possession: P/2540646**

**Tuesday 4th September – Possession: P/2540652**

|

| Item  | Uffington (inc.)  | All Lines  | 2230  | to  | 2345  |
| --- | --- | --- | --- | --- | --- |
|  | and  | Possession  |  |  |  |
|  | Swindon East  |  |  |  |  |
|  |  |  |  |  |  |
|  | South Marston  | South Marston Goods  | 2230  | to  | 0515  |
|  |  | Possession  |  |  |  |
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|  |  |  |  |  |  |
|  |  | South Marston Euro Terminal  | 2230  | to  | 0515  |
|  |  | Sidings Possession  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  | Highworth Jn  | Up Through Sidings  | 2230  | to  | 0515  |
|  | and  | Sidings Possession  |  |  |  |
|  | Swindon East  |  |  |  |  |
|  |  |  |  |  |  |
|  |  | Cocklebury Sidings  | 2230  | to  | 0515  |
|  |  | Sidings Possession  |  |  |  |
|  |  |  |  |  |  |
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|  | Highworth Jn  | Highworth Branch Siding  | 2230  | to  | 0515  |
|  |  | Sidings Possession  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  | Uffington (inc.)  | All Lines  | 2345  | to  | 0515  |
|  | and  | Possession  |  |  |  |
|  | Wootton Bassett Jn  |  |  |  |  |
|  |  |  |  |  |  |
|  | Swindon Jn  | Down and Up Kemble  | 2345  | to  | 0515  |
|  | and  | Possession  |  |  |  |
|  | Rodbourne Jn  |  |  |  |  |
|  |  |  |  |  |  |
|  | Swindon East  | Hawkesworth Steel Terminal  | 2345  | to  | 0515  |
|  | and  | Sidings Possession  |  |  |  |
|  | Swindon  |  |  |  |  |
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|  | **ISOLATION OF ELECTRICAL SECTIONS**  |  |
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|  | For EIS03 blanket isolation please see P/2513525.  |  |

|  | **PROTECTION LIMITS**  |  |
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|  | 2230 TO 2345 Down Main: Beyond **SB1011#** to Approach SW8616B points# Up Main: Beyond SW8617B points# to Approach SB1014# Down Swindon Goods: Approach SW1169# Up Swindon Reception: Beyond SW8617A points# 2345 TO 0515 Down Main: Beyond **SB1011#** to Approach SW1235# Up Main: Beyond SW8640A points# to Approach SB1014# Down Kemble: Approach SW1313 Up Kemble: Beyond SW1310#  |  |
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|  | **GENERAL REMARKS**  |  |
|  | LINE CLEAR VERIFICATION PROCESS APPLIES. TRAINS FORMED OF EMPTY COACHING STOCK (ECS) MAY BE STABLED OR OUT-BERTHED ON SWINDON PLATFORM 2 LINE IF NECESSARY DURING POSSESSION OF THE LINE FOR ENGINEERING WORK OR A LINE BLOCKAGE.  |  |

**Wednesday 5th September – Possession: P/2540653**

**Thursday 6th September – Possession: P/2540654**

**Friday 7th September – Possession: P/2540656**

**Protection on the Down Main Differs from Monday and Tuesday Nights**

|

| Item  | Uffington (inc.)  | All Lines  | 2230  | to  | 2345  |
| --- | --- | --- | --- | --- | --- |
|  | and  | Possession  |  |  |  |
|  | Swindon East  |  |  |  |  |
|  |  |  |  |  |  |
|  | South Marston  | South Marston Goods  | 2230  | to  | 0515  |
|  |  | Possession  |  |  |  |
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|  |  |  |  |  |  |
|  |  | South Marston Euro Terminal  | 2230  | to  | 0515  |
|  |  | Sidings Possession  |  |  |  |
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|  |  |  |  |  |  |
|  | Highworth Jn  | Up Through Sidings  | 2230  | to  | 0515  |
|  | and  | Sidings Possession  |  |  |  |
|  | Swindon East  |  |  |  |  |
|  |  |  |  |  |  |
|  |  | Cocklebury Sidings  | 2230  | to  | 0515  |
|  |  | Sidings Possession  |  |  |  |
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|  | Highworth Jn  | Highworth Branch Siding  | 2230  | to  | 0515  |
|  |  | Sidings Possession  |  |  |  |
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|  | Uffington (inc.)  | All Lines  | 2345  | to  | 0515  |
|  | and  | Possession  |  |  |  |
|  | Wootton Bassett Jn  |  |  |  |  |
|  |  |  |  |  |  |
|  | Swindon Jn  | Down and Up Kemble  | 2345  | to  | 0515  |
|  | and  | Possession  |  |  |  |
|  | Rodbourne Jn  |  |  |  |  |
|  |  |  |  |  |  |
|  | Swindon East  | Hawkesworth Steel Terminal  | 2345  | to  | 0515  |
|  | and  | Sidings Possession  |  |  |  |
|  | Swindon  |  |  |  |  |
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|  | **ISOLATION OF ELECTRICAL SECTIONS**  |  |
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|  | For EIS03 blanket isolation please see P/2513525.  |  |

|  | **PROTECTION LIMITS**  |  |
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|  | 2230 TO 2345 Down Main: Beyond **SW1105#** to Approach SW8616B points# Up Main: Beyond SW8617B points# to Approach SB1014# Down Swindon Goods: Approach SW1169# Up Swindon Reception: Beyond SW8617A points# 2345 TO 0515 Down Main: Beyond **SW1105#** to Approach SW1235# Up Main: Beyond SW8640A points# to Approach SB1014# Down Kemble: Approach SW1313 Up Kemble: Beyond SW1310#  |  |
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|  | **GENERAL REMARKS**  |  |
|  | LINE CLEAR VERIFICATION PROCESS APPLIES. TRAINS FORMED OF EMPTY COACHING STOCK (ECS) MAY BE STABLED OR OUT-BERTHED ON SWINDON PLATFORM 2 LINE IF NECESSARY DURING POSSESSION OF THE LINE FOR ENGINEERING WORK OR A LINE BLOCKAGE.  |  |

**“*This email is in accordance with Access Condition D3.5 and relates to Section 3.1 of the Timetable Planning Rules being the Procedure for Altering the Engineering Access Statement or Timetable Planning other than through the Twice-Yearly Process Having Effect from a Passenger Change Date.  Standard Network Code and Standard Track Access Conditions will apply with regard to this/these possession/s*”.**

Many thanks

**David Brignall**

Engineering Access Planner, Western Route

**Appendix B**

**Re: Fw: URGENT REQUEST - W18-769-WC - WEEK 23 - GW105 GW1 AT UFFINGTON TO FORDGATE VIA BOX**

Good morning,

At this late stage we cannot agree to this possession as it is out of our Informed Traveller time scales.

We also have several trains which are diverted via Swindon.

If your control team would like to contact ours they may agree.

Kind regards,
**Amanda Stevens**
**Engineering Planning Assistant (Southern)**

DB Cargo (UK) Limited
Lakeside Business Park
Carolina Way
Doncaster
DN4 5PN

(t):    [redacted]
(w):   www.uk.dbcargo.com


Melinda Knaggs---30/08/2018 10:28:40---Many Thanks Melinda Knaggs

From: Melinda Knaggs/Externe/DB AG/DE
To: Amanda Stevens/
Date: 30/08/2018 10:28
Subject: Fw: URGENT REQUEST - W18-769-WC - WEEK 23 - GW105  GW1 AT UFFINGTON TO FORDGATE VIA BOX

Many Thanks

**Melinda Knaggs**
**Engineering Planning Assistant (Anglia & LNW South)**

DB Cargo (UK) Limited
Lakeside Business Park
Carolina Way
Doncaster
DN4 5PN

(w) www.uk.dbcargo.com


----- Forwarded by Melinda Knaggs/Externe/DB AG/DE on 30/08/2018 10:28 -----

From: EAP Western Route
To: [addresses redacted]
Date: 30/08/2018 10:26
Subject: URGENT REQUEST - W18-769-WC - WEEK 23 - GW105  GW1 AT UFFINGTON TO FORDGATE VIA BOX
Sent by: Brignall David

Good morning,

In Graham Whites absence please can you review the below late notice request and respond, or forward to an appropriate individual.

Many thanks

**David Brignall**
Engineering Access Planner, Western Route

**Appendix C**

**DECISION - W18-769-WC - WEEK 23 - GW105 GW1 AT UFFINGTON TO FORDGATE VIA BOX**

**WEEK 23 – GW105  GW1 AT UFFINGTON TO FORDGATE VIA BOX**

EAP Reference: W18-769-WC

Dear All,

I have been approached by my colleagues in West Country Planning regarding a request for the following possessions. This submission is to support critical construction activities ahead of dynamic test train running in week 24.

Please note amended start time of 2300 for all nights in **green**.

**Monday 3rd September – Possession: P/2540646**

**Tuesday 4th September – Possession: P/2540652**

|

| Item  | Uffington (inc.)  | All Lines  | **2300**  | to  | 2345  |
| --- | --- | --- | --- | --- | --- |
|  | and  | Possession  |  |  |  |
|  | Swindon East  |  |  |  |  |
|  |  |  |  |  |  |
|  | South Marston  | South Marston Goods  | **2300** | to  | 0515  |
|  |  | Possession  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  | South Marston Euro Terminal  | **2300** | to  | 0515  |
|  |  | Sidings Possession  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  | Highworth Jn  | Up Through Sidings  | **2300** | to  | 0515  |
|  | and  | Sidings Possession  |  |  |  |
|  | Swindon East  |  |  |  |  |
|  |  |  |  |  |  |
|  |  | Cocklebury Sidings  | **2300** | to  | 0515  |
|  |  | Sidings Possession  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  | Highworth Jn  | Highworth Branch Siding  | **2300** | to  | 0515  |
|  |  | Sidings Possession  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  | Uffington (inc.)  | All Lines  | 2345  | to  | 0515  |
|  | and  | Possession  |  |  |  |
|  | Wootton Bassett Jn  |  |  |  |  |
|  |  |  |  |  |  |
|  | Swindon Jn  | Down and Up Kemble  | 2345  | to  | 0515  |
|  | and  | Possession  |  |  |  |
|  | Rodbourne Jn  |  |  |  |  |
|  |  |  |  |  |  |
|  | Swindon East  | Hawkesworth Steel Terminal  | 2345  | to  | 0515  |
|  | and  | Sidings Possession  |  |  |  |
|  | Swindon  |  |  |  |  |
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|  | **ISOLATION OF ELECTRICAL SECTIONS**  |  |
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|  | For EIS03 blanket isolation please see P/2513525.  |  |

|  | **PROTECTION LIMITS**  |  |
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|  | **2300** TO 2345 Down Main: Beyond **SB1011#** to Approach SW8616B points# Up Main: Beyond SW8617B points# to Approach SB1014# Down Swindon Goods: Approach SW1169# Up Swindon Reception: Beyond SW8617A points# 2345 TO 0515 Down Main: Beyond **SB1011#** to Approach SW1235# Up Main: Beyond SW8640A points# to Approach SB1014# Down Kemble: Approach SW1313 Up Kemble: Beyond SW1310#  |  |
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|  | **GENERAL REMARKS**  |  |
|  | LINE CLEAR VERIFICATION PROCESS APPLIES. TRAINS FORMED OF EMPTY COACHING STOCK (ECS) MAY BE STABLED OR OUT-BERTHED ON SWINDON PLATFORM 2 LINE IF NECESSARY DURING POSSESSION OF THE LINE FOR ENGINEERING WORK OR A LINE BLOCKAGE.  |  |

**Wednesday 5th September – Possession: P/2540653**

**Thursday 6th September – Possession: P/2540654**

**Friday 7th September – Possession: P/2540656**

**Protection on the Down Main Differs from Monday and Tuesday Nights**

|

| Item  | Uffington (inc.)  | All Lines  | **2300** | to  | 2345  |
| --- | --- | --- | --- | --- | --- |
|  | and  | Possession  |  |  |  |
|  | Swindon East  |  |  |  |  |
|  |  |  |  |  |  |
|  | South Marston  | South Marston Goods  | **2300** | to  | 0515  |
|  |  | Possession  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  |  | South Marston Euro Terminal  | **2300** | to  | 0515  |
|  |  | Sidings Possession  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  | Highworth Jn  | Up Through Sidings  | **2300** | to  | 0515  |
|  | and  | Sidings Possession  |  |  |  |
|  | Swindon East  |  |  |  |  |
|  |  |  |  |  |  |
|  |  | Cocklebury Sidings  | **2300** | to  | 0515  |
|  |  | Sidings Possession  |  |  |  |
|  |  |  |  |  |  |
|  |  |  |  |  |  |
|  | Highworth Jn  | Highworth Branch Siding  | **2300** | to  | 0515  |
|  |  | Sidings Possession  |  |  |  |
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|  |  |  |  |  |  |
|  | Uffington (inc.)  | All Lines  | 2345  | to  | 0515  |
|  | and  | Possession  |  |  |  |
|  | Wootton Bassett Jn  |  |  |  |  |
|  |  |  |  |  |  |
|  | Swindon Jn  | Down and Up Kemble  | 2345  | to  | 0515  |
|  | and  | Possession  |  |  |  |
|  | Rodbourne Jn  |  |  |  |  |
|  |  |  |  |  |  |
|  | Swindon East  | Hawkesworth Steel Terminal  | 2345  | to  | 0515  |
|  | and  | Sidings Possession  |  |  |  |
|  | Swindon  |  |  |  |  |
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|  | **ISOLATION OF ELECTRICAL SECTIONS**  |  |
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|  | For EIS03 blanket isolation please see P/2513525.  |  |

|  | **PROTECTION LIMITS**  |  |
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|  | **2300** TO 2345 Down Main: Beyond **SW1105#** to Approach SW8616B points# Up Main: Beyond SW8617B points# to Approach SB1014# Down Swindon Goods: Approach SW1169# Up Swindon Reception: Beyond SW8617A points# 2345 TO 0515 Down Main: Beyond **SW1105#** to Approach SW1235# Up Main: Beyond SW8640A points# to Approach SB1014# Down Kemble: Approach SW1313 Up Kemble: Beyond SW1310#  |  |
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|  | **GENERAL REMARKS**  |  |
|  | LINE CLEAR VERIFICATION PROCESS APPLIES. TRAINS FORMED OF EMPTY COACHING STOCK (ECS) MAY BE STABLED OR OUT-BERTHED ON SWINDON PLATFORM 2 LINE IF NECESSARY DURING POSSESSION OF THE LINE FOR ENGINEERING WORK OR A LINE BLOCKAGE.  |  |

**“*This email is in accordance with Access Condition D3.5 and relates to Section 3.1 of the Timetable Planning Rules being the Procedure for Altering the Engineering Access Statement or Timetable Planning other than through the Twice-Yearly Process Having Effect from a Passenger Change Date.  Standard Network Code and Standard Track Access Conditions will apply with regard to this/these possession/s*”.**

Many thanks

**David Brignall**

Engineering Access Planner, Western Route

**Appendix D**

**REGARDING DECISON W18-769-WC WEEK 23**

Hi Amanda,

As discussed the issuing of a decision yesterday means Network Rail intend to take the access as published in that decision.

However the situation is currently under review at Route MD / COO level and we expect developments in this which may yet result in the access being withdrawn.

After the decision was issued GWR informed Network Rail that it would be approaching the Access Disputes Resolution Committee asking for an expedited hearing by teleconference to take place today (Friday 31st August) or Monday (3rd September).

I hope that we (Network Rail) will be able to provide a clear update by 1500 today.

Many thanks

**David Brignall**

Engineering Access Planner, Western Route