

1 DETAILS OF PARTIES

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

- (a) GB Railfreight Limited ("GBRf") whose Registered Office is at 3rd Floor, 55 Old Broad Street, London, EC2M 1RX; and
- (b) Network Rail Infrastructure Limited ("NR") whose Registered Office is at 1 Eversholt Street, London, NW1 2DN.

1.2 Third parties to this dispute may include Virgin Trains West Coast, Cross Country Trains, Northern Rail, London Northwestern Railway, Trans Pennine Express, East Midlands Trains and other freight.

2 THE CLAIMANT'S RIGHT TO BRING THIS REFERENCE

2.1 This matter is referred to a Timetabling Panel ("the Panel") for determination in accordance with Condition D3.4.1 of the Network Code. GBRf is dissatisfied with the decision made by NR in respect of the Late Notice Decision of a 52 hour possession at Liverpool and the unacceptable level of disruption this would involve.

3 CONTENTS OF REFERENCE

This Sole Reference includes: -

- (a) The subject matter of the dispute in Section 4;
- (b) A detailed explanation of the issues in dispute in Section 5;
- (c) In Section 6, the decisions sought from the Panel in respect of
 - (i) legal entitlement, and
 - (ii) remedies;
- (d) Appendices and other supporting material.

4 SUBJECT MATTER OF DISPUTE

- 4.1 On 27th June 2019 GBRf notified a dispute with Network Rail in relation to Network Rail's decisions regarding possession P2019/2640755, which was published as a late notice possession decision on 26th June 2019 [Appendix 1.1]. The dispute was brought under Condition 3.4.12 of the Network Code as applicable at the time and the Secretary registered it as TTP1521 [Appendix 1.2]. In notifying Network Rail of its response to the late notice possession request, GBRf indicated its requirements in the hope these would be considered and resolve all the issues without a Timetable Panel hearing to be necessary.
- 4.2 It is GBRf's belief that Network Rail has reached a decision for a disruptive possession without adequate consultation, as required by Condition D3.4.4 (a), and that it has applied the Decision Criteria incorrectly in reaching its decision (if this has been done at all) set out in Condition D3.4.4 (b).
- 4.3 The proposed possession, reference P2019/2640755, for planning week 32, involves a 52 hour block of all lines in the Liverpool area, from 02/11/19 to 04/11/19, thereby preventing any access to and from Liverpool Bulk Terminal as well as our sidings facility in Tuebrook; which prevents the stabling of our wagon sets and locomotives. Map supplied [Appendices 2.1 – 2.2] shows the lines GBRf would normally operate our biomass traffic as well as Tuebrook Sidings we utilise to stable sets and locomotives (short term) when not in use.
- 4.1 The possession was first consulted on a conference call on 09th Jan 2019 which GBRf attended [Appendix 3.1]. This is a significant piece of work for the commissioning of Edge Hill re-signalling; which was published and agreed in Engineering Access Statement publications Possession 2272741 [Appendix 5.1]. GBRf are not fully aware of what the circumstances were that led to the commissioning work not being delivered. Now Network Rail are attempting to squeeze the possession in at late notice on top of already agreed disruptive possessions affecting all operators. By taking this course of action makes it difficult to agree and de conflict with other work. Notes provided from the conference call [Appendix 3.2].
- 4.2 Network Rail advised GBRf on the call that there we would not have the ability to run any services. GBRf advised Network Rail that the primary services directly affected

was biomass (energy traffic) and that winter months should be avoided. On the conference call GBRf advised there were possessions already planned and agreed in weeks 20 and 21 (summer weeks) affecting the same flow of traffic. GBRf advised Network Rail these would be the preferred weeks for the proposed Liverpool possession to be aligned with so we were not cancelling services any more weekends than we needed to and they were summer weeks whereby our customer would not be on a high burn period.

- 4.3 With the block of all running lines and restriction of stabling infrastructure has meant that GBRf would be directly affected and would have no realistic alternative means of being able to serve the end customer and therefore resulting in cancellations.
- 4.4 The reason for this is due to the fact our customer is forecasting to order 37 trains per week at this time of year with each train conveying 2400 tonnes of biomass. Considering all this means that we are not able to convey the biomass by road; this is not a viable option considering the quantities of the product and frequency services [Appendix 6.1].
- 4.5 A follow up conference call was arranged for the 16th January which GBRf attended [Appendix 3.3] following the advice from all affected operators and the work delivery specialists. Dating the works over the Christmas period was discussed but concern about securing resources for this period was mentioned. Following this Network Rail made the decision to go with week 13. GBRf expressed disappointment that the work could not be aligned as requested, but as the week was outside winter periods we would agree the proposed week (although this was still not ideal). The consensus from all operators at that time was to go with week 13; notes provided from the conference call [Appendix 3.4].
- 4.6 On 18th January LNW EAP sent out dummy publication of the proposed possession [Appendix 3.5] for operators to check and either agree/disagree – GBRf did not respond to this request but can confirm the detail was correct. No follow up official request or decision notice from Network Rail was sent for this possession on week 13.
- 4.7 On the 04th February GBRf attended a conference call to discuss the possibility of out-stabling sets due to there being no access at Tuebrook Sidings [Appendix 3.6] in week 13. GBRf were at this point still believing there to be no issue with the chosen week.

- 4.8 The next communication from Network Rail was over 4 weeks later on the 08th March 2019 advising the requested access in week 13 has now been cancelled and that the project were looking to carry out this work over Christmas [Appendix 3.7], even though all operators expressed concern about Christmas several week prior on the conference call (16th January). GBRf responded to Network Rail advising that we could not accept winter periods due to the high demand of service our customer will be expecting. Network Rail then confirmed the possession would be during the Christmas shutdown period [Appendix 3.8]. It is GBRf's view that Christmas shutdown period was never a realistic proposition due to the high demand of works already in the plan which had gone through the EAS development the previous year meaning resources already being secured by other projects. What discussions had been taking place during these 6 weeks and what involvement had any operators? GBRf had not been invited to any discussions relating to this change.
- 4.9 13 weeks later on the 11th June GBRf received a request for the same possession in week 32 Possession P2019/2640755 [Appendix 4.1]; GBRf had no prior warning this was coming. Considering the limited consultation previously, GBRf would have expected at least the same again so we could have at least explained our position and work closer with Network Rail further to avoid this dispute. If discussions occurred it is clear that GBRf were not included in any consultation from 03rd March to the new request received 11th June. The deadline to respond to the new request was the 25th June 2019. GBRf would be greatly interested to know what actions/discussions Network Rail was having during these 13 weeks because again GBRf were not invited to any discussions.
- 4.10 Network Rail document Calendar of Milestone Dates for the 2019 timetable page 11 states that variations to services have to be bid at T-18 by the 28th June (for week 32) [Appendix 5.2]. It is GBRf's opinion that this has been rushed through without further consideration to allow all affected operators to have 3 days to bid their changes to Network Rail. The timing of this request critically gives no time for Network Rail to address GBRF's concerns about not being able to run during the winter months as they have previously been advised.
- 4.11 GBRf then sought advice on the 14th June [Appendix 3.9] from the customer (Drax Power) to clarify if the proposed possession would be workable with them for demand

and shipping arrangements of the product at Liverpool Port. On the 22nd June 2019 GBRf received confirmation from Drax Power the possession would be too disruptive during their "highest demand period" [Appendix 3.10]. This only confirmed everything GBRf had previously advised Network Rail. GBRf must point out that the communication from Drax Power relates to another project (Trans Pennine Upgrade); but the communication to them confirmed what the nature of the works to be delivered.

4.12 On the 24th June 2019 GBRf advised Network Rail that we were not able to agree the possession due to the unacceptable volume of cancellations to our primary customer Drax Power as well as unconfirmed out stabling arrangements for our wagon sets. GBRf also advised Network Rail of possible options to be explored which might have been acceptable [Appendix 3.11]. Further communication with Network Rail following my advice, Network Rail wanted to information regarding the number of services we would not be able to run. This information was supplied [Appendices 3.12 and 6.1]; total number of loaded trains is 12.

4.13 On the 26th June 2019 Network Rail issued the Decision Notice for possession P2019/2640755 [Appendix 4.2]; which GB Railfreight made clear why we could not accept the possession but Network Rail progressed the decision anyway without any offer to look into making the possession less disruptive or look an alternative time of year. Attached to this Decision Notice was a map which includes notes about the possession limits and additional traffic remarks [Appendix 2.3]; it would have been useful if this information was sent out with the request. For the first time GBRf had visibility that Pilot working was being made available to Northern Rail and East Midlands Trains as well as other passenger service provisions. It is clear that discussions have taken place between Network Rail and these operators to make arrangements to fulfil their needs during the disruption; GBRf have not been privileged to such discussions.

5 EXPLANATION OF EACH ISSUE IN DISPUTE AND THE CLAIMANT'S ARGUMENTS TO SUPPORT ITS CASE

5.1 Network Code D3.4.4 (b) requires Network Rail to provide details of how it has come to its decision to justify its decisions in respect of this late notice decision; no such details

were provided. It is clear to GBRf that Network Rail has failed to consult properly in respect of this possession.

- 5.1 In the first instance, only one option was suggested and, despite its unsuitability to GBRf and we suspect after its decision was already made. It is therefore apparent that Network Rail cannot have applied the Decision Criteria set out in Network Code Condition D4.6.1 correctly at the point at which it made its published decision in the form of the Decision Notice, as it was not fully apprised of the options available to it.
- 5.2 As mentioned earlier GBRf have not been served with a Decision Criteria even though GBRf made Network Rail aware the possession was going to be heavily disruptive; how can GBRf accept a decision which is not acceptable to us without understanding how Network Rail made an "industry decision"?
- 5.3 As a consequence of not applying the correct consultation process, GBRf continues to face a possession that severely impacts its customer and operations. GBRf believes the Decision Criteria cannot have been applied correctly, simply because the decisions made to date to continue with the 52 hour possession have not been adequately explained, alternative options have not been pursued after only been invited to X2 short telephone conference calls on something so majorly disruptive. GBRf believe the full extent of the impact to its business and its customer has not been taken into consideration.
- 5.4 Taking the Decision Criteria Network Code D4.6.1 in turn, with respect to Decision Criteria (a) and (c), GBRf believes that Network Rail has fallen short here. Network Rail may feel upon completion the work will deliver improved performance and reliability. GBRf's view is that this critical piece of work should have been incorporated within in all the possessions Network Rail have had already to deliver the re-signalling project in the Liverpool area. For GBRf this demonstrates Network Rail's inability to properly plan significant pieces of work.
- 5.5 In respect of Decision Criteria (b), (d), (e), (f) and (j). GBRf are unable to serve the requirements of its customer at its highest demand of the year; such restrictions on operation that this proposal is really an unfeasible proposition.

- 5.6 Network Rail have been made aware of the number of trains GBRf will have to cancel as well as the fact this period of the year; it is fair to say Network Rail has made a decision meaning GBRf cancel services that does not reflect the demand. GBRf would expect to run a 37 train per week plan [Appendix 6.1] with the loss of 12 loaded trains 1/3 of our overall service.
- 5.7 GBRf's concern is that it will simply not be possible to adequately supply the end customer with the volumes of biomass it will need at this time of the year. Our customer will expect a full service weeks prior and after the block and with no scope to run additional services due to no further resources available and also the lack of capacity with the high volume of passenger services over the cross Pennine routes.
- 5.8 The effect will be felt on GBRf's resources with wagon sets possibly in the wrong location and with no firm plan as to where we are able to out stable x4 biomass wagon sets each 25 wagons and x1 Aggregate set. GBRf have engaged with Network Rail on previous similar blocks to out-stable our wagon sets but we have more sets to consider now.
- 5.9 Another consideration is the care to our locomotives during winter months. Where ordinarily the locomotives would be operating, we will have to stand them down during the time of the possession. GBRf are concerned we will not have the ability to access our locomotives to start them up and run as an engine care program. This is a procedure carried out at all locations when locomotives are not being used during winter months. There are no guarantees GBRf will be able to carry out this key function.

6 DECISION SOUGHT FROM THE PANEL

6.1 The Claimant is requesting that the Panel determine:

- (a) That under Condition D3.4.4 (a) Network Rail has failed to consult adequately;
- (b) That under Condition D3.4.4 (b) Network Rail has failed to comply, has not applied the Decision Criteria for the possession reasonably and has not justified its reasons for its decisions.
- (c) Under Condition D5.3.1(a), that the 52 hour possession is withdrawn and re-consider, with appropriate industry involvement, an alternative time of year or a new plan that can be delivered in accordance with due process, contractual obligation and commercial sensibility.

7 APPENDICES

1 - Dispute Notices

- 1.1 GBRf's Notice of Dispute to the Late Notice Decision on Possession 2640755.
- 1.2 Reference letter from ADC.

2 - Maps

- 2.1 Liverpool area map showing the routes GBRf operate.
- 2.2 Continuation of the Liverpool area map GBRf operate.
- 2.3 Map Supplied with the Decision Notice showing the traffic remarks and passenger operator requirements.

3 - Meeting Notes and Emails

- 3.1 Conference call invite for 09th January 2019.
- 3.2 Meeting notes from the conference call on the 09th January 2019 (2 pages).
- 3.3 Conference call invite for 16th January 2019.

- 3.4 Meeting notes from the conference call on the 16th January 2019 (2 pages).
- 3.5 Email containing the proposed possession discussed for week 13 (2 pages).
- 3.6 Conference call invite for 04th February 2019 to discuss out-stabling sets.
- 3.7 Email advising Network Rail was to explore the Christmas period.
- 3.8 Dialogue between GBRf and Network Rail regarding Christmas block.
- 3.9 Request to GBRF Commercial to seek advice from Drax Power.
- 3.10 Confirmation from Drax Power of potential risk caused by none delivery of biomass.
- 3.11 GBRf's response not accepting the Late Notice Request issued by Network Rail.
- 3.12 Email on 25th June to Network Rail with attachment showing the affected loaded trains.

4 – Possession Documents

- 4.1 Week 32 Possession Request dated 11th June 2019 (4 pages)
- 4.2 Week 32 Possession Decision dated 11th June 2019 (4 pages)

5 – Network Rail Publications

- 5.1 EAS Possession 2418191 week 39 2017 Resignalling Project 3 day block.
- 5.2 Network Rail calendar of dates to bid variations to schedules.

6 – GBRf Documents

- 6.1 GBRf 37 train per week plan (services highlighted in green are trains GBRf would lose)

8 SIGNATURE

For and on behalf of GB Railfreight Limited

A handwritten signature in black ink, appearing to read 'DP', is written above a horizontal line.

Signed

DARREN PELL
Engineering Access Manager