

Submission to Timetabling Panel

TTP2043

Transport for Wales Rail Ltd

24 May 2022

1 DETAILS OF PARTIES

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

(a) Transport for Wales Rail Ltd whose Registered Office is at 3 Llys Cadwyn, Pontypridd, CF37 4TH ("TfW Rail") ("the Claimant"); and

(b) Network Rail Infrastructure Limited whose Registered Office is at 1 Eversholt Street, London NW1 2DN ("Network Rail") ("the Defendant").

(c) TfW Rail's contact details are Chris Dellard, Head of Access Planning,

[REDACTED]

(d) Third parties that may be affected by the Panel finding in any of the ways sought in this sole reference have been conveyed to the Secretary of the ADC and are GB Railfreight; Freightliner; Avanti West Coast; Merseyrail; Colas Rail; DRSL; and DB Cargo.

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 Conditions D2.2.8 and D5 of the Network Code (Appeal in accordance with the ADRR).

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 This is a dispute regarding the publication by Network Rail of changes to the 2023 Timetable Planning Rules (TPR) as they apply to the routes GW731, NW3005 and NW3007 (the "TPR changes").

4.2 This dispute arises over Network Rail's application of Clauses 1.2.7 and 1.3.2 of the National Timetable Planning Rules and Condition D2.2.7 of the Network Code which together TfW Rail believes Network Rail meant to rely upon to make the TPR changes.

4.3 Network Rail consulted on the TPR changes (which did not include any changes to Sectional Running Times (SRTs) that were subsequently included in the Decision) on 8 April 2022, with a consultation deadline of 22 April 2022. TfW Rail responded to reject the proposals on 22 April 2022. Network Rail published its Decision on 11 May 2022. TfW appealed the Decision by registering a Timetabling Dispute on 13 May 2022.

4.4 The TPR changes comprise all changes relating to GW731, NW3005 and NW3007 as they are shown in Network Rail's document entitled "Western and Wales Dec 22 V2.2". A list of the sections containing these changes is at **Appendix 1**. The TPR changes also comprise all changes made to Sectional Running Times (SRTs) that were included in a separate document in Network Rail's Decision email.

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

5.1 Background

5.2 In November 2021 TfW Rail applied to ORR under Section 22A of the Railways Act 1993 for additional passenger track access rights between Wrexham and Bidston, in order to increase the passenger service on Weekdays and Saturdays from 1 train per hour (1 tph) to 2 tph. The intended commencement date at the time of TfW Rail's application was the May 2022 Timetable. In December 2021 GB Railfreight Limited also applied to ORR under Section 22A, for additional freight track access rights to and from Penyffordd, to serve the Padeswood Cement Works on the line between Wrexham and Bidston. ORR is currently considering these applications.

5.3 Network Rail has prepared a timetable for the Wrexham-Bidston line incorporating the Train Slots that are supported by existing track access rights held by operators and as many of the requested additional Train Slots (for which additional track access rights are being sought by operators) as it has deemed possible, which it provided to TfW Rail on 5 May 2022.

5.4 Because Network Rail is unable to fully include all requested Train Slots in the May 2022 Timetable, it is proposing to declare the route between Wrexham and Bidston as Congested Infrastructure in accordance with the Railways (Access, Management and licensing of railway Undertakings) Regulations 2016.

5.5 As part of this timetabling work, Network Rail has used new TPRs. TfW Rail understands that these are the same TPRs that have since been published as a Decision by Network Rail on 11 May: the validity of that Consultation and Decision being the subject of this Dispute.

5.6 Network Rail's Consultation

5.7 Network Rail consulted on the TPR changes (which did not include any changes to Sectional Running Times (SRTs) that were subsequently included in the Decision) on 8 April 2022 (**Appendix 2**), with a consultation deadline of 22 April 2022. The TPR document used to consult the changes was a full copy of the Western & Wales TPRs (281 pages) with marked up changes. It was entitled "Version 2.2" which TfW Rail understands that Network Rail intends to apply from the start of the December 2022 Timetable.

5.8 TfW Rail responded to reject the proposals on 22 April (**Appendix 3**), citing:

- (a) Its belief that the TPR changes would decrease available capacity on NW3007 (Wrexham General – Bidston);
- (b) Lack of evidence to support Network Rail's proposals;
- (c) A concern about the short timescales, considering that Validation of the December 2022 Timetable is well underway; and
- (d) No accompanying SRT proposals were provided, making it impossible to identify the impact of the TPR changes.

5.9 Network Rail's Decision

5.10 Network Rail published its Decision on 11 May 2022 (**Appendix 4**). In its Decision it clarified that the changes apply to the routes GW731, NW3005 and NW3007. Network Rail stated that:

(a) "We have discussed this and believe we should keep the changes made in V2.2 (attached)."

(b) "We acknowledge there are concerns around the Wrexham area and would like to continue to work with operators in order to resolve these concerns."

(c) "We are able to arrange a site visit to the signal boxes if necessary, please let us know which says are best for you and we can arrange this with the LOM."

5.11 A summary of the items in Network Rail's document entitled "Western and Wales Dec 22 V2.2" that are in dispute (the TPR Changes) is in **Appendix 1**.

5.12 Explanation of each issue in dispute

5.13 TfW Rail disputes Network Rail's right under the National Timetable Planning Rules and the Network Code to make the TPR changes.

5.14 In Network Rail's National Timetable Planning Rules 2023 Version 2, which are produced in accordance with the requirements of Part D of the Network Code, Clause 1.2.7 states that "Changes to individual TPRs will be supported by evidence showing how the values were developed. Sources of evidence are to be agreed by the affected parties". Network Rail did not explain its rationale behind the proposed changes in its consultation.

5.15 Clause 1.3.2 of the same document states that Network the proposer of any changes to TPRs will include "Supporting evidence as agreed by Network Rail and affected parties". Network Rail did not provide supporting evidence in its consultation.

5.16 Network Rail had previously advised TfW Rail that it was considering changes to TPRs. The correspondence was as follows.

(a) 24 January: Network Rail held a meeting to discuss TPRs on the routes GW731, NW3005 and NW3007

(b) 26 January: Network Rail sent a working document with amendments to TPR values (**Appendix 5**)

(c) 9 March: Network Rail visited the signalboxes at Croes Newydd, Penyffordd and Dee Marsh but the invite on 22 March was too late for TfW Rail to be able to attend (**Appendix 6**)

(d) 6 April: Network Rail sent an updated working document (**Appendix 7**)

(e) 20 April: Network Rail provided TfW Rail with its notes from signalbox visits (**Appendix 8**)

5.17 TfW Rail contends that this correspondence did not amount to a) an agreement by TfW Rail on the sources of evidence to be used to inform proposed changes to individual TPRs or b) an acknowledgement by TfW Rail of any requirement for, or agreement to, any changes.

5.18 Therefore, TfW Rail believes that Network Rail has not adequately complied with Clauses 1.2.7 or 1.3.2.

5.19 Network Rail provided new information in the Decision (in the form of a document listing changes to SRTs) that was not included in the Consultation. In its Decision, Network Rail stated that “We acknowledge there are concerns around the Wrexham area and would like to continue to work with operators in order to resolve these concerns.” Network Rail also stated that “We are able to arrange a site visit to the signal boxes if necessary, please let us know which says are best for you and we can arrange this with the LOM.” This suggests to TfW Rail that the necessary evidence-gathering to complete the assurance work has not concluded to the agreement of all parties.

5.20 Taken together, TfW Rail contends that these facts should have been reasons for Network Rail, acting reasonably and in accordance with the Decision Criteria, to decide not to publish the TPR changes.

5.21 Instead, Network Rail stated that “We have discussed this [presumably within Network Rail only] and believe we should keep the changes made in V2.2”. But Network Rail did not explain the reasons for its Decision, especially in light of TfW Rail's and other operators' objections.

5.22 TfW Rail believes that Network Rail meant to rely on Condition D2.2.7 of the Network Code to undertake the Consultation and publish its Decision. This Condition states that:

"Between D-44 and publication of the New Working Timetable at D-26, Network Rail may further revise the Rules where it considers, acting reasonably, such revision necessary or desirable in order to optimise that New Working Timetable".

5.23 Network Rail has provided no evidence to suggest if, or why, in Network Rail's opinion, the TPR changes are reasonably necessary or desirable to optimise the New Working Timetable. The TPR changes are a rewrite of the TPRs on entire lines of route: TfW contends that this cannot be regarded as simply a 'further revision' of the TPRs, or that the changes are merely to 'optimise' the New Working Timetable. TfW Rail can see no reason why these major changes must be made at such a late stage, when the December 2022 Timetable is already being Validated by Network Rail. Therefore TfW Rail believes that Network Rail has misinterpreted the applicability of this Condition.

5.24 In neither the formal consultation process or in the correspondence prior did Network Rail adequately explain the rationale behind the TPR changes or how they might affect the New Working Timetable – both for December 2022 and for future timetables. Against the current backdrop of section 22A applications to ORR for additional track access rights on and to/from the Wrexham-Bidston line, and Network Rail's intention to declare the route as Congested Infrastructure, TfW Rail is particularly keen to understand the exact impacts of the TPR Changes but was not given an adequate opportunity to do so before Network Rail published its Decision.

5.25 In conclusion, TfW Rail believes that Network Rail incorrectly consulted on and confirmed the TPR changes because:

- (a) No rationale or evidence was provided in the consultation (and nor were any forms of evidence agreed with TfW Rail before the consultation);
- (b) Network Rail did not explain why the TPR changes are "reasonably necessary or desirable to optimise the New Working Timetable" in accordance with Condition D2.2.7 of the Network Code;
- (c) New information was provided in the Decision that was not included in the consultation; and

(d) TfW Rail objected to the proposals: Network Rail acknowledged concerns from operators but chose to publish the changes regardless, with no explanation for doing so and no reference to how it applied the Decision Criteria in making its decision.

6 DECISION SOUGHT FROM THE PANEL

6.1 The Panel is asked to determine that Network Rail has not followed or has incorrectly applied Clauses 1.2.7 and 1.3.2 of the 2023 National Timetable Planning Rules and Condition D2.2.7 of the Network Code in its consultation of, and subsequent decision to publish the TPR changes.

6.2 As a result of the decided principle above, Network Rail should withdraw the Decision and work with operators to develop new proposals (if it wishes), to apply to a later Timetable Period (the earliest such Timetable being the May 2023 Timetable) and in accordance with the processes in the Timetable Planning Rules and the Network Code.

6.3 There are no other issues to be decided.

7 APPENDICES

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

All appendices 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.

8 SIGNATURE

For and on behalf of Transport for Wales Rail Ltd

Signed

A handwritten signature in black ink, appearing to read "Dellard".

Print name

Chris Dellard

Position

Head of Access Planning

The Appendices

Ref	Title	Page
1	TfW Rail's summary of the items in Network Rail's document entitled "Western and Wales Dec 22 V2.2" that are in dispute (the TPR Changes)	2
2	Network Rail Consultation email	3
3	TfW Rail response to consultation	4
4	Network Rail Decision email	7
5	Correspondence: Network Rail email: working document with amendments to TPR values, 26 January	9
6	Correspondence: Network Rail email inviting operators to signalbox visit, 22 March	20
7	Correspondence: Network Rail email: updated working document with amendments to TPR values, 6 April	21
8	Correspondence: Network Rail email: Network Rail's notes from signalbox visits, 20 April	34