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| **Joint Submission by**  **Direct Rail Services and Network Rail to the Timetabling Panel**  **Dispute Reference TT222**  **Scotland Territory 2009 Rules of the Route** |
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**1                    DETAILS OF PARTIES**

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

* + 1. Direct Rail Services Ltd, whose Registered Office is at NDA Herdus House, Westlakes Science & Technology Park, Moor Row, Cumbria, CA24 3HU. "DRS ("the Claimant"); and
    2. NR Infrastructure Ltd, whose Registered Office is at Kings Place, 90 York Way, London, N1 9AG (“NR” (“the Respondent”))

(c)            DRS correspondence address:

Sarka Oldham,

General Freight Account Manager,

Direct Rail Services Ltd,

Kingmoor Depot,

Etterby Road,

Etterby,

Carlisle.

CA3 9NZ.

Tel: 01228 406525

Fax: 01228 406585

Mob: [removed]

Email: [removed]

NR correspondence address:

Matt Allen

Network Access Unit Manager

Network Rail, Network Access Unit

City Exchange

11 Albion Street

LEEDS

Tel: 0113 341 2230

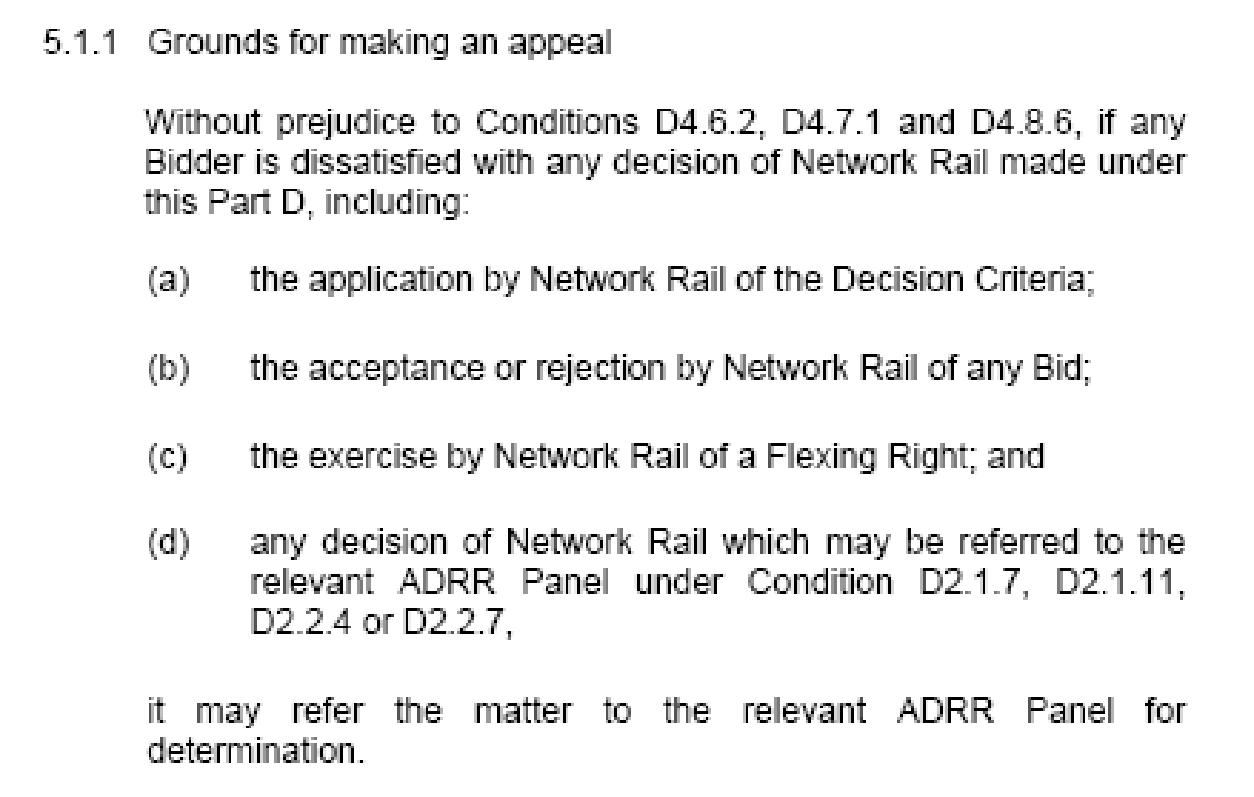
Fax: 0113 341 2341

Mob: [removed]

Email: [removed]

**2                    THE PARTIES’ RIGHT TO BRING THIS REFERENCE**

* 1. This matter is referred to an Timetabling Panel ("the Panel") for determination in accordance with Condition D2.1.7 of Part D of the Network Code
  2. Paragraph 5.1.1 of Part D of the Network Code states:



**3              CONTENTS OF REFERENCE**

The Parties have together produced this joint reference and it includes:-

(a)                The subject matter of the dispute in Section 4;

(b)                A summary of the issues in dispute in Section 5;

(c)                A detailed explanation of the issues in dispute prepared by the claimant with a paragraph by paragraph response from the respondent(s) in Section 6;

(d)               Any further issues raised by the respondent in Section 7;

(e)                The decisions of principle sought from the Panel in respect of legal entitlement and remedies in Section 8; and

(f)                  Appendices and other supporting material.

**4                    SUBJECT MATTER OF DISPUTE**

4.1       DRS are concerned about the disruptive effect of possessions required to undertake renewals work between Dundee and Aberdeen and which cause the cancellation of services between Grangemouth and Aberdeen.

4.2         The Part or Condition that the dispute relates to or is associated with Network Code Condition D2 ‘Consultation Process to Establish the Rules of the Route/Plan.

4.3        There are copies of the following documents annexed to the reference:

DRS annexed documents:

i) DRS’ response to RotR v6

ii) Letter from Eddie Stobart confirming the start dates of new services

iii) Latter of support from Eddie Stobart

1. Email of support from Asda

NR annexed documents:

i) DRS’ response to RotR v1 - Scotland

ii) DRS’ response to RotR v2 - Scotland

iii) 2009 Access Summary v9.5 (ROTR V2 with Stirling Mid) 19-03-08.xls

1. 2009TTY DRS Meeting 24-01-08.
2. DRS Consultation (18th March 2008)
3. DRS Consultation (19th June 2008)
4. Access Summary v9.1 22.08.07

4.4      In Schedule 5 of the Track Access Contract, DRS has Level 1 contractual rights to the following services; 4A11 (SO), 4N83 (SO), 4A11 (Sun) and 4N83 (Sun).

**5                    SUMMARY OF DISPUTE**

5.1 DRS are a major Intermodal service provider in the UK successfully introducing new, high profile customers onto rail. In the last three years DRS grew its Intermodal business portfolio by over 300% through providing a safe, secure and reliable service to our customers. The customers including major retailers like ASDA, Tesco, Morrison’s, Sainsbury’s, Marks and Spencer etc. rely on rail and have reduced their in house road fleet on the basis of a continuous rail service.

In Scotland, DRS operate directly for ASDA delivering goods on a daily basis from Grangemouth Distribution Centre to Stores in Aberdeen area.

In addition, this year DRS and Eddie Stobart are launching two new dedicated daily train services for Tesco from Grangemouth – one to Inverness and one to Aberdeen. Once again, the goods will be delivered from Tesco Livingston Distribution Centre to stores in Inverness and Aberdeen. Both the services were heavily supported by Scottish Executive and attracted significant FFG grant in order to allow Tesco to switch from road to rail, saving over 13,000 lorry miles per year each. The Inverness service will commence on 27th October 2008 and Aberdeen service on the 17th November 2008.

The proposals from Network Rail for 2009 ROTR possessions in Scotland initially resulted in DRS disputing 21 different possessions that were affecting our current and future rail services. In order to resolve the dispute, DRS hosted a tri-party meeting on the 19th June 2008 where representatives of DRS, Network Rail, ASDA and Eddie Stobart discussed the possessions in question. This activity was undertaken in response to the Access Dispute Committee recommendations that the nature of the proposal be properly explored with the end customer.

DRS, ASDA and Eddie Stobart agreed to over 66% of the proposed possessions by finding alternative solutions to deliver the required service. The remaining disputed possessions were however causing significant logistical and financial issue for our customers.

In addition to Level 1 rights for the Asda services, DRS has documented records regarding the firm intention to provide an additional service on behalf of Tesco. These records go back to 2007 and as such Network Rail were fully aware of DRS’ future plans and so had an obligation to factor them into their engineering plans for the coming year.

ASDA and Tesco explained the implications of the services being cancelled to Network Rail stating that this would result in significant costs. Network Rail encouraged our customers to declare these costs and promised to find a way to compensate them. Unfortunately, at the following meeting on the 16th September 2008 in Glasgow, Network Rail confirmed there was no budget or mechanism for such compensation as the possessions were not classified as Network Change. This fact was however discussed at the previous meeting in June and if this was the case, Network Rail should have stated its position clearly when the customers were present. Please find enclosed letters from ASDA and Eddie Stobart explaining their position and understanding of the dispute.

DRS, ASDA and Eddie Stobart urge Network Rail to consider one of the following outcomes:

* Network Rail allows the train services in question to run
* Network Rail takes the possession of the line on Saturday afternoon once our services passed the particular location
* Network rail compensate all injured parties for the demonstrable damages

**6 EXPLANATION OF EACH ISSUE IN DISPUTE WITH RESPONSE**

6.1.1 DRS and its customers are unable to accept the suggested ROTR 2009 possessions in weeks 41 to 44 due to the serious logistical and financial consequences of the train cancellations. We feel we have been very cooperative and reasonable when discussing the original proposal and agreed to 66% of the proposed possessions.

We urge Network Rail to reconsider its proposals and allow the train services in question to run by either running through the possession period or taking the possession later. DRS has made specific requests to Network Rail to increase the number of disruptive possessions, decreasing their duration and thus avoiding the level of disruption on the freight services. This proposal has been rejected by Network Rail without any demonstration that it has been properly considered. DRS believes that passenger requirements have driven their decision in this matter.

* + 1. Network Rail welcomes new rail freight traffic from road to rail and is dedicated to supporting its customers with this purpose. Network Rail is responsible for ensuring that the railway infrastructure is safe and reliable. From time to time in order to achieve this it is necessary to disrupt timetable services to deliver renewal and maintenance activities. The decision by Network Rail to restrict access to the network for its customers is not a decision taken lightly, Network Rail discusses fully all aspects of all line closures with its customers to find ways of minimising the impact on their business and customers as a result of our plans. Network Rail seeks rail to the preferred mode of transport and overall reliable, safe, accessible, and value for money.

Network Rail is accountable for the management of the network and as such is responsible for balancing timetable and engineering access requirements in accordance with the Network Code Condition D6 Decision Criteria.

* + 1. These disputed possessions were first formally proposed to DRS within the proposals contained within the Scotland Territory’s Preliminary Proposal (version 1) 2009 ROTR which was published on Friday 7th December 2008. These possessions remained in the plan with minor tweaks to geographical limits and were detailed within Final Principle (version 3) ROTR published on Friday 4th April 2008 in accordance with the Network Code Condition D2 ‘Consultation Process to Establish the Rules of the Route/Plan’. Network Rail expected that DRS would take disruptive access proposals that have been in the plan since Decem 2007 into consideration when entering into new commercial agreements.
    2. These possessions contain major works of a scale that were not feasible to deliver within the standard possession opportunities. They were therefore proposed in section 7 of the ROTR - The Register of Possessions. These items were subsequently issued in the Confirmed Period Possession Plan in accordance with the Network Code Condition D4.8 Supplemental Timetable Revision Process.
    3. In DRS’s version 2 ROTR response there was no reference made to the operation of Saturday services 4A11, 4N81 and 4N83 and these services were therefore not taken into consideration by Network Rail when reviewing operator responses and making alterations to the ROTR proposals. It is Network Rails understanding that these services did not have agreed paths and rights when the ROTR were confirmed.**.** Network Rail understands that there is an acceptable alterative to DRS and their customer for retiming the Sunday traffic 4A11 and 4N83 run on Monday.
    4. On Thursday 19th June Network Rail presented an overview of Network Rail Engineering Access Plan Development Process and methodology for delivery of simple track renewals to representatives from DRS, Asda and Eddie Stobart to help provide supporting information for the possession contained within version 3 ROTR.
    5. Network Rail based its decision in April 2008 largely around the information provided by operators in their responses to version 2 ROTR and application of the Network Code Condition D6 clauses a), d), e), h) and I).
    6. Should Network Rail find it imperative that the possessions are being taken at the times proposed and therefore, force DRS to cancel our train services, DRS would like Network Rail to compensate our customers as presented on 16th September 2008 (ASDA - £78,875 for the period; Eddie Stobart - £52,000 for the period)

6.2.2 These works that are planned to be undertaken in these weekend possessions are for normal ‘like for like’ maintenance and renewals activities. There is no contractual compensation regime in place between Network Rail and any Freight Operating Company in relation to compensation payments for disruptive engineering works.

* + 1. During the development of the 2009 ROTR Network Rail can demonstrate it has been working with DRS to solve their objections with proposed disruptive access plans. Possessions in the Grangemouth area were altered to permit key DRS services to operate.

6.3.1 List of Cancelled Services

Saturday, 3rd January 2009: 4A11, 4A66, 4N81, 4N83

Sunday, 4th January 2009: 4A11, 4N83

Saturday, 10th January 2009: 4A11, 4A66, 4N81, 4N83

Sunday, 11th January 2009: 4A11, 4N83

Saturday, 17th January 2009: 4A11, 4A66, 4N81, 4N83

Sunday, 18th January 2009: 4A11, 4N83

Saturday, 24th January 2009: 4A11, 4A66, 4N81, 4N83

Sunday, 25th January 2009: 4A11, 4N83

* + 1. This series of disruptive possessions is required:
* Week 41, P2008/994612

Montrose-Carmont 2355 Fri 02/01 – 0530 Mon 05/01

Laurenckirk – 2010 yards skim dig (cat 16 renewals). Due to complexity of overbridges on site and requirement of stone to be removed (2400yds) there are 12 engineering haulage trains required on site. This job would equate to 4x29hour possessions. Engineers trains are required to stand on opposite line to the line under renewal when this work is being undertaken

* Week 42, NP2008/1064539

Newtonhill and Aberdeen 0130 Sat 10/01 – 0500 Mon 12/01

Aberdeen Clayhills 580 yds trax (Cat 11). Due to the interface with Aberdeen station, there is limited working for engineering trains (I in at a time). A multitude of cables require to be disconnected and reconnected. This job is a dig rather than skim. This job would equate to 2x29hours. Clayhills line into the depot is in need of renewal poor state and can be supported by pictures. Engineers the believe line would need to shut if remedial works are not undertaken

* Week 43, P2008/1057836

Newtonhill and Craiginches 0030 Sat 17/01 – 0505 Mon 19/01

Marywell Drainage – 505 yards of drainage. This is a location prone to flooding, bringing risks of disruption to train services.

* Week 43, P2008/1059193

Inverkeilor –Montrose 0030 Sat 17/01 – 0545 Mon 19/01

Kirkton of Craig – Devegetation of Slope to allow inspections (job is over two years)- 5000sqm of large trees to remove, 3000sqm of scaling and devegetation. 500sqm of large boulders to be removed. This work is on the Single Line. Known as a problem site for rock fall. Risks minimised by undertaking work in 54hrs possessions.

* Week 44, P2008/1059423

Inverkeilor –Montrose 0030 Sat 24/01 – 0545 Mon 26/01

Kirkton of Craig – Devegetation of Slope to allow inspections (job is over two years)- 5000sqm of large trees to remove, 3000sqm of scaling and devegetation. 500sqm of large boulders to be removed. This work is on the Single Line. Known as a problem site for rock fall. Risks minimised by undertaking work in 54hrs possessions.

* Week 44

P2008/986509

Carnoustie- Arbroath 0035 Sat 24/01/09 – 0550 Mon 26/01/09

East Haven – 1371 yds trax (Cat 11 renewal) (This job has already been deferred from the 2006/07 Scotland Track Renewals Programme).

* + 1. These possessions have the support of ScotRail, National Express ECand CrossCountry who are also impacted upon the disruption planned. The dating of the these possession in relation to the timescales that DRS have bought these items to dispute has meant that other affected Operators have bid and received amended train path offer’s via Supplemental Timetable Revision Process to comply with the industry Informed Travel commitments. DRS have suggested that these possessions would be acceptable to their business if the possessions started from 19:00 hr Saturday. This start time would be disrupted by passenger operators. The work is packaged into 4x54hr possessions in weeks 41-44:
* To undertake the work in 29xhr possessions, would incur, at a minimum of a further 5 weekends of disruption to this area
* More weekends of disruption would now impact on work in the Fife area, (which cannot be delivered at the same time as North of Dundee)
* Due to the volume of renewals carried out in the year
* There would not be sufficient resources available to undertake the work over a prolonged period of time
  + 1. As a result of these disruptions, 960 lorry movements will need to be carried out by road. The provision of such movements will prove very difficult since the availability of road asset for this level of activity is limited.
    2. Network Rail understands that it would be an acceptable alterative to DRS reduce these possessions to start after the passage
    3. Network Rail are unable to offer a passage of these trains through the possessions due to the way in which the renewals work is undertaken. If work is carried out on the down line, associated engineering plan and engineers trains are required to foul the opposite line. Further to this, part of the work is also being undertaken on the Single line section between Usan and Montrose, therefore no route would be available for DRS Traffic.

**7                    ANY FURTHER ISSUES RAISED**

7.1 Following our discussions with Network Rail regarding ROTR proposals in 2010 and 2011, DRS are concerned that Network Rail are planning to take further possessions that will prevent DRS to operate Saturday services between Grangemouth and Aberdeen beyond 2009.

As the nature of our business is long term and TESCO indeed committed to at least 5 year contract, DRS would like Network Rail to consider their proposals and either allow our services to run or compensate our customers in case of service cancellations.

**8                    DECISION SOUGHT FROM THE PANEL**

8.1            The Panel is asked to determine:

(a)         DRS is seeking the panel to direct Network Rail to reduce the duration of the possessions in question in order that DRS can offer an acceptable level of service to their customers, ASDA and Eddie Stobart Ltd.

(b) Network Rail is seeking the committee to direct DRS to accept the disruptive engineering access plan as detailed in the V3 2009 ROTR and subsequent Confirmed Period Possession Plans.

(c) As these items have been in the access plan since version 1 Rules of the Route, advise DRS that they should have brought this dispute to the Panel’s attention earlier and that it is wrong for DRS on these timescales to now seek a determination from the Panel that could impact already amended timetable plans.

**9                    SIGNATURES**

For and on behalf of DRS For and on behalf of Network Rail

Signed Signed

Print name Print name

Position: Position:

Date: Date:

**10                 APPENDICES AND ANNEXES**

*All appendices and annexes should be bound into the submission, and should be consecutively page numbered.*

**11                 SUPPLEMENTARY INFORMATION**

*All supplementary information should be bound into the submission, and should be consecutively page numbered. Where the information is only made available after the main submission has been submitted to Panel Members, the parties should ensure that the supplementary material is consecutively numbered, so as to follow on at the conclusion of the previous submission.*

**Joint Submission by DRS & Network Rail**

**Dispute Reference TTP222**

**Appendices of Attachments listed in Clause 4.3**

1. DRS’ response to RotR v6
2. Letter from Eddie Stobart confirming the start dates of new services
3. Latter of support from Eddie Stobart
4. Email of support from Asda
5. DRS’ response to RotR v1 – Scotland
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