

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 Freightliner Group Ltd, DB Cargo, Direct Rail Services, Cross Country Trains, West Midland Trains, Chiltern Railways.

2 THE CLAIMANT’S RIGHT TO BRING THIS REFERENCE

The first reference (TTP 2280) is referred to a Timetabling Panel (“the Panel”) for determination in accordance with Conditions D2.2.8 and D.5 of the Network Code. As per the National Timetable Planning Rules Access Impact Matrix (Section 7), Network Rail has failed to produce the requested relevant “Severity 4” Timetable Study.

Network Rail has also not abided by the Network Code Conditions D3.4.7 to D3.4.12 in that “*Network Rail shall provide each Timetable Participant, by TW-30, its proposals for Restriction of Use in respect of the corresponding timetable week*”. By not providing “its proposals” (Timetable Study) for possessions in Week 18 3756238 and 3842903 & week 21/22 3734374 and 3734378, Network Rail has not implemented the procedures as set out in D3.4.7 to D3.4.12 and has, therefore, lost its opportunity under Condition D4.4 to use its designated flexing abilities. This, in turn, means Network Rail has not used all its available powers in the Network Code to fully achieve D4.6.1 “The Objective”. It is on these grounds that GB Railfreight believes Network Rail has breached its Track Access Contract, and specifically with all directly and indirectly impacted operators.

The second and third references (TTP2352 and TTP2413) are referred to a Timetabling Panel ("the Panel") for determination in accordance with Conditions D2.2.8 and D5 of the Network Code. TTP2352 is a Late Notice Possession extension decision to the original possession 3842903 brought about under TTP2280.

TTP2413 is a Late Notice Possession extension decision to the original possession 3756238 brought about under TTP2280.

Therefore these TTP2352 and TTP2413 references merely update the original Engineering Access proposals by extending the overall block times by circa 1 day and some adjustment to blocking limits. In GB Railfreight's view, the principles that need to be examined are no different for the original possessions (TTP2280) or the Late Notice Possession extensions.

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 TTP2280 refers to separate sets of engineering access blocks, namely, possession reference numbers for Week 18 3756238 and 3842903 and possession reference numbers for Week 21 and 22 3734374 and 3734378. Sections 4.2 – 4.15 cover 3756238 and 3842903 and Sections 4.16 – 4.25 cover 3734374 and 3734378.
- 4.2 The subject matter was first included in the EAS Version 3 publication [Appendix 4.1] and GB Railfreight responded to this [Appendix 5.6] on the 5th May 2023, stating the need for a Timetable Study.
- 4.3 From the response to Version 3, and with GB Railfreight responses being submitted on 5th May 2023 and the Version 4 publication on 14th July 2023, there has been no meeting to specifically deal with the operator requirements of this blockade.
- 4.4 On 4th August 2023, GB Railfreight raised a dispute with Network Rail in relation to its decision regarding multiple published possessions under Section 7 of the 2024 Version 4 Engineering Access Statement (EAS). The possessions are for North West & Central Region [possession reference 3756238] and Great Western Route [possession reference 3842903] [Appendix 1.1]. The dispute was brought under Conditions D2.2.8 and D.5 of the Network Code, as applicable at the time, and the ADC Secretary registered it as TTP2280 [Appendix 1.2].
- 4.5 GB Railfreight responded to Network Rail's Decision publication EAS 2024 Version 4, where the possessions remained the same [Appendix 4.2]. GB Railfreight have the same concerns, that no Timetable Study had been undertaken. At this point, in its decision publication, Network Rail have not complied with the Network Code.
- 4.6 GB Railfreight responded to its Version 3 of the Engineering Access Statement [possessions 3756238 and 3842903] stating the severity of the Week 18 Section 7 blocks to be "Severity 4", as defined by the National TPR Access Impact Matrix [Appendix 4.9]. This requires

Network Rail to undertake a Timetable Study. Network Rail did not object to, or disagree with, GB Railfreight's Severity 4 grading.

- 4.7 Since the Notice of Dispute was sent for Version 3 of the Engineering Access Statement, and inclusive of the Late Notice Possession extension decisions (TTP2352 and TTP2413) to date, no action has been taken by Network Rail to fulfil their obligations in informing directly and indirectly affected operators that they may need to flex their services to accommodate diverted trains.
- 4.8 On the 21st November 2023, a call had been arranged for the 27th November 2023 to discuss further requirements of the access Network Rail had published. GB Railfreight attended this call, however no supporting notes were sent out following this call. GB Railfreight advised the possession was still in a dispute status and that a "Severity 4" Timetable Study needed to be produced and that any request/decision notice following this call will be disputed as a result of no supporting acceptable Timetable Study. Following this, a formal request was received on the 4th December 2023 [Appendix 2.1] and GB Railfreight responded [Appendix 2.2].
- 4.9 On the 21st December 2023, Network Rail issued a Late Notice Possession decision [Appendix 2.3] to extend the blockade by 1 day, now finishing on Thursday and the blockade is now shown as Saturday 27th July 2024 2:00 to Thursday 1st August 2024 4:45. No Timetable Study was presented to directly or indirectly affected operators at any stage.
- 4.10 On the 13th February 2024, GB Railfreight received an e-mail advising us of the "Timetable Study" produced by Network Rail, however this only contained an outline hourly plan, and purely between Reading and Acton. This does not come anywhere near the outputs of what a "Severity 4" Timetable Study must deliver. GB Railfreight responded the day after [Appendix 2.8]

- 4.11 On the 19th February 2024, GB Railfreight received a formal request from Network Rail to extend possession 3756238 to finish on (date) Thursday in line with the Great Western possession 3842903 that was disputed in (date) December. GB Railfreight responded to this request, declining it because a Timetable Study had not been produced as per the required "Severity 4" grading [Appendix 2.4]. Note the response period was by 17.00 on 4th March 2024.
- 4.12 On the 7th March 2024, GB Railfreight attended a meeting regarding the Sutton Park additional access requirements, a separate matter, after the subject for discussion had ended. The matter regarding the Oxford route was raised by Network Rail to understand our issues (with DB Cargo present). GB Railfreight advised the issues around the Oxford blockade, being the lack of a Timetable Study in order to avoid this matter being brought to a dispute hearing. The feedback was with Network Rail to act upon but there has been no further communication regarding this and no further communication following this was made in respect of our requirements.
- 4.13 On the 11th March 2024, GB Railfreight received a formal decision from Network Rail, with no Timetable Study having been undertaken in line with the possession extension [Appendix 2.6]
- 4.14 On the 14th March 2024, GB Railfreight attended a meeting with Network Rail regarding to multiple possessions on the Great Western region, again the subject of the Oxford route came up at the end of the call. GB Railfreight again advised to Network Rail that the block needed to be supported with a Timetable study.
- 4.15 With the Version 3 of the Engineering Access still in dispute and the Late Notice Possession now extending the original possession(s), no Timetable Study had been received from Network Rail, and so GB Railfreight lodged a Notice of Dispute for the Late Notice Possession decision received on the 11th March 2024 with the view to being expedited immediately. GB Railfreight also requested at the same time

TTP2280 as TTP2413 references merely update the original Engineering Access proposals [Appendices 1.5 and 1.6].

- 4.16 By not fully abiding by the Network Code Conditions D3.4.7 to D3.4.12, Network Rail has lost its opportunity under D4.4 to use its designated flexing ability which, given the 'double blocking' effect, adds heightened risk and uncertainty to Railfreight customers and passengers alike.
- 4.17 Regarding Week 21 and 22 3734374 and 3734378, the subject matter was first included in the EAS Version 1 publication [Appendix], and GB Railfreight responded to this on the 25th November 2022, stating the severity of the Week 21/22 Section 7 blocks to be "Severity 4", as defined by the National TPR Access Impact Matrix. This requires Network Rail to undertake a Timetable Study. Network Rail did not object to, or disagree with, GB Railfreight's Severity 4 grading.
- 4.18 On the 3rd February 2023, on publication of Engineering Access Statement Version 2, Network Rail responded stating a Timetable Study would be produced ahead of the DPPP [Appendix 5.2].
- 4.19 On the 24th February 2023, GB Railfreight advised the possession was disputed pending the Timetable Study.
- 4.20 On the 31st March 2023, Network Rail issued the 2024 EAS Version 3 with no change [Appendix 4.7].
- 4.21 On the 5th May 2023, GB Railfreight responded to this reaffirming the dispute, pending the Timetable Study [Appendix 5.3].
- 4.22 On the 14th July 2023, Network Rail issued the 2024 EAS Version 4 (Decision publication) with no change [Appendix 5.4].
- 4.23 On 4th August 2023, GB Railfreight responded to this [Appendix 4.8] on the 4th August 2023, again reaffirming the possessions were disputed pending a Timetable Study.
- 4.24 On the 10th January 2024, the DPPP was received. Still, no Timetable Study had been produced at TW-30. At this point, Network Rail has not

implemented the procedures as set out in D3.4.7 to D3.4.12 and had, therefore, lost its opportunity under Condition D4.4 to use its designated flexing abilities. This, in turn, means Network Rail has not used all its available powers in the Network Code to fully achieve D4.6.1 “The Objective”.

- 4.25 Although this does not preclude GB Railfreight from bidding, the absence of a complete Timetable Study for possession 3734374 and 3734378 means GB Railfreight is bidding in an uniformed manner with no assurance of what a revised Timetable might look like. By not fully abiding by the Network Code Conditions D3.4.7 to D3.4.12 Network Rail has lost its opportunity under D4.4 to use its designated flexing ability. This therefore imports significant risk on to GB Railfreight’s customers and business.

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

- 5.1 TTP2280, TTP2352 and TTP2413 share the common issue, namely, Network Rail has also not abided by the Network Code Conditions D3.4.7 to D3.4.12 in that “Network Rail shall provide each Timetable Participant, by TW-30, its proposals for Restriction of Use in respect of the corresponding timetable week”. By not providing “its proposals” (Timetable Study) for Possessions in Week 18 3756238 and 3842903 & week 21/22 3734374 and 3734378, Network Rail has not implemented the procedures as set out in D3.4.7 to D3.4.12 and has, therefore, lost its opportunity under Condition D4.4 to use its designated flexing abilities. This, in turn, means Network Rail has not used all its available powers in the Network Code to fully achieve D4.6.1 “The Objective”. It is on these grounds that GB Railfreight believes Network Rail has breached its Track Access Contract, and specifically with all directly and indirectly impacted operators.

- 5.2 Network Rail has not properly consulted directly or indirectly operators and sought agreement for all Network Rail Variations to be made. Therefore the impact on rail freight customers and passengers cannot be fully understood or known.
- 5.3 Railfreight is facing significant threats to its business through competition with road hauliers in various sectors. Rail is perceived to have uncertainty, late notice service cancellation and rigidity which are frequently sighted as major reasons for modal shift from rail to road.
- 5.4 Regarding service specifics, GB Railfreight have X18 Intermodal services impacted by week 18 (possessions 3756238 and 3842903) and in week 21/22 (possessions 21/22 3734374 and 3734378) we have X29 services serving Southampton Port to Manchester, Ditton, Doncaster, Hams Hall and East Midlands. The total road movements that would be required for week 18 would be circa 810 and week 21/22 would be circa 1300. No viable contingency option exists to move the volume of traffic required for either block.
- 5.5 There will be X7 Network Rail SCO loaded services in week 18 and X12 services in week 21/22 serving Eastleigh which will mean we will not be able to deliver approximately 28,000 tonnes of ballast. A shortfall of product could potentially impact on Network Rail's own infrastructure works. Based upon 44t lorries (largest that can go on UK roads) this would equate to 636 road movements required. MOD are key customer over this route operating circa X3 services a week.
- 5.6 The 'double blocking' on London North Eastern, East Midlands, Anglia and Great Western, LNW North West & Central routes heightens the (as yet unknown) risk profile facing inter-regional operators, customers and passengers alike.
- 5.7 There is no evidence from Network Rail that it has considered the impact of the diversion for freight. Additionally, the determination of TTP1704 found that it was *"difficult to understand how Network Rail could have considered its application of the Decision Criteria to have*

been fully informed without the required Capacity Study having been completed” (Paragraph 72).

- 5.8 GB Railfreight asserts that Network Rail has failed to consider the commercial impact of its customer in this instance. The determination of TTP1704 directed Network Rail towards the ORR determination of TTP102 – *“Network Rail should be reminded of the need to understand the commercial interests of its customers, which appears not to have been the case here. The ORR’s Determination of TTP102 is a useful tool for possession planners. Within possession planning Network Rail is reminded of the need to follow the provisions of the National Timetable Planning Rules, especially 6.1.1.”*. It is apparent to GB Railfreight that Network Rail has not done so before reaching its decisions in relation to these matter.

6 DECISION SOUGHT FROM THE PANEL

- 6.1 The Claimant is requesting that the Panel determine that:

- (a) By not carrying out its duties as stated in the National Timetable Planning Rules and the Network Code, Network Rail is in breach of its Track Access Contract with GB Railfreight.
- (b) If needed, in order to achieve the Objective, Network Rail be directed to flex the services of both directly affected operators and any operators indirectly affected by the Restrictions of Use.
- (c) If Network Rail is found to be in breach of contract, GB Railfreight be awarded costs and damages arising from these disputes.

7 APPENDICES

1 Dispute Notices

1.1 Version 4 EAS

1.2 Version 4 TTP2280 e-mail

1.3 GW Late Notice possession 3842903

1.4 GW Late Notice TTP2352 e-mail

1.5 LNW Late Notice possession 3842903

1.6 GW Late Notice TTP2413 email

2 E-mails

2.1 GW week 18 Late Notice possession request possession 3842903

2.2 GBRf response to request possession 3842903

2.3 GW week 18 Late Notice possession Decision possession 3842903

2.4 LNWS week 18 Late Notice possession request possession 3756238

2.5 GBRf response to request possession 3756238

2.6 LNWS week 18 Late Notice possession Decision possession 3756238 and response

2.7 GB Railfreight advising TT study requirements week 18

2.8 Network Rail response to week 18 requirements and GB Railfreight response to what had been worked on

2.9 Week 21/22 first batch of amendments and GB Railfreight response

3 Maps

3.1 Week 18 blocked area

3.2 Week 18 affected route and diversionary

3.3 Week 21/22 blocked area

3.4 Week 21/22 affected route and diversionary

4 Network Rail Publication

4.1 2024 EAS version 3 (week 18)

4.2 2024 EAS version 4 (week 18)

GW Late notice possession (3942903) Please refer to decision email

LNW late notice possession (3756238) Please refer to decision email

4.3 DPPP week 18 possessions 3842903 and 3756238

4.4 DPPP week 21/22 possessions 3734374 and 3734378

4.5 Week 21 /22 EAS Version 1 publication

4.6 Week 21/22 EAS Version 2 publication

4.7 Week 21/22 EAS Version 3 publication

4.8 Week 21/22 EAS Version 4 publication

4.9 Engineering Access Impact Matrix

5 GBRf Documents

5.1 2024 week 21/22 EAS Version 1 response

5.2 2024 week 21/22 EAS Version 2 response

5.3 2024 week 21/22 EAS Version 3 response

5.4 2024 week 21/22 EAS Version 4 response

5.5 Week 18 and 21/22 DPPP responses

5.6 Week 18 EAS Version 3 and 4 response

5.7 LNW NR confirming TT study requirements

5.8 GWR NR confirming TT study requirements

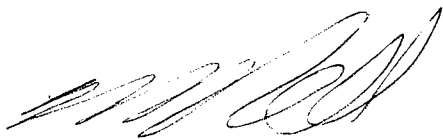
5.9 GB Railfreight advising issues in week 21/22

5.10 MOD service summary (previous running)

5.11 Network Rail SCO and Intermodal plans showing services required to run.

8 SIGNATURE

For and on behalf of GB Railfreight Limited

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

Signed

Darren Pell
Engineering Access Manager