

1 DETAILS OF PARTIES

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

(a) **GRAND CENTRAL RAILWAY COMPANY LIMITED**, ("Grand Central"), a company registered in England under number 3979826 having its registered office at 1 Admiral Way, Doxford International Business Park, Sunderland SR3 3XP ("The Claimant") ; and.

(b) **NETWORK RAIL INFRASTRUCTURE LIMITED**, ("Network Rail"), a company registered in England under number 2904587 having its registered office at Kings Place, 90 York Way, London, N1 9AG ("the Respondent").

(c) For the purpose of correspondence in relation to this dispute the parties should be contacted at the following addresses:

Grand Central
C/O Alliance Rail Holdings Limited
88 The Mount
York
YO24 1AR

Tel [REDACTED]

[REDACTED]

Network Rail
Dan Grover
George Stephenson House,
Toft Green, York,

YO1 6JT

[REDACTED]

[REDACTED]

1.2 In relation to the possible affected third parties the following may be affected:

East Coast Main Line Company Limited, East Coast House
25 Skeldergate
York
YO1 1DH
Tel [REDACTED]

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 following Conditions of the Network Code part D Paragraphs **2.1.6, 2.3.5, 2.4.3, 2.4.4, 2.4.7, 2.5, 4.2.2.**

3 CONTENTS OF REFERENCE

This Sole Reference 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) In Section 7, the decisions of principle sought from the Panel in respect of
 - (i) legal entitlement and
 - (ii) remedies;
- (e) Appendices and other supporting material.

4 SUBJECT MATTER OF DISPUTE

- 4.1** (a) Two disputes as to the offer of train slots in accordance with Part D of the Network Code (TTP494, TTP495) ; and
 (b) A dispute in relation to Network Rail's failure to adhere to timescales set out in the Network Code for producing the New Working Timetable publication 2013. (TTP493).

4.2 Dispute TT 493

This dispute arises over the interpretation of Condition D 2.4.3 and D 2.4.4 of the Network Code The basis for this claim is an email sent by Andy Lewis on the 14/04/12 (Annex B1) where he stated that paths would not be worked on *"As we are now in the middle of validating the December 2012 timetable the only option we have left is to revisit this path (applies to 1D93 SO and 1A68 SX), and any alternative solutions you may have, after the December 2012 offer on June 8th."*

4.3 Dispute TT494

This dispute arises over the interpretation of Paragraph D 2.1.6, D 2.3.5 and D 4.2.2 of the Network Code.

Network Rail is obliged under Paragraph D 2.3.5 to issue a Prior Working Timetable (PWT) at D-45 (27th January 2012). Network Rail issued a copy to Alliance on the 27th January (Annex C). However we also note that in a letter to ORR dated 2nd July 2012 Network Rail states it has not issued a PWT (Annex E). Clearly Alliance takes the view that a PWT was issued on the 27th January 2012.

Alliance believes that when Network Rail issued the PWT to Alliance it was not reviewed by Network Rail for paths that should have been removed in accordance with Paragraph 2.1.6 Part D of the Network Code.

Network Rail failed to follow the Network Code as it allowed East Coast to bid for both a 16:08 London King's Cross to York and a 16:08 London King's Cross to Newark which clashed with each other.

In addition East Coast did not submit a complete PDNS (Annex G) as required under paragraph D 2.5. In both cases Network Rail should have notified East Coast of this fact and East Coast could have submitted a revised Access Proposal under paragraph D 2.4.7.

4.4 TT 495

This dispute arises over the interpretation made by Network Rail that "Train Operator Variations" can be included in the New Working Timetable before D-26. Network Rail has failed to correctly prioritise Access Proposals in accordance with paragraph D 4.2.2 leading to a rejection of Grand Central's bid for 1N93 (SX) an additional 13.23 London King's Cross to Sunderland service.

Network Rail has rejected this service as there was no path available on the Durham Coast due to a clash with 6N50GA (SX). 6N50 does not appear in the Prior Working Timetable issued by Network Rail; it was bid for as a Train Operator Variation and has no firm rights.

5 SUMMARY OF DISPUTES

As indicated in the Network Code Part D 2.3.6, *"Not later than D-45 Network Rail shall provide to the Timetable Participants a copy of the Prior Working Timetable."*

Network Rail at no point in the timetable process made an attempt to distribute a PWT. It was not until a request was made that Alliance received what Network Rail deemed to be a PWT. Had a request not been made Alliance believes that a PWT would not have been issued by D-45.

Alliance on behalf of Grand Central, submitted its PDNS (Annex H) on 2nd March 2012. The submitted PDNS contained the requirement for Grand Central services for the December 2012 timetable.

The PDNS contained bids for the current services detailed in Grand Central's Track Access Contract with the addition of additional bids to accommodate the extra services Grand Central subsequently applied for to the ORR (28th and 7th Supplemental Agreements), as was explained in the PDNS.

The PDNS submitted on behalf of Grand Central contained a bid for a path between Sunderland and London departing at 15:18. This path was rejected by Network Rail early in the process as detailed in the email from Andy Lewis, (Annex A1).

Network Rail is fully funded to undertake work to check the validity of paths that have been bid for. Alliance believes that Network Rail did not undertake sufficient enough work to prove this path. The evidence provided for the rejection of the path is detailed in an email from Andy Lewis (Annex A1). No evidence has been given to show that Network Rail attempted to use the contractual flex available. An annotated copy of the email is also attached (Annex A2) to show what Alliance believes to be further reasonable analysis.

Alliance is aware that as soon as Network Rail advised that the path could not be accommodated a revised proposal could have been submitted under paragraph 2.4.7. However, the email from Andy Lewis clearly stated *"As we are now in the middle of validating the December 2012 timetable the only option we have left is to revisit this path (applies to 1D93 SO and 1A68 SX), and any alternative solutions you may have, after the December 2012 offer on June 8th."*

As a result of this statement the additional service which Grand Central had bid for had to fit around all other offered bids in the December 2012 timetable.

The result of this is that the only additional service which could be accommodated and offered by Network Rail was a 1447 departure from Hartlepool. This has caused Grand Central significant operational problems, in that the previous London King's

Cross departure (1N92) is now unable to run through to Sunderland as the unit is required to operate the 1447 service from Hartlepool.

At the same time, as required, East Coast submitted their PDNS (Annex G). Due to the expiry of rights for a number of Newark – London services, East Coast also lodged an application with the ORR (34th Supplemental Agreement), to extend the period of rights of these services and extend them to York. The Supplemental Agreement also included an additional two York services.

Network Rail advised East Coast that it would be unable to accommodate the extension of the current Newark services to York. East Coast went on to amend the application which went out to consultation on 11th April 2012. The amended application requested an extension of rights for current Newark services without the initially requested extension to York.

The PDNS submitted by East Coast contained a request for the extension of the Newark services to York. However it also contained a request that should these aspirations not be able to be met, East Coast would wish to retain the services as they exist in the December 2011 timetable. The PDNS submitted by East Coast did not include in its Access Proposals all of the relevant information as set out in the Network Code Part D paragraph 2.5.

Both the Grand Central and East Coast PDNS contained a bid for the 1608 path from London King's Cross. As a result of the above points, Alliance believes that Network Rail incorrectly prioritised the bids of East Coast and Grand Central.

Due to what Network Rail mistakenly believed to be competing bids they applied the decision criteria (Annex F) to ascertain who should be awarded the path. Alliance believes that this was an unnecessary application of the decision criteria as Grand Central's bid should have received higher priority than East Coast if the Network Code had been applied correctly.

It is important to note that since East Coast was offered the 1608 path Alliance continued to work with Network Rail to find an alternative solution to accommodate an additional Grand Central service. An alternative fully compliant path was identified at 1552 from London Kings Cross. This path has been rejected by Network Rail on unsubstantiated performance grounds.

Alliance, as part of the PDNS, also bid for an additional London King's Cross – Sunderland service with a departure time of 1323.

Again, this path was rejected early in the process due to a number of conflicts with other services. Alliance believes that several of these conflicts were easily resolved and details of this can be seen in Annex A2.

One of the conflicts identified was a conflict with a freight service 6N50. This service has no firm rights and was not included in the prior working timetable issued by Network Rail. This service has since been identified as a Train Operator Variation as indicated in the letter from Fiona Dolman, (Annex D) which states *"we have received a spot bid from GBRf for an additional train in the Dec 2012 timetable"*.

Clearly Network Rail has prioritised a Train Operator Variation over a fully compliant bid from Grand Central.

The individual issues raised in this summary and the supporting arguments are detailed in Section 6.

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

6.1 Dispute TTP493

Grand Central has been operationally and commercially severely disadvantaged by Network Rail's refusal to progress its Access Proposal in accordance with Paragraph 2.4.3 (Part D). The basis for this claim is an email sent by Andy Lewis on the 14/04/12 where he stated that paths would not be worked on *"As we are now in the middle of validating the December 2012 timetable the only option we have left is to revisit this path (applies to 1N93 SO and 1A68 SX), and any alternative solutions you may have, after the December 2012 offer on June 8th."*

Alliance on behalf of Grand Central submitted a bid for the 1518 Sunderland to London King's Cross service. As detailed in the summary this bid was rejected early in the timetable process.

Network Rail conducted some work on reviewing the bid by Grand Central; however the annotated version of the Andy Lewis's email (annex A2) shows further areas Network Rail should have investigated. However, they declined to undertake further work advising us they would *"revisit this path"* after the offer date on June 8th (D-26).

Paragraph 2.4.4 Part D gives priority to those services that are submitted by D-40. In issuing this email Network Rail has deliberately chosen to ignore the Network Code. The impact of this approach has meant that Grand Central has had to develop its paths around the paths offered in the New Working Timetable.

The statement in Andy Lewis's email not only ignores paragraph D 2.4.4 but also chooses to ignore paragraphs D 2.4.7 and D 2.4.3 whereby *"Network Rail must Notify the Participant of this fact, as soon as possible after it has become aware of it, so that the Timetable Participant has the opportunity to submit a further Access Proposal"* and *"Access Proposals may be submitted up to D-26"*.

The statement in the email indicates Network Rail are not willing to conduct any further work until after D-26, a clear breach of the Network Code.

As a result Grand Central was left to bid into "white space" after the offer date with an alternative solution. The only solution available after the offer date was a service which could not follow the required calling pattern, a 1447 Hartlepool to London King's Cross service. This service has a significant operational and commercial impact on Grand Central. Due to unit requirement, 1N92 is unable to run through to Sunderland.

As a result of Network Rail not correctly applying the Network Code, Grand Central is at a commercial disbenefit and revenue will be impacted upon for the coming timetable.

6.2 Dispute TTP494

This dispute is brought as Network Rail has not applied the Network Code correctly when considering the competing Access Proposals of East Coast and Grand Central. This dispute is brought on the basis that Network Rail has rejected Grand Central's bid for 1D81 (SX)16:08 London King's Cross to Wakefield Kirkgate service.

Network Rail has rejected this service in favour of the East Coast 16:08 London King's Cross to Newark Northgate. At the time of bidding neither operator held access rights for these proposed services.

Alliance believes that Network Rail was not correct in issuing a Prior Working Timetable that included the 16:08 East Coast service (to Newark) despite Grand Central's protests that this was unfair and clearly favoured East Coast. (Annex C).

Network Rail should have removed this train from the Prior Working Timetable in accordance Part D Para 2.1.6 as there was no expectation that the rights would be held by East Coast. East Coast had formally applied to ORR for access rights to support a London to York service not a Newark service. An amended application for rights to Newark was sent out for consultation by the ORR on 11th April 2012.

By allowing the 1608 service to remain in the PWT, Grand Central was immediately seriously disadvantaged in the timetable process.

Alliance wishes to draw attention to the response to a related complaint issued by Network Rail (Annex E). Network Rail clearly state that they believe a PWT was not issued and that *"Alliance would not have been in a better position had it had a prior working timetable"*.

Alliance believes that Network Rail had no intention of issuing a Prior Working Timetable. Indeed it remains apparent that some areas of Network Rail still think no such timetable was issued. If this is the case then Network Rail has clearly ignored paragraph D 2.3.6 whereby Network Rail shall provide a PWT no later than D-45. However, when pressed by Alliance, a copy of the previous Working Timetable was issued with no appropriate work undertaken to ensure a correct Prior Working Timetable was issued in accordance with paragraph D 2.1.6.

Alliance believes that Network Rail did not correctly follow the Network Code as it allowed East Coast to bid for both a 16:08 London King's Cross to York and a 16:08 London King's Cross to Newark. There is a material difference between the paths depending on whether the service runs to York or to Newark; specifically, terminating at Newark requires a crossing move to Platform 3. As a result both services conflict with each other and so the Access Proposals should have been dealt with in accordance with Network Code Part D paragraph 2.4.6 / 7. Network Rail failed to do this.

If Network Rail had correctly followed the Network Code it should have notified East Coast that the paths conflicted and East Coast could have submitted a revised Access Proposal.

In addition, Alliance believes that Network Rail has not applied the Network Code correctly in relation to the PDNS submitted by East Coast.

The PDNS submitted by East Coast (Annex G) was deficient in part 2 as it did not include content required in a valid Access Proposal as dictated by Part D paragraph 2.5. According to paragraph D 2.5.1 a PDNS needs to include; *"the intermediate calling points"* and *"The railway vehicles or the timing load to be used"*. The PDNS clearly states that *"These changes have not been included in the electronic PIF or the Rolling Stock diagrams which accompany this document."* Alliance would therefore expect this information to be contained in the PDNS document. This is clearly not the case. Because of this the bid was incomplete at the Priority Date. The detail required in the East Coast Access Proposal was not submitted until after the Priority Date.

As a result of the failures of Network Rail to follow the Network Code then under Part D paragraph 4.2.2 Alliance believes that the East Coast bid should have been prioritised in accordance with D 4.2.2 (d) (iv) and that the Grand Central bid should be prioritised in accordance with D4.2.2 (d) (iii). This would have given the Grand Central bid higher priority than the East Coast bid.

Network Rail's failure to follow the Network Code as detailed above, led them to believe that the application of the Decision Criteria was required to determine whether to offer the Grand Central or the East Coast service. This application of the Decision Criteria (which in itself is incorrect) is irrelevant (Annex F). As the Grand Central service was bid compliantly at the Priority Date and an application for rights had been made, Part D 4.2.2 (d) (iii) applies to this service.

In respect of the East Coast service, the content of the Access Proposal relating to the changes was submitted after the Priority Date. This would mean that the East Coast service should have been given a priority lower than the Grand Central service. The East Coast service should have been prioritised in accordance with Part D 4.2.2 (d) (iv) in a lower priority than the Grand Central bid.

Since Network Rail's decision to reject Grand Central's service, Alliance has continued to work with Network Rail with the hope of finding an alternative solution. Alliance identified a fully compliant path departing London at 1552. Network Rail has since rejected this path on the grounds of an unsubstantiated performance assessment. It is important to note that Network Rail has not undertaken any performance analysis on the 1608 service to which an offer to East Coast was made.

An application was made to the ORR (7th Supplemental Agreement) for this additional West Yorkshire service. Whilst an initial indication of a decision has been received by the ORR, no formal decision has been received. Should rights for an additional West Yorkshire service be awarded, Grand Central is at significant commercial disbenefit as a result of Network Rail not correctly applying the Network Code.

6.3 Dispute TTP495

This dispute is brought on the basis that Network Rail has rejected Grand Central's bid for 1N93 (SX) an additional 13.23 London Kings Cross to Sunderland service.

Network Rail has rejected this service as there was no path available on the Durham Coast due to a clash with 6N50GA (SX). This is the 11.06 Maltby Colliery to Tyne Coal Terminal operated by GBRF. 6N50 does not appear in the Prior Working Timetable issued by Network Rail, it was bid for as a Train Operator Variation.

In a letter from Fiona Dolman to Alliance on the 22nd May 2012 (Annex D) she states *"we have received a spot bid from GBRf for an additional train in the Dec 2012 timetable"*.

Whilst Alliance understands other conflicts were identified with the proposed path, it believes many of these issues could have been resolved. Details of this are shown in Annex A2. This document also clearly shows the identified conflict with the Train Operator Variation 6N50. Indeed the final offer letter (Annex I) indicates that a reason for rejecting the path is the conflict with 6N50.

Network Rail has clearly given higher priority to 6N50 as a Train Operator Variation than a bid submitted in accordance with the Network Code D 2.4.4 (1N93). Network Rail should have given priority to bids made at the Priority Date. It appears that Network Rail has accepted bids made as Train Operator Variations into the New Working Timetable prior to D-26.

7 DECISION SOUGHT FROM THE PANEL

7.1 Dispute TTP493

The Panel is asked to determine that:

- a) Network Rail did not adhere to the timescales as set out in the Network Code Part D and in doing so disadvantaged Grand Central in the timetable process.

7.2 Dispute TTP494

The Panel is asked to determine that:

- a) Network Rail did not correctly issue a Prior Working Timetable in accordance with the Network Code and in doing so disadvantaged Grand Central in the timetable process.
- b) Network Rail incorrectly prioritised the bids from Grand Central and East Coast and the bid submitted from Grand Central should have been given higher priority in the bidding process.

- c) Network Rail unnecessarily and incorrectly applied the decision criteria in making the timetable offer.
- d) Network Rail should have formally offered the 1608 path the Grand Central as opposed to East Coast as part of the timetable process.

7.3 Dispute TTP495

The Panel is asked to determine that:

- a) Network Rail did not correctly issue a Prior Working Timetable in accordance with the Network Code and in doing so disadvantaged Grand Central in the timetable process.
- b) Network Rail incorrectly gave priority to a Train operator variation as opposed to a compliant bid. As a result Network Rail is in breach of the Network Code and disadvantaged Grand Central in the timetable process.

7.4 REMEDIES

7.5 Dispute TTP493

- a) Network Rail to re-examine the 1518 departure from Sunderland utilising its flex under the Network Code to full effect (including its rights to vary clock face departures).
- b) Network Rail must not impose arbitrary new timescales that impact upon the creation of the new working timetable.

7.6 Dispute TTP494

- a) Network Rail to adhere to its obligations under the Network Code in relation to issuing a Prior Working Timetable and how it assesses bids in accordance with paragraph 2.1.6 Part D.
- b) Network Rail to path the 1608 London King's Cross to Wakefield Kirkgate service as originally bid for by Grand Central in its PDNS (for the Dec 2012 timetable). Network Rail must utilise its flex under the Network Code to full effect (including its rights to vary clock face departures).

7.7 Dispute TTP495

- c) Network Rail to put in place a process for managing Train Operator Variations that does not lead them to being prioritised higher than rights bid for at the Priority Date.

- d) Network Rail to path the 1323 London King's Cross to Sunderland service as originally bid for in the PDNS (for the Dec 2012 timetable) Network Rail must utilise its flex under the Network Code to full effect (including its rights to vary clock face departures).

8 APPENDICES AND ANNEXES

ANNEX A – PART D, NETWORK CODE

ANNEX B – EMAIL CORRESPONDENCE ANDY LEWIS, NETWORK RAIL

ANNEX C – EMAIL CORRESPONDENCE RE PRIOR WORKING TIMETABLE

ANNEX D – CORRESPONDENCE RE TRAIN OPERATOR VARIATIONS

ANNEX E – NR RESPONSE TO COMPETITION COMPLAINT

ANNEX F – CORRESPONDENCE RE DECISION CRITERIA

ANNEX G – EAST COAST PDNS

ANNEX H – GRAND CENTRAL PDNS

ANNEX I – OFFER LETTERS

9 SIGNATURE

The Claimant

For and on behalf of

GRAND CENTRAL RAILWAY COMPANY

Signed



Print Name

C BRANDON

Position

HEAD OF SYSTEMS (ALLIANCE RAIL HOLDINGS)

This is a control mechanism; it provides the Panel with the re-assurance that the dispute has been referred with the knowledge and understanding of the disputing corporate bodies. This is important, as engaging in formal dispute resolution implies a commitment to accepting the outcome of that process.

In this context, the Claimant is reminded that in sending representatives to argue its case before the Panel,

- (a) "it shall... ensure that
- (b) the competencies, skills and knowledge of any chosen representative are appropriate to the issues involved in the dispute (content, subject and value); [ADR Rule A19]