

## 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 King's 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  
York 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:

First Capital Connect.

## **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 **4.2.2**.
- 2.2** In addition this timetable dispute is referred to the Panel, as this places Network Rail in breach of its contractual commitments in the Grand Central (Sunderland) contract schedule 5, table 8.3 Departure Time Ranges. (Annex A).

## **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 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) A dispute as to the offer of a train slot in accordance with Part D of the Network Code; and
- (b) A dispute as to an offer of a train slot in accordance with the Firm Rights set out in the Track Access Contract.
- 4.2** This dispute arises over the interpretation of condition D4.2.2 of the Network Code (Annex B). Network Rail has failed to be consistent with the 'Exercised Firm Rights' of Grand Central as a Timetable Participant in the development of the New Working Timetable for December 2012.

Alliance also believes Network Rail to be in breach of its Track Access Contract with Grand Central by not accommodating the Firm Rights set out in schedule 5.

## **5 SUMMARY OF DISPUTES**

- 5.1** Alliance on behalf of Grand Central submitted its PDNS on 2<sup>nd</sup> March 2012. The PDNS contained the requirement for Grand Central services for the December 2012 timetable. This dispute refers specifically to the bid for 1N90, 0749 London King's Cross – Sunderland service.
- 5.2** The PDNS submitted (Annex D) requested that 1N90 be retimed to depart King's Cross at 0820. It is important to note that this falls within the departure time ranges set out in Grand Central's Track Access Contract.
- 5.3** This proposal was rejected by Network Rail early in the timetable process. As a result Network Rail Indicated it would offer the 0749 departure that operates in the current timetable. Grand Central did not challenge this.
- 5.4** Subsequently Network Rail requested to flex the 0749 service by 1 minute to give a departure time of 0748. This was rejected by Alliance (Annex C1).
- 5.5** Network Rail in its offer letter (Annex E) made a formal offer for the 0749 service on 8<sup>th</sup> June 2012.
- 5.6** On 19<sup>th</sup> July Network Rail wrote to Alliance (Annex C2) requesting the retiming of the 0749 to 0748, understanding that the change will fall outside of Grand Central's contractual right and an "*element of good will is required*" to remove an outstanding timetabling dispute with First Capital Connect. The request was made to accommodate an ECS working for FCC to Royston.
- 5.7** Alliance reluctantly agreed to this change with the understanding that any solution to the issue would be fully compliant with the Timetable Planning Rules.
- 5.8** A further email exchange between Alliance and Network Rail (Annex C3/C4) showed that the solution proposed for 3R54 (FCC service) by retiming 1N90 was not fully compliant with Timetable Planning Rules in that it required the engineering allowance to be reduced by 1 minute. Indeed it became apparent that the initial bid from FCC for 2P04 was also non compliant. This led Grand Central to withdraw its acceptance of the 0748 path (Annex C4).
- 5.9** A further revised solution was offered by Alliance (Annex C5) whereby 1N90 would be retimed to 0806 allowing a solution to be found for FCC and for Grand Central to remain within their departure time ranges as set out in their Track Access Contract. Network Rail rejected the proposal of the 0806 departure but no further alternative has been offered by Network Rail. Alliance has continued to work with Network Rail but as yet no compliant solution has been proposed.

- 5.10** Alliance believes Network Rail is in breach of the Network Code by not accommodating an existing firm right held by Grand Central. Alliance also believes Network Rail is in breach of the Track Access Contract held with Grand Central as no path has been offered in line with the contractual rights.

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

- 6.1** Network Rail is in clear breach of the Network Code Part D4.2.2, which states "*each New Working Timetable shall be consistent with the Exercised Firm Rights of each Timetable Participant*".
- 6.2** In offering Grand Central a path which is outside of the departure time ranges set out in their Track Access Contract Network Rail is also in clear breach of the Track Access Contract.
- 6.3** Alliance on behalf of Grand Central was made aware that Network Rail was struggling to accommodate the current 0749 departure of 1N90 and had requested it be moved to 0748.
- 6.4** Alliance was willing to work with Network Rail in order to find an appropriate solution. Indeed an alternative fully compliant path was identified departing London King's Cross at 0806 which was within the departure time ranges set out in the Track Access Contract and proposed on the basis that it is fully compliant with the Timetable Planning Rules.
- 6.5** Network Rail was unwilling to accept the 0806 path and instead indicated that they would make a formal offer for 1N90 to depart London at 0748. At the date of submission of this dispute, no formal offer has been received.

**7 DECISION SOUGHT FROM THE PANEL**

**7.1 The Panel is asked to determine that:**

- a) Network Rail is in breach of the Network Code by not accommodating an Exercised Firm Right of a Timetable Participant (Grand Central).
- b) Network Rail is in breach of the Track Access Contract held by Grand Central by not offering a compliant path in line with the departure time ranges of the firm rights detailed in the contract.

## 7.2 REMEDIES

- a) Network Rail to offer (the best possible) compliant path in terms of the Grand Central Track Access Contract and the Network Code.
- b) Network Rail to utilise its flexing right to optimise the pathing options.

## 8 APPENDICES AND ANNEXES

**ANNEX A – GRAND CENTRAL TRACK ACCESS CONTRACT TABLE 8.3**

**ANNEX B – PART D NETWORK CODE**

**ANNEX C – EMAIL CORRESPONDENCE WITH NR REGARDING 1N90**

**ANNEX D – GRAND CENTRAL PDNS**

**ANNEX E – GRAND CENTRAL OFFER LETTER**

## 9 SIGNATURE

The Claimant

For and on behalf of

GRAND CENTRAL RAILWAY COMPANY LTD

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]