

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:

East Coast Mainline Limited
25 Skeldergate
York
YO1 1DH

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 (Annex A) Paragraphs **4.2.2** and **5.6.1**. **Alliance Rail (Alliance) is acting as agent for Grand Central in this dispute.**

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 in relation to Network Rail's failure to implement a ruling for dispute TTP494 made by a Timetabling Panel for December 2012 in accordance with Part D of the Network Code; and
- (b) A dispute as to the rejection of a train slot in accordance with Part D of the Network Code in relation to Grand Central's 1D81 London – Wakefield for May 2013;and
- (c) A dispute as to the offer of East Coast's 1B88 London to Newark for May 2013.

- 4.2** This dispute arises over Network Rail's failure to adhere to Part D of the Network Code. Specifically, paragraphs 5.6.1 and 4.2.2.

- 4.3** Under paragraph 5.6.1 *"Network Rail shall be bound and empowered to take such steps as may be necessary to implement all rulings made by a Timetabling Panel"*. In relation to TTP494, Network Rail was issued a determination on Monday 12 November 2012 and subsequently received a preliminary written determination on 05 December 2012. Network Rail has failed to implement the ruling detailed in this determination (Annex B).

Under paragraph 4.2.2 (a) "*A New Working Timetable shall conform to the Rules applicable to the corresponding Timetable Period;*" Network Rail is in breach of the Network Code as it has again offered a non compliant 1608 London King's Cross – Newark Northgate for the May 2013 timetable change.

5 SUMMARY OF DISPUTES

- 5.1** Alliance brought TTP494 on Grand Central's behalf on 2 July 2012. Alliance raised this dispute because Network Rail had refused to offer a path for 1D81 London King's Cross to Wakefield Kirkgate.
- 5.2** Subsequently, TTP494 reached a conclusion on 12 November 2012 and a determination was given to allow parties to the dispute enough time to implement the ruling. A further preliminary written determination was provided on 5 December 2012. The Timetable Panel made a clear Determination that took into account the need for the timetable changes to be implemented quickly. Network Rail failed to implement the requirements of the Timetable Panel.
- 5.3** Following the determination of TTP494 by the Timetable Panel. Grand Central resubmitted its application for an additional West Yorkshire service, specifically the 1608 London King's Cross – Wakefield Kirkgate and the 0753 Mirfield – London King's Cross, to the Office of Rail Regulation (ORR) on 15 November 2012.
- 5.4** The ORR requested comments from Network Rail regarding the application these comments were received on 18 December 2012 (Annex D).
- 5.5** On 16 November 2012, Grand Central received a timetable offer for the May 2013 timetable. This offer letter rejected 1D81 solely on the grounds of '*awaiting firm contractual rights*' (Annex C) No information was provided to Grand Central between the Priority Date and the Offer Date informing Grand Central that 1D81 would be rejected.
- 5.6** A further conversation with Network Rail confirmed that the non compliant 1608 London King's Cross – Newark Northgate had again been offered to East Coast (Annex E).
- 5.7** Grand Central believes that Network Rail is in breach of the Network Code for the following reasons:
- a) Network Rail has not implemented the determination made by the Timetabling Panel on TTP494.

- b) Network Rail has offered a non compliant 1608 London King's Cross – Newark Northgate service to East Coast.
- c) Network Rail has rejected the 1608 London King's Cross – Wakefield Kirkgate service (1D81).

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 D5.6.1, which states:
"Network Rail shall be bound and empowered to take such steps as may be necessary to implement all rulings made by a Timetabling Panel or the Office of Rail Regulation pursuant to this Condition D5. All such steps shall be taken promptly".
- 6.2 A determination has been made by the Timetabling Panel for dispute TTP494. In giving the determination on 12 November 2012, the hearing Chair was extremely clear in the reasoning behind the determination and during the hearing all parties agreed and understood this. Network Rail failed to act upon this determination.
- 6.3 A Preliminary Record of Determination was then provided on 5 December 2012 to reiterate the decision made and reasoning behind that given in the determination.
- 6.4 Rule 16 of the Access Dispute Resolution Rules states *that "the Hearing Chair shall (where appropriate) adapt the procedures adopted in each dispute to reflect its specific requirements in terms of subject matter, timescales and significance".*
- 6.5 In paragraph 1.2 of the Preliminary Record the Hearing Chair states *"I consider it necessary and expedient to adapt the dispute procedure so as to provide the Dispute Parties with a written confirmation at least of the decisions and conclusions already reached and announced."*
- 6.6 Network Rail has failed to accept and act upon this as the determination breaching paragraph 5.6.1 Part D of the Network Code.
- 6.7 The Network Code Part D paragraph 5.4.2 states *"Save where expressly stated otherwise in this Part D, where an appeal to the Office of Rail Regulation pertaining to this Part D is pending, the relevant decision of the Timetabling Panel shall remain binding until such time as the Office of Rail Regulation determines or orders otherwise".*
- 6.8 Network Rail is again in breach of this paragraph as a determination to TTP494 has been given. In the event Network Rail appeals this determination they continue to be bound by the determination of the Timetable Panel until the ORR determines otherwise.

- 6.9** Following the determination Grand Central resubmitted its application for the additional West Yorkshire Services as the 8th Supplemental Agreement. Network Rail was requested to comment on the application and did so on 18 December 2012.
- 6.10** The response from Network Rail (Annex D) states the following: *"Network Rail is currently re-validating Grand Central's 1608 weekday service from King's Cross to Wakefield Kirkgate. Work is ongoing to remove junction margin issues with this path."*
- 6.11** The 1608 path bid for by Grand Central for the December 2012 timetable was fully validated. Network Rail rejected it based only on its flawed application of the Decision Criteria. The Timetable Panel for TTP494 determined that the path should have been offered to Grand Central for the December 2012 timetable based on application of Part D paragraph 4.2 of the Network Code. In addition the Panel Chair stated that the correct application of the Decision Criteria would have been in Grand Central's favour.
- 6.12** As the path was already validated, Network Rail has no reason to re-validate the path. Under the Network Code Part D paragraph 5.6.1 Network Rail can take *"such steps as necessary to implement all rulings made by a Timetabling Panel"*.
- 6.13** In addition Network Rail has made an offer to East Coast for the same non compliant 1608 London King's Cross – Newark Northgate service for the May 2013 timetable. This shows that Network Rail has no intention of implementing the determination set out by the Timetabling Panel.
- 6.14** The Network Code Part D Paragraph 4.2.2 states that Network Rail shall endeavour to comply with all Access Proposals subject to a number of principles including 4.2.2(a) *"a New Working Timetable shall conform with the Rules applicable to the corresponding Timetable Period;"*
- 6.15** Network Rail for the May 2013 timetable made an offer to East Coast for the 1608 London King's Cross – Newark Northgate service (1B88). This service has been shown to be non compliant with the Timetable Planning Rules in that 1B88 has a sub-standard headway behind 4E19 at Grantham, Claypole Loop and Newark Northgate where it terminates. The headway should be 4 minutes in all cases. By offering this train Network Rail is in breach of the Network Code.
- 6.16** Grand Central's expectation following TTP494 was that 1D81 would be offered to Grand Central for the December 2012 timetable and that 1D81 would also be offered for May 2013. Network Rail and Grand Central continued to work on 1D81. Network Rail rejected this path for the May 2013 timetable on the 16 November 2012. The rejection was solely because Network Rail was *"Awaiting confirmation of Firm Contractual Rights"*.

- 6.17** Network Rail should have offered 1D81 on the grounds that the path was fully validated. Network Rail has no reason to decline 1D81 under the Network Code Part D paragraph 2.4.6.
- 6.18** It is common practice for Network Rail to offer services which are fully validated and can be accommodated in the New Working Timetable whilst Operators await the award of Firm Contractual rights by the ORR. This is evidenced by Network Rail progressing agreed section 22 applications with other Operators. The Supplemental Agreements that Network Rail has progressed as agreed applications (for the Dec 2012 timetable) based on validated paths are:
- (a) London and Birmingham Railway Limited 40th Supplemental Agreement
 - (b) First/Keolis Transpennine Limited 50th Supplemental Agreement
 - (c) London Overground Rail Operations Limited 50th Supplemental Agreement
 - (d) First ScotRail Limited 50th Supplemental Agreement
 - (e) West Coast Trains Limited 2nd Supplemental Agreement
 - (f) Stagecoach South West Trains 44th Supplemental Agreement

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 implementing the determination reached by the Timetabling Panel for Timetable dispute TTP494.
- b) Network Rail is in breach of the Network Code by offering the 1608 (SX) London King's Cross – Newark Northgate service to East Coast.
- c) Network Rail should have offered the 1608 London King's Cross – Wakefield Kirkgate service to Grand Central as part of the formal offer made on 16 November 2012 for May 2013.

7.2 REMEDIES

- a) Network Rail to include the 1608 Grand Central London King's Cross – Wakefield service in the current Working Timetable.
- b) Network Rail to remove the 1608 East Coast London King's Cross – Newark Northgate from the current Working Timetable.

- c) Network Rail to offer the 1608 London King's Cross – Wakefield Kirkgate service to Grand Central and include it in the published New Working Timetable for May 2013.
- d) Network Rail to remove the 1608 East Coast London King's Cross – Newark Northgate from the New Working Timetable for May 2013.
- e) The Hearing Chair to consider awarding costs to Grand Central in the region of £6,400. Full breakdown of costs can be provided as required.

8 APPENDICES AND ANNEXES

ANNEX A – PART D NETWORK CODE

ANNEX B – PRELIMINARY RECORD OF DETERMINATION TTP 494

ANNEX C – GRAND CENTRAL MAY 2013 OFFER LETTER

ANNEX D – NETWORK RAIL COMMENTS TO ORR RE 8TH SUPPLEMENTAL AGREEMENT

ANNEX E – TEXT MESSAGE REGARDING OFFER OF 1B88 TO EAST COAST

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]