

Network Rail's Submissions to the
Timetable Panels TTP807 and TTP808
Hearing Date: 01 June 2015.

1 DETAILS OF PARTIES

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

(a) **GB Railfreight Limited (Company Number 03707899)** whose Registered Office is at 3rd Floor, 55 Old Broad Street London, EC2M 1RX ("GB Railfreight or GBRF") ("the Claimant"); and

(b) **Freightliner Group Ltd** whose Registered Office is at The Podium, 1 Eversholt Street, London, NW1 2FL ("Freightliner") ("the Claimant");

And

(c) **Network Rail Infrastructure Limited** whose Registered Office is at 2nd Floor, 1 Eversholt Street, London NW1 2DN ("Network Rail") ("the Defendant").

(d) Day to Day contact details for the person dealing with this dispute at GBRF is Paul Yates, [REDACTED]

(e) Day to Day contact details for the person dealing with this dispute at Freightliner is Jason Bird, [REDACTED]

(f) Day to day contact details for the person dealing with this dispute at Network Rail is Maria Lee, [REDACTED]

(g) Network Rail believes that First Great Western Ltd, Direct Rail Services Ltd, DBS, Colas Rail Ltd, Devon and Cornwall Railways Ltd, West Coast Railway Ltd, Rail Operations (UK) Ltd, other open access Operators and Heathrow Express Ltd may be affected by the outcome of this adjudication.

2 THE DEFENDANTS RIGHT TO CONTEST THIS REFERENCE

- 2.1 This matter is referred to the Timetabling Panel ("the Panel") for determination in accordance with Condition D2 & D5 of the Network Code and is also pursuant to Section 3.5.4 of the National Timetable Planning Rules.
- 2.2 The contractual provisions which entitle Network Rail to make amendments to the Timetable Planning Rules between D-41 and D-26 are detailed in Network Code Part D, condition 2.2.7
- 2.3 Network Code Part D Condition D2.2.8 (a) allow for a Timetable Participant that is dissatisfied with Network Rail's decision to appeal in accordance with Network Code Part D, Condition D5. Network Rail accepts that GBRF and Freightliner is entitled to raise this dispute.

3 CONTENTS OF REFERENCE

- 3.1 This Response to the Claimant's Sole Reference includes:-
 - (a) The subject matter of the dispute in Section 4;
 - (b) A summary of the issues in dispute Section 5;
 - (c) A detailed explanation of the issues in dispute prepared by the claimant;
 - (d) In Section 7 the decisions of principle sought from the Timetabling Panel
 - (e) Appendices and other supporting material.

4 SUBJECT MATTER OF DISPUTE

- 4.1 The matter in dispute is Network Rail's decision to amend the Timetable Planning Rules (TPR), the document entitled '*Amendment to GW103 and GW104 Timetable Planning Rules 2016, Sections 2.1, 5.2.1, 5.3 and 5.4 Decision*' regarding various timetable planning rules amendments and additions around West Ealing. The decision is in conjunction with a proposed Network Change for a new layout at West Ealing.
- 4.2 The Network Change (Ref: NC/G1/2014/CRL/001) for the proposed new layout at West Ealing has not been established. (Network Change – Claimant Appendix B)
- 4.3 Network Rail believe that the dispute is about amendment to the TPR values which is covered in the Network Code Part D Sections 1.1.7, 2.1, 2.2.7, 4.6.1, 4.6.2 (a) (b) 5.2.1, 5.3, and 5.4 (Italicized Network Code sections have been supplied by “Claimants”)

5 EXPLANATION FROM THE DEFENDANT'S PERSPECTIVE OF EACH ISSUE IN DISPUTE

- 5.1 Network Rail will refer to the references in the GB Railfreight dispute paper and respond.
- 5.2 (4.3) Network Rail agree that the Timetable Planning Rules 2016 (Version 2) Decision Document for all routes was published on Feb 6th 2015. (Claimant Appendix A)
- 5.3 (4.4) Network Rail agree that on February 13th 2015 an additional consultation document (Claimant Appendix C) proposing various timetable planning rules amendments and additions to Version 2 decision document was issued under Network Code Condition D2.2.7 (Appendix A)
- 5.4 (4.5) Network Rail issued an accompanying letter summarising the changes made (Claimants Appendix C)
- 5.5 (4.6) Network Rail confirms the key elements to the Consultation document were copied onto the Claimants dispute paper (Claimants dispute paper pages 3 and 4 of 40. Claimants Appendix C pages 16 and 17 of 40)

- 5.6 (4.7) GB Railfreight formally queried all junction margins associated with West Ealing through its response to the post V2 amendment under D2.2.7. The response stated '...as this is outside of V2 timescales...' and that GBRF 'would like evidence of why the junction margins at West Ealing need almost doubling as this is a reduction in capacity...'. Network Rail believes 2.2.7 allows a revision of the Rules therefore GBRF disputing outside of V2 timescales is not relevant. It was made clear that this change was consulted and decision made in line with D2.2.7 and not D2.2.5. Network Rail responded to the request for evidence on 5 March 2015 (Appendix B) by offering the Railsys modelling (Appendix C) used to inform the planning values. This offer was not taken up by either referring parties. GBRF response to the amendment does not indicate they are disputing the junction margin values, but that they are disputing the junction margins as the Network change is not established, and that the values reduce capacity. Network Rail refute this claim as Railsys modelling showed that the values proposed were suitable to produce a contractually compliant New Working Timetable that Network Rail intends to publish at D-26 for December 2015. Network Rail believe they have produced a timetable that is consistent with the exercised Firm Access Rights of the timetable participants and therefore in accordance with D4.2.2 (a) and (b). (Appendix D timetable column print of Greenford Branch) (Appendix E Access Contracts)
- 5.7 (4.8) Network Rail confirm a Decision Document was issued on March 2nd 2015 setting out to implement the proposal under Network Code 2.2.7 citing Decision Criteria C (Claimants Appendix E). Network Rail considers that the revision to the rules were 'reasonable'. Railsys modelling showed that the values proposed were suitable to produce a contractually compliant timetable and the New Working timetable that Network Rail intends to publish at D-26 for December 2015. A timetable that is consistent with the exercised Firm Access Rights of the timetable participants and therefore in accordance with D4.2.2 (a) and (b).
- 5.8 (4.9) Network Rail refutes GBRF claim and considers that the revision to the rules were 'reasonable'. Railsys modelling showed that the values proposed were suitable to produce a contractually compliant timetable and the New Working timetable Network Rail intends to publish at D-26 for December 2015. A timetable that is consistent with the exercised Firm Access Rights of the timetable participants and therefore in accordance with D4.2.2 (a) and (b). Part D2.2.7 sets the timescales under which NR is obliged to make changes which NR has followed. There is no requirement under D.2.2.7 for a Network change to have become established this is a

separate process under the Network Code. Network Rail accepts that the ruling of the determination of TTP371 stands in accordance with D5.1.2. Network Rail has appealed this decision to the ORR and awaits events. Network Rail's view remains that Part D and Part G are separate parts of the Network code they work separately and deal with separate issues. Part D relates to timetabling Part G covers the commercial settlement between Network Rail and Access beneficiaries as a result of Changes to the Network affecting their business. In line with the determination of TTP371 Network Rail has proposed that the changes to the TPRs at West Ealing will only apply once the Network change has been implemented currently planned for Christmas 2015. There is nothing in the determination of TTP371 or in the Network Code Part D or Part G that does not allow Network Rail to propose or implement TPR changes prior to the Network Change being established. Part G allows that a Network change can be established at any time before implementation of the change, but Part D lays down strict timescales for the amendment of the TPRs and timetable production that Network Rail followed. The practical effect is that Network Rail is often obliged to propose and implement TPR changes to reflect Network Change before they are established, as we have to plan the timetable on the basis that the Network change will go ahead. Network Rail is strongly of the view that as GBRF having brought the dispute under Part D that the panel should limit its consideration as to Network Rail's entitlement to amend the TPRs under Part D and D.2.2.7 and not the determination of TTP371 and if Network Rail has correctly applied those provisions in this case.

- 5.9 (4.10) Network Rail confirms GBRF registered their dispute on March 3rd 2015.
- 5.10 Both referring parties cite Access Disputes Committee decision form T1371 (Appendix F&G). In this case Network Rail although recognising the Determination feels that 5.1 (Claimants Appendix G Page 31 of 40) does not apply as the TPR's are listed as starting Christmas 2015 once the infrastructure is in place. (Appendix F) It is not clear what relevance the Part G guidance note has to this dispute, as the code notes the 'guidance note' is simply that 'guidance'. Network Rail notes that there is no mention of Part D in this note and Network Rail view is that the mention of implementation refers to the physical alteration of the Network only.
- 5.11 (4.11) Network Rail although recognising the Determination TTP371 and its application to Forest Gate and Stratford feels that in this case 5.1 (Claimants Appendix G Page 31 of 40) does not apply as the TPR's are listed as starting Christmas 2015 once the infrastructure is in place. (Claimants appendix page 4 of

40) Network rail also state current TPR values cease to apply from Christmas 2015 (claimant's appendix E page 25 of 40). (Claimants page 3 and 4 of 40 of the dispute paper). Network Rail have appealed to the ORR with regard to TTP371 as the Network Code is not explicit on this and a link between part D and part G of the Network Code cannot be identified (claimant appendix G 3.2 page 27 of 40), as inferred by both GBRF and Freightliner. The current Track Access Contracts for both parties section 5.4 (Appendix E) states "Changes to the Engineering Access Statement and the Timetable Planning Rules are subject to regulatory protection (including appeals) in accordance with Part D of the Network Code."

- 5.12 (5.1/6.8/6.9/6.10/6.11/6.12/6.12.1/6.12.2/6.12.3) Network Rail believes there is limited value in referring to Oxford Phase 0. The facts giving rise to the decision not to implement/progress the Oxford Phase 0 TPR's were very different from the current dispute. The email sent to GBRF to explain why we were not proceeding with the change had been written to explain the issues internally within Network Rail. (Claimant dispute paper 6.8 page 7 of 40). We do understand under the Code that it is up to Network Rail to make decisions however with our discussions with train operators we noted that we had not progressed our proposals sufficiently to be able to explain them to the Timetable Participants. We also recognised that proposing TPR change without a supporting Network Change proposal regardless of the wording of Part D or Part G was not best practice and it was for this reason we decided not to proceed with the TPR change.
- 5.13 (5.2/5.3) Network rail offered to discuss evidence to substantiate the newly proposed TPRs values 05 March 2015 (Claimant Appendix I. Defendant Appendix B). The Claimant has mentioned Establishment of the Network change, however the determination of TTP371 does not mention establishment of a Network change only implementation of the change.
- 5.14 The dispute registered (claimant appendix H page 33 of 40 reference a and b) does not dispute the TPR values proposed by Network Rail only that this may cause a reduction in capacity and refers to TTP371.
- 5.15 (6.4/6.5/6.6/6.7) Network rail offered to discuss evidence with regards to the values, which would have included the Railsys modelling. Another Operator queried the junction margins and the evidence was provided.(Appendix G). As previously stated GBRF referred to 'reduced capacity' and 'V2 timescale' not actual TPR values. The offer for further discussion was not taken up by either party. GBRF query the wording

of the 'junction margins' Network Rail believe that as these 'midpoints' are within the same signal section that a rewording to 'platform end margins' would clarify the location

5.16 Network rail refutes GBRF's claim that there is no methodology on reaching the values. Network Rail has evidence that we remain willing to share that the current DEC 15 TPR's work and can accommodate current capacity. Please see (Appendix C) showing the Railsys modelling.

5.17 The infrastructure is planned to installation is Christmas 2015, the timetable is designed to operate over the expected infrastructure from Christmas 2015 5.18

5.18 Network Rail views that the issues raised by future use are best addressed by Part G process in establishing the Network Change.

6 DECISION SOUGHT FROM THE PANEL

6.1 THE DECISION THAT NETWORK RAIL SEEKS FROM THE TIMETABLING PANEL IS FOR THE PLANNED DEC 15 TPR'S FOR WEST EALING CONSULTATION DOCUMENT IN AND THE DECISION DOCUMENT TO REMAIN. ALSO THAT NETWORK RAIL IS ABLE TO USE D2.2.7 TO PROPOSE ALTERATIONS TO THE RULES AFTER VERSION 2 OF THE RULES HAS BEEN PUBLISHED (NR 5.6, GBRF 4.7)

7 APPENDICES

Appendix A – Network Code Part D 1.17, 2.2.7, 4.61, 6.21

Appendix B – Email offering discussion on Network Rail's decision

Appendix C – West Ealing Report

Appendix D – TT column print off of Greenford Branch

Appendix E – Track Access Contracts

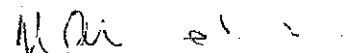
Appendix F – TPR Decision email.

Appendix G – Email with Railsys evidence (Appendix D) to other Operator querying TPR values

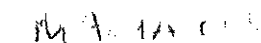
8 SIGNATURE

For and on behalf of
[usually Network Rail Infrastructure
Limited]

Signed



Print Name



Position

