



a Genesee & Wyoming Company

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By email

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TTP1520

Dear Caroline,

Freightliner welcomes the opportunity to make further representations in connection with Network Rail's appeal of TTP1520. Freightliner provides brief comments below to supplement the previous evidence provided on 25th October 2019.

Timescales

Freightliner lodged the timetable dispute on 21st June 2019 and at every stage, including in the handling of this appeal, has sought to expedite the process. Our priority at every stage has been to seek inclusion of the train slots in the December 2019 timetable, in line with access rights. It is important that the industry has a dispute process that can resolve matters within appropriate timescales.

Network Rail appears to suggest that the only option now is to wait until the May 2020 timetable to resolve the matter. This is wholly unsatisfactory. Freightliner reiterates the poor incentive that this would create. It would allow parties to believe they can fail to meet their contractual obligations simply by waiting until a sufficiently late stage in the Timetabling process. It is imperative that resolution of disputes can be addressed in the timetable in question.

In this instance, was Network Rail to be permitted to wait until a future timetable to rectify a contractual failure in the prior timetable, a dangerous precedent would be created. It would risk Network Rail in future wrongly rejecting any access proposal in the knowledge that they would only be required to rectify it in future timetables. This would not be tenable for any operator nor its customers and undermines the status of access rights.

Scope of timetabling panel

Freightliner reiterates that the Timetable Panel's decision focused on the 'result to be achieved' rather than a specific alternative. The hour-long time windows in each of our access rights both at origin and destination and the significant amount of pathing time in the schedules, means that there are various different timetabling options, which the Timetabling Panel did not direct Network Rail on.

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Freightliner is concerned that Network Rail wishes to limit the scope of the timetabling panel. Instructing Network Rail to merely 'reconsider its decision' would significantly undermine the value in raising a timetabling dispute, as Network Rail would not be compelled to rectify their contractual failures in future.

Award of Compensation

Freightliner notes that Network Rail continues to query the award of compensation. Freightliner has asked throughout this dispute that the paths be accommodated in line with access rights, in order to grow rail freight volumes. It is only in the absence of accommodating the train slots at 1600t does the issue of compensation become relevant. It is now clear to Freightliner that Network Rail will not include these 1600t paths from the start of the December 2019 timetable and Freightliner is now planning on the assumption that these paths will be available from the start of April in line with the Timetabling Panel's decision. Freightliner is expecting to be compensated for the financial impact of not having these paths available from the start of the December timetable.

Freightliner would consider that the circumstances to award compensation, as detailed in Condition D5.7.1 of the Network Code, to apply. Freightliner regards Network Rail breaching its track access contract to be wholly unreasonable and therefore the award of compensation by the Timetabling Panel to be entirely appropriate.

Network Rail seems to be implying that a breach of Freightliner's track access contract is not unreasonable. Therefore, Network Rail suggests Freightliner should raise a separate dispute to seek compensation. To raise a separate dispute on the same contractual matter would not be a good use of the industry's time. It would introduce additional cost, time and bureaucracy and cannot be in the best interests of the industry to reconvene on the same matter. We note Network Rail's recent tendency to use external lawyers (meaning that the other party in a dispute must also consider its legal representation) to handle disputes referred to Access Dispute Adjudication.

Conclusion and further discussion

Freightliner notes that Network Rail has now ascertained the full impact on other operators of uplifting the Freightliner tonnages. Freightliner would reiterate that this impact is purely the result of Network Rail's own failure to adhere to the Network Code and its breach of Freightliner's contract. The scale of the impact should not be reason to avoid fulfilling contractual obligations.

As ever, please let us know if you would like to discuss any part of this response.

Yours sincerely,



Peter Graham,
Rail Strategy Manager,
Freightliner Group Limited