



RAILWAYS ACT 1993 FINAL ORDER - RAILTRACK PLC

Under section 55 of the Railways Act 1993, I hereby make the following order in respect of Railtrack PLC of Railtrack House, Euston Square, London NW1 2EE—

The obligation.

1. In the period of 12 months beginning on 1 April 1999 (the 'total period'), Railtrack shall, in order to comply with Condition 7 (Stewardship of the Licence Holder's Network) of its network licence, ensure that the minutes delay in the total period is at least 12.7 per centum less than the minutes delay in the base year.

Monetary penalty

2. If Railtrack fails to comply with the obligation in paragraph 1, it shall pay to the Regulator, within one month of demand, a monetary penalty of £4 million for each percentage point by which the change in minutes delay in the total period compared with the base year (rounded up to the nearest one-tenth part of a percentage point) is less than 12.7 per centum and pro rata for each one-tenth part of a percentage point.

Relief from the obligation

General

3. For the purposes of paragraph 1:
 - (a) there shall not be counted as minutes delay any minutes delay which the Regulator determines he is satisfied should be left out of account on the grounds that Railtrack is entitled to relief because it has reduced minutes delay to the greatest extent reasonably practicable having regard to all relevant circumstances including the ability of Railtrack to finance its licensed activities; and
 - (b) having regard to the determination of any dispute after the date of this order and before 7 August 2000 relating to the allocation of any minutes delay which are material to the obligation in paragraph 1, the Regulator may determine an appropriate adjustment should be made in respect of the minutes delay in the base year or the total period.

Power to initiate determinations

4. A determination may be made by the Regulator under paragraph 3 at any time after the end of the total period and whether on the Regulator's initiative, notified



to Railtrack on or before 31 July 2000, or on the application of Railtrack (under paragraph 5).

Right of Railtrack to require Regulator to make determination

5. Railtrack shall be entitled, by notice given to the Regulator on or before 31 July 2000, to require the Regulator to make a determination for the purposes of paragraph 3. Any such notice shall be accompanied by a statement by Railtrack specifying—
 - (a) the number of minutes delay which Railtrack asserts should not be counted as minutes delay;
 - (b) the reasons for leaving them out of account;
 - (c) any adjustment which Railtrack asserts should be taken into account in making an adjustment under paragraph 3(b); and
 - (d) the reasons for making such an adjustment,

and containing such additional information as Railtrack wishes the Regulator to take into consideration in making his determination.

Representations etc. from any person

6. In making a determination under paragraph 3, the Regulator shall be entitled to take into consideration any representations or objections by any person which are timeously made and not withdrawn.

Certificates

7. Not later than 31 May 2000 Railtrack shall provide to the Regulator a statement of the minutes delay and each component of the definition of minutes delay during the base year and the total period.
8. Not later than 31 May 2000 Railtrack shall provide to the Regulator a certificate in the form specified in Schedule 2 to this order, given on behalf of Railtrack by a director of the company.

Definitions and interpretation

Definitions

9. In this order—

"base year" means the period of twelve months beginning on 1 April 1998;

"certificate" means a certificate given under paragraph 8;



"director", in relation to a company, has the meaning ascribed to it in section 741 of the Companies Act 1985;

"minutes delay" means the amount calculated by the formula $X \div Y$ where:

X is the aggregate number of minutes delay of passenger trains in the base year, a period or the total period (as the case may be):

- (a) measured in accordance with the system operated by Railtrack pursuant to Condition B of the Railtrack Track Access Conditions; and
- (b) allocated as being the responsibility of Railtrack in accordance with the procedures set out in:
 - (i) the track access contracts between Railtrack and each of the franchise operators, Heathrow Express Operating Company Limited and Eurostar (UK) Limited and any other relevant passenger train operator and that Condition B; and
 - (ii) the TRUST Attribution Guide issued by Railtrack and in force from time to time subject (in respect of the Guide in force at the date of this order) to such modifications (including any new delay code) as may be approved by the Regulator,

and generally on the basis upon which allocation was actually and demonstrably effected during the year commencing 1 April 1998 and used to calculate the Railtrack-caused delays per passenger train movement shown in Table A on page 49 of the Network Management Statement; and

Y is the total number of passenger train movements in the base year, a period or the total period (as the case may be) ascertained on the same basis as that used to determine the number of passenger train movements for the purposes of Table A on page 49 of the Network Management Statement.

"Network Management Statement" means the statement published by Railtrack in March 1999 in accordance with paragraph 4 of Condition 7 of its network licence;

"period" means a period as specified in Schedule 1 to this order;

"Railtrack" means Railtrack PLC;

"Railtrack Track Access Conditions" means the document having that name incorporated in track access contracts to which Railtrack is a party; and



"total period" has the meaning ascribed to it in paragraph 1.

Interpretation

10. In this order (unless the context otherwise requires)—
- (a) references to paragraphs are to paragraphs of this order;
 - (b) paragraph headings are for convenience of reference only and do not form part of, and shall neither affect nor be used in the construction of, this order;
 - (c) where, for the purpose of any track access contract referred to in the definition of "minutes delay", the base year, a period or the total period would be treated as starting or finishing other than at the beginning or end of the date stated, it shall be so treated for the purpose of all definitions and calculations in this order; and
 - (d) terms and expressions defined in the Railways Act 1993, or Railtrack's network licence shall have the same meanings in this order.

Effective date

11. This order shall take effect on 25 November 1999.

A handwritten signature in black ink, appearing to read "Tom Winsor".

TOM WINSOR
Rail Regulator

24 November 1999



Schedule 1

PERIODS

Period number	Duration
1	1 April 1999 – 1 May 1999
2	2 May 1999 – 29 May 1999
3	30 May 1999 – 26 June 1999
4	27 June 1999 – 24 July 1999
5	25 July 1999 – 21 August 1999
6	22 August 1999 – 18 September 1999
7	19 September 1999 – 16 October 1999
8	17 October 1999 – 13 November 1999
9	14 November 1999 – 11 December 1999
10	12 December 1999 – 8 January 2000
11	9 January 2000 – 5 February 2000
12	6 February 2000 – 4 March 2000
13	5 March 2000 – 31 March 2000



Schedule 2

Certificate under paragraph 8 of the final order by the Rail Regulator in respect of Railtrack PLC dated 23 November 1999

I, [*state name of director in question*], being a director of Railtrack PLC, Railtrack House, Euston Square, London NW1 2EE, hereby certify to the Rail Regulator as follows—

1. The minutes delay in respect of the base year was [state number] and in respect of the total period was [state number] and the amounts represented by X and Y in the definition of minutes delay were respectively [state number] and [state number] in the base year and [state number] and [state number] in the total period.
2. The information given in paragraph 1 of this certificate—
 - (a) has been collected and compiled honestly and accurately in accordance with processes and procedures which are sound and in accordance with the final order made by the Rail Regulator in respect of Railtrack PLC dated 24 November 1999 ("the final order"); and
 - (b) is information given for the purposes of the Railways Act 1993.
3. Terms and expressions used in this certificate have the meanings ascribed to them in the final order.

This certificate is given this day of 2000

by

Director