
ACCESS DISPUTE RESOLUTION

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Model Clauses

Annex 1: Proposed amendments to ADR Rules

Thank you for the opportunity to comment on the proposals and draft conclusions that you published on 24 December 2002.

I wish to make some comments on Annex 1 of the model clauses entitled 'Proposed Amendments to Access Dispute Resolution Rules'. These comments are submitted in my capacity as the Disputes Secretary, and from an objective and knowledgeable standpoint, based on eight years dealing with the procedures.

If the Industry accepts that a Dispute Secretary has a role to play, then he should be allowed to play that role, including operating the processes and the consultation involved in appointment of an arbitrator. That is why I advocate that the Dispute Secretary should continue to be in the initiative in the process as described in Section C of the Rules. I do not think that it is for the Rail Regulator to be involved in purely process issues.

Accordingly, I contend that the words 'Dispute Secretary' should be substituted for 'the Regulator':

- (i) in sections C2.2.4(d);
- (ii) in the line immediately following clause (d) of section C2.2.4, after the words "by such person as"; and
- (iii) in clause C.2.5.

The last few words of paragraph C2.2.4 'and the Disputes Secretary' are then superfluous and could be deleted.

Furthermore, if you accept my point that the Dispute Secretary should operate the routine process rather than the Regulator, the words "and the Regulator" could be deleted in paragraphs C2.1.1(b) and C2.2.3(a).

I do fully accept that the Regulator, and not the Dispute Secretary, should maintain a

published list of suitable people and approve the appointment of any new candidates for the list in accordance with paragraph C2.2.2(b).

Finally the cross-reference in the first line of paragraph C2.2.5 should, I think, be to paragraph C2.2.4.

Yours sincerely,

Chris Blackman
Disputes Secretary