

**CLARIFICATION OF CERTAIN
ASPECTS OF THE DISPUTES
COMMITTEE AWARD IN THE
CASE DC 58
23 JULY 1998**

**NATIONAL UNION OF RAIL, MARITIME AND
TRANSPORT WORKERS (RMT)**

AND

**ASSOCIATED SOCIETY OF LOCOMOTIVE
ENGINEERS AND FIREMEN (ASLEF)**

**Trade Union Organisation Within the Train
Operating Companies' Lines of Promotion to Driver**

and

**Trade Union Organisation of Conductors Within
Central Trains**

1. The Disputes Committee has been asked by the TUC General Secretary to clarify certain aspects of its Award DC 58, 23 July 1998, RMT and ASLEF. This followed a letter from ASLEF setting out twelve points which the Association said covered 'areas' of the Award of the Committee upon which it sought clarification. In accord with the normal procedure of the TUC, in such circumstances, the ASLEF letter was sent to the RMT and the union asked if it wished to comment on the points raised by ASLEF. Subsequently, the ASLEF letter and the RMT response was sent to the Committee (the RMT response was also sent to ASLEF).

2. The Committee was advised by the TUC General Secretary that in its considerations it should have in mind that the TUC General Council has decided and Congress endorsed that there is no appeal against the Award of a Disputes Committee. However, a party to a Disputes Committee Award may request that any specific aspect of its terms be clarified if it was thought that its intention/application was, in some way, unclear.

3. In reaching its decisions the Committee has carefully considered the points raised by ASLEF, the response of the RMT and the advice of the TUC General Secretary. The Committee also, of course, has had in mind its intentions in deciding its Award (DC 58, 23 July 1998) after hearing the original submissions of both unions.

4. The Committee set out below, chronologically, each point raised by ASLEF, together with the 'Response' of the Committee.

5. ASLEF's Point 1

"In respect of paragraph 22 of the Award, can ASLEF recruit Conductors when they commence Driver Training?"

The Committee's Response

Paragraph 22 of the Award deals with, among other things, the circumstances whereby ASLEF may recruit conductors or any other person, within Central Trains, who undertakes driver training. The relevant part of paragraph 22 states:

"Therefore, if a conductor or any other person, within Central Trains, undertakes driver training while remaining covered by the substantive terms and conditions of their existing position they should not be subject to recruitment and representational efforts by ASLEF. Only when such a person has completed their training and taken up a 'footplate' position would it be appropriate for them to be recruited by ASLEF in accord with the terms of the Disputes Principles.....' (The Committee's additional underlining).

The final sentence of paragraph 22 explains that other circumstances where it would be appropriate for an individual to seek membership of ASLEF, without the Society being in breach of the Disputes Principles, are set out in paragraphs 20 and 21 of the Award. The terms of these two paragraphs are set out below:

Paragraph 20

"Therefore, where a train operator seeks applicants for driving vacancies from across all its employees this shall not be regarded by ASLEF as giving it rights of recruitment either of all the individuals within the scope of the recruitment or amongst those who successfully apply, providing that during their training their substantive terms and conditions continue to be determined by another union's existing recognition and negotiating arrangements. Once an individual has completed training and takes up a driving position, then it would be appropriate for them to apply for membership of ASLEF if that was their wish and for the proper membership transfer procedures to be carried out."

Paragraph 21

"However, where a successful applicant for driver training is taken out of their current recognition and negotiating arrangements and placed into full-time driver training, covered by ASLEF recognition and negotiating arrangements, it would then be appropriate for them to apply to transfer to ASLEF, if they so wished. Likewise, where a recruit from outside undertakes full-time driver training covered by ASLEF recognition and negotiating arrangements, it would be appropriate for them to apply to join ASLEF. If in either of these circumstances an individual was unable, for whatever reason, to continue with driver training and was offered a position in another grade, it would be appropriate for them to transfer their membership following the proper

procedures to the union that is recognised to negotiate their substantive terms and conditions.”

In the view of the Committee the point raised by ASLEF is clarified by, as explained in the final sentence of paragraph 22, reading the relevant part of paragraph 22 in conjunction with paragraphs 20 and 21. All of which are set out above. In addition, regard must be given to the terms of paragraph 19 which deals with rights of recruitment and representation in accord with the TUC Disputes Principles and Procedures.

6. ASLEF's Point 2:

“If a conductor is a non trade unionist can ASLEF recruit that conductor who decides to become a driver?”

The Committee's Response

In the terms of the Award of the Committee, it is not relevant, in respect of ASLEF recruitment, whether a conductor who wishes to become a driver is a 'non trade unionist'. What is relevant to ASLEF recruitment of any person who wishes to become a driver has been set out by the Committee in respect of ASLEF's Point 1 above (see paragraph 5 above).

7. **ASLEF'S Point 3:**

"If a conductor is a former member of another recognised trade union and demands to join ASLEF are we in order to take such an individual into our Society?"

The Committee's Response

The terms of TUC Disputes Principle 2 clearly set out the procedures to be taken if a union receives a membership application from a person who is currently, or was a former member, of another union. These procedures must be adhered to in all circumstances. In this regard the Committee, unfortunately, found it necessary to state in paragraph 25 of its Award:

"During its investigation the Committee became very concerned at the apparent difficult state of relations between ASLEF and RMT and that there seems little or no effort to comply with the TUC Disputes Principles and Procedures. These circumstances must change....."

8. **ASLEF's Point 4:**

"Are the Committee aware that on Central Trains a conductor who becomes a trainee driver receives a new contract and is on the bottom rung of the driver grade? At this point ASLEF believes we are entitled to recruit this individual even though training has not been completed. Is this assumption correct?"

The Committee's Response

The Committee would again refer ASLEF, in general, to the terms of the response to its Point 1 above, which clarifies ASLEF recruitment in respect of any individual who wishes to or takes up, driver training. Specifically, ASLEF's point is clearly covered by that part of paragraph 22 which the Committee has set out in its response to Point 1 above. That is:

"Therefore, if a conductor or any person, within Central Trains, undertakes driver training while remaining covered by the substantive terms and conditions of their existing position they should not be subject to recruitment and representational efforts by ASLEF."

Therefore, a conductor in the circumstances of ASLEF's Point 4 is only appropriate to recruitment and representation by the union which determines his/her existing terms and conditions of employment.

9. ASLEF's Point 5:

"How can the Committee reconcile the fact that they accept that "the line of promotion to drivers" within the privatised rail industry *does not exist* (para. 22) with the recognition that recruitment to driver "is open to staff within a particular company to apply for driver training (para.16)?"

The Committee's Response

In the view of the Committee the quotes from the Award of the Committee, as set out in ASLEF's Point 5, are both selective and taken out of context.

In paragraphs 14-21 of its Award the Committee deal with the question of whether such a concept as 'line of promotion to driver', continues to exist within the privatised rail industry, as it did within BR. Paragraph 15 of the Award states:

"There is now a multiplicity of train operating companies, whereas previously BR was the sole employer. From its investigations, the Committee is of the view that a 'line of promotion to driver' does not now exist in a structured and defined way as it did within BR. (The Committee's additional underlining).

Paragraph 16 of the Award states:

"The general position in respect of becoming a driver now appears to be that when driving vacancies arise, it is open to all staff within a particular company to apply for driver training. However, if internal recruitment cannot provide the required personnel then there will be external recruitment either of persons to be trained as drivers or who have already gained driver qualifications with another train operator. Some train operators, because of their staffing structure will advertise internally and externally at the same time, others will advertise only externally, seeking to attract already qualified drivers."

Paragraph 17 of the Award states:

"In the view of the Committee, it cannot be said that the arrangements that now exist for the recruitment of drivers within the privatised train operators give ASLEF rights of recruitment among staff already covered by recognition and negotiating rights accorded to another union - without the agreement of that union (TUC Disputes Principle 3). Indeed, the fact that an individual covered by recognition and negotiating rights of a union, other than ASLEF, may apply for driver training does not give ASLEF recruitment rights either of the individual or within the grade in which the individual is employed. (The Committee's additional underlining)".

The partial quote from paragraph 22 of the Award by ASLEF in its Point 5 is not contradictory, as implied by the Society, to the terms of paragraphs 14-21, of the Award or to that part of paragraph 22 as quoted by ASLEF.

10. **ASLEF's Point 6:**

"In what way do the Committee believe they carried out the additional request of the General Secretary, TUC, *"to decide upon the differences between ASLEF an RMT in respect of the trade union membership of persons who are in the 'line of promotion to driver' within the privatised train operating companies"?*"

The Committee's Response

The Committee do not consider that the terms of ASLEF's Point 6 constitutes a request for clarification of a specific aspect of the terms of the Committee's Award. (See advice to the Committee from the TUC General Secretary in paragraph 2 above).

However, the Committee would refer ASLEF to, in particular, paragraphs 14-21 of the Award therein the Committee deal with the arguments between the unions about the line of promotion to driver within the privatised train operating companies. Also, paragraph 22 which deals with the particular circumstances of Central Trains.

11. ASLEF's Point 7

"Was it the intention of the Committee that in accepting the changes that have taken place in the railway industry since privatisation, including the opening up of the recruitment possibilities to driver from all employed within some companies, to severely restrict the recruitment possibilities of ASLEF?"

The Committee's Response

This point by ASLEF does not constitute a request for a clarification of the specific aspect of the Award of the Committee. However, ASLEF should be aware that, in deciding the terms of its Award, the Committee considered very carefully both the written and oral submissions of ASLEF and the RMT. The Committee also had in mind the terms of the 'Regulations Governing Procedure In Regard to Disputes Between Affiliated Organisations', Paragraph (R) which states:

"The basic approach of the Disputes Committee shall be to seek to obtain an agreed settlement, whether of a permanent or an interim character, which is acceptable to all the disputants; and the Disputes Committee may at any time make such recommendations as it see fit. But whenever the Disputes Committee considers it to be necessary, it shall make an award. In deciding the dispute the Disputes Committee shall have general regard to the interest of the trade union Movement and to the declared principles or declared policy of Congress but shall in particular be guided by the *Principles Governing Relations Between Unions*, as amended by the General Council and adopted by the Congress from time to time (see also pages 24-26 "The role of TUC Disputes Committees In Disputes Between Affiliated Organisations").

The Disputes Committee did not decide the terms of its Award on the basis of either restricting or expanding the field of recruitment of ASLEF or RMT. The decision of the Committee was based upon the merits of the arguments of each union and being guided in its deliberations by the terms of the above Paragraph (R) of the Disputes Regulations so as to reach a decision that is fair and just in all the circumstances.

12. ASLEF's Point 8

"ASLEF's recruitment policy, "the line of promotion", has always been determined by the Promotion, Transfer and Redundancy Arrangements (PT&R). Such agreements negotiated at Company Council level give open access into the drivers line of promotion based on suitability, first by internal

application and transfers and secondly by external application and recruitment. Should this not have been the basis for a new definition of the line of promotion to driver?".

The Committee's Response

The Committee consider that the terms of ASLEF's "Point 8" could be said to constitute more of an 'Appeal' against the Committee's Award, rather than the seeking of a clarification of a specific aspect of the terms of the Award. (See advice to the Committee by the TUC General Secretary, paragraph 2 above, that there is no appeal against the Award of a Disputes Committee.

However, as a general comment, the Committee would recall that it was because of the longstanding differences between ASLEF and the RMT, which they could not resolve between themselves, that the Committee had to make a binding Award. Unless and until the two unions reach clear jointly agreed understandings on any aspect of relations between them, as covered by the Committee's adjudication, the terms of the Award must apply. So, if the two unions were to jointly agree between themselves a 'new definition of line of promotion to driver' it would supersede the relevant parts of the Committee's's Award, and the TUC General Secretary must be notified.

13. ASLEF's Point 9

"ASLEF never asked for or wished to recruit all those who could apply for Drivers jobs in the new companies, but what we did expect and do need is a

workable definition of “a line of promotion to driver” would be arrived at by the Committee that recognised the changes that had taken place in the railway industry?”

The Committee’s Response

In the view of the Committee, ASLEF’s point 9 falls into the same category as its Point 8, in that it does not seek a ‘clarification’ of a specific aspect of the terms of the Award. The Committee’s comments in regard to ASLEF’s Point 8 therefore also apply to its ‘Point 9’.

As a general comment however, the Committee would again refer ASLEF to the terms of paragraphs 14 to 21 of the Award which lay down the circumstances of the recruitment and representation of train drivers within the privatised rail industry.

14. ASLEF’s Point 10:

“How is ASLEF to interpret the Award where:

- (i) at Gatwick Express there is a machinery that has a Company Council for all traincrew?

- (ii) on Tyne and Wear Metro there is now a new grade of Metro Operator which is a multi-skilled position filled by staff who will be trained to undertake both revenue control and driving duties?

- (iii) on Croydon and other new Metro systems there is as yet no organised trade union?"

The Committee's Response

In response to (i) 'Gatwick Express', it is the Committee's experience that representation on a Company Council is usually 'grade or area' based. In such circumstances, the Committee sees no reason why there should be any difficulty in applying the terms of its Award, particularly paragraphs 14 to 21, to determine the representation of ASLEF and RMT on the Company Council.

With regard to (ii) 'Tyne and Wear Metro', there is a previous TUC Disputes Committee Award which applies to this system which, in any case, is not part of the privatised mainline train operating companies upon which the Committee has made its Award.

As to (iii) 'Croydon and other new metro systems', the TUC has established a 'light Rapid Transit Committee', to which both ASLEF and RMT are party. This Committee, which is chaired by the TUC General Secretary, deals with all aspects of trade union organisation and recognition covering Light Rapid Transit Systems. Indeed, it is understood by the Committee that ASLEF, along with other constituent unions of the TUC LTRC, are currently involved in an agreed procedure to determine trade union recognition within the new Croydon LRT system.

15. **ASLEF's Point 11**

"Can the Committee's decision stand the test of the legal right of a person to join an appropriate union of his/her choice and has the Committee appreciated the penalty costs that could be awarded against ASLEF?".

The Committee's Response

The terms of the Award of the Committee neither commit nor induce a breach of current industrial relations/employment legislation.

16. **ASLEF's Point 12**

"How does the Committee reconcile its statement in paragraph 26 that *"there is a possibility of structural change becoming an on-going feature within the industry"* with an Award that is both historical in its analysis and static in its application? How can ASLEF adapt its membership and recruitment policies to meet the changing needs of the Railway Industry if its recruitment base is fixed in the past, for all time?".

The Committee's Response

The ASLEF quote from paragraph 26 of the Award is highly selective. The full text of the paragraph leaves the reader in no doubt that the Committee was looking to the future in urging ASLEF and RMT to take steps to provide for them to 'grow and prosper' in the face of 'structural change becoming an ongoing feature within the industry'. The Committee can do no more than reproduce paragraph 26 in full:

"Indeed, given the multiplicity of train operations that now exist, each with their own organisations objectives; the turnover in company ownership; and the question of franchise renewal, there is a possibility of structural change becoming an on-going feature within the industry. In the view of the Committee, if the unions are to grow and prosper in these circumstances, they must make an effort to set aside their long-standing differences and animosities and work closer together as urged of all affiliates that come into close contact, by TUC Disputes Principle 1. Perhaps in the discussions chaired by the TUC General Secretary about inter-union relations within the Rail industry, consideration could be given to the possibility of establish a joint union high-level group to monitor the activities of train operators that may impact upon inter-union activities. Where this is the case and difficulties arise or threaten to arise, the 'group' would use its best endeavours to establish a mutually acceptable solution; the long-term objective being to establish more harmonious inter-union relations and closer working, which can only be of benefit to members and the advancement of trade unionism within the industry". (The Committee's additional underlining).

17. Representation of Conductors at Local Level

Background

On 25 March 1999 the TUC General Secretary met the General Secretary of ASLEF and the General Secretary of RMT, about a difference that had emerged between the two unions as to whether or not the Dispute Committee

Award provided for ASLEF to represent conductors at local level within Central Trains. ASLEF argued that the Society did have such a right, whereas the RMT contended that the Award did not provide such rights of representation to ASLEF. The TUC General Secretary decided, in the circumstances, to ask the Disputes Committee to clarify the issue. He also asked the Committee, in so doing, to meet representatives of both unions to hear at first hand their respective arguments. Prior to this, both unions provided written submissions to the Committee which were also exchanged between ASLEF and RMT. The Committee reconvened in Congress House on 28 May, when representatives of both unions made oral submissions. At the conclusion of these, it was said for the RMT that the union would wish to put its final comments to the Committee in writing. When these were received by the TUC, a copy was forwarded to ASLEF and as the Society had commenced the re-convened proceedings, it was invited to respond to the RMT statement with a concluding written submission. On receipt of the ASLEF written response this, together with the RMT concluding comments, was sent to the Committee (a copy of the ASLEF submission was also sent to RMT).

The Committee's Response

The Committee has fully considered all the oral and written evidence and supporting documentation provided to it by both unions on this issue. The Committee dealt with all the issues between ASLEF and RMT, within Central Trains, in paragraphs 22 and

23 of its Award. For convenience these are set out in full below and the Committee have underlined those parts of each paragraph which are of particular relevance to the question of the representation of conductors at local level:

"22. The Committee now turn to the particular issues between the RMT and ASLEF within Central Trains. The arguments by ASLEF about the 'line of promotion to driver' insofar as they apply to Conductors within Central Trains being appropriate to recruitment and representation by ASLEF, have been dealt with in paragraphs 14-21 above, wherein the Committee deal with the question of whether such a concept continues to exist within the privatised rail industry. The view of the Committee is that it does not. Having in mind its views and decisions in the above paragraphs, the Committee has decided that ASLEF should not have in the past and must not in the future seek to recruit and represent Conductors within Central Trains without the express agreement of the RMT, which is the recognised union to negotiate the substantive terms and conditions for Conductors within the company. Any such step by ASLEF in future would be in contravention of Disputes Principles 2 and 3 and Principle 4, if the union was to contemplate either official or unofficial action in pursuing representational rights. Therefore, if a Conductor or any other person, within Central Trains, undertakes driver training while remaining covered by the substantive terms and conditions of their existing position they should not be subject to recruitment and representational efforts by ASLEF. Only when such a person has completed their training and taken up a 'footplate' position would it be appropriate for them to be recruited

by ASLEF in accord with the terms of the Disputes Principles. Other circumstances where an individual would be appropriate to seek membership of ASLEF without the Society being in breach of the Disputes Principles are set out in paragraphs 20 and 21 above.

23. The Committee consider it to be regrettable that a number of Conductors within Central Trains left the RMT to join ASLEF. Where ASLEF did not inform RMT that their former members had applied to join the Society, this was in breach of Principle 2. The Committee is of the firm view that the Conductors who were previously members of RMT should very seriously consider returning into membership of the RMT, which is the union recognised by the employer to represent and negotiate for Conductors.

RMT and ASLEF should keep each other informed of the membership of Conductors on a regular basis and if it were thought necessary by either organisation discussions should be held and agreement reached on a mutual acceptance of a resolution to the Central Trains membership issue. In any such discussions, efforts should be made and account taken of all outstanding membership issues between the unions - certain counter claims about membership recruitment were made against RMT by ASLEF during the Committee's investigation. Also, there must be clear understanding by both unions that the terms of the TUC Disputes Principles and Procedures must be carried out in all circumstances and early replies made to all correspondence in this regard."

When the Committee, in paragraph 22 of its Award, said that “ASLEF should not have in the past and most not in the future seek to recruit and represent conductors in Central Trains” (the Committee’s additional underlining) the Committee intended this to apply to both Company Council level and local/depot level. The terms of the Committee’s decision did not differentiate between the two levels of representation and it is therefore wrong of ASLEF to so argue that it did and to, as a consequence, seek to put forward conductors who are now members of ASLEF, to stand as conductor representatives in local depot elections. The Committee consider that in the light of the foregoing they should draw attention to the terms of paragraph 23 of their Award (set out above), which deals with the recruitment of RMT conductor members into membership of ASLEF in breach of TUC Disputes Principle 2 (see in particular the Committee’s underlining).

The Committee now turn to the argument by ASLEF that, “the original Disputes Committee did not have within any of its terms of reference a remit to examine the right of ASLEF to represent Conductors at local level within Central Trains”. The Committee has consulted the TUC General Secretary on this point. As a consequence, the Committee would explain that under Rule 12(e) of Congress the TUC General Secretary ‘may refer any such case’ of dispute between affiliates to a ‘Disputes Committee of Congress for resolution....’ . In paragraph 2 of the Award of the Committee it stated:

“Initially, the Committee had been convened by the TUC General Secretary to consider differences between RMT and ASLEF about the trade union

organisation of Conductors employed by Central Trains. The RMT claimed that ASLEF had acted in breach of TUC Disputes Principles 2, 3 and 4 in respect of its recruitment of conductors within Central Trains. ASLEF had rejected the charges of the RMT and had argued that it had certain long-standing rights of recruitment which allowed it to recruit Conductors which it claimed were within the 'line of promotion to driver' within Central Trains."

The Committee has, of course, already referred above to paragraph 22 of its Award wherein it decided, among other things, that ASLEF, "should not have in the past and must not in the future seek to represent Conductors within Central Trains, without the express agreement of the RMT". This falls within the terms of Principle 3 upon which the Committee had to decide.

The Committee is very disappointed at the differences that continue between ASLEF and RMT. It is the view of the Committee that the time and effort so expended would be better deployed as suggested within the terms of paragraphs 25 and 26 of the Award, which are concerned with the establishment of more harmonious inter-union relations and closer working between ASLEF and RMT. The Committee would add that this should include making every effort to resolve differences by agreement. However, having made this point, the Committee is pleased to note that discussions have been held between the General Secretaries of ASLEF and RMT, with the TUC General Secretary and that further talks are scheduled to include the Presidents of both unions. The Committee very much hope that this will lead to much improved relations and understandings that in turn will provide for closer

working on common issues which would be a direct benefit to members of both ASLEF and RMT.

Signed W Connor (Chair)
 K Cameron
 W McCarthy
 B Barber (Secretary)

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