



IN THE COMPETITION
APPEAL TRIBUNAL

Case: 1106/5/7/08

BETWEEN:

ENRON COAL SERVICES LIMITED (in liquidation)

Claimant

-and-

ENGLISH WELSH & SCOTTISH RAILWAY LIMITED

Defendant

ORDER (as amended)

UPON reading the written submissions of the parties

AND UPON hearing Counsel for the parties at a case management conference on 12 January 2009

IT IS ORDERED THAT:

FORUM

1. Under rule 18 of the Competition Appeal Tribunal Rules 2003 (S.I. No. 1372 of 2003) (“the Tribunal Rules”), the proceedings shall be treated as proceedings in England and Wales.

APPLICATION FOR REJECTION OF PART OF CLAIM

2. Any application to dismiss any part of the Claim or Defence shall be heard at a hearing fixed for 10.30am on 5 February 2009, with a time estimate of one day. Initial skeleton arguments are to be filed and served by 5.00pm on 26 January 2009. Any skeleton arguments in response are to be filed by 5.00pm on 30 January 2009.

DISCLOSURE OF DOCUMENTS

3. The Claimant shall by 5.00pm on 14 January 2009 set out its proposed disclosure methodology in response to the Defendant's letters dated 22 December 2008 and 30 December 2008.
4. By 27 February 2009 there should be disclosure of the following specified information:
 - (a) the Claimants shall disclose all of the specific documents to which the Claimants refer in the Claim Form;
 - (b) the Defendant shall disclose:
 - (i) relevant parts of the confidential version of the ORR decision provided by the ORR to the Defendant; and
 - (ii) relevant third party documents from the ORR's files relating to the decision provided by the ORR to the Defendant.
5. By 27 February 2009, the parties shall exchange lists in accordance with the principles and procedure applicable to standard disclosure set out in CPR 31 of the following documents for disclosure:
 - (a) the documents on which that party relies; and
 - (b) the documents which:
 - (i) adversely affect its own case;
 - (ii) adversely affect another party's case; or
 - (iii) support another party's case.
6. The parties shall indicate by 5.00pm on 6 March 2009 which of the documents listed pursuant to [5] above they wish to receive copies. Any such copies provided to be subject to agreement to pay all reasonable costs of copying.
7. The parties shall provide copies of any documents requested pursuant to [6] above within seven days of receiving notice from the other party.
8. The Claimant shall provide copies of the e-mail data that was the subject of the correspondence between the parties dated 12 and 13 March 2009 in the format agreed between the parties by 5.00pm on 9 April 2009.

9. The documents to be disclosed by the parties pursuant to [4] and [5] above shall include any documents within their possession containing “specified information” within the meaning of Part 9 of the Enterprise Act 2002 and shall include in particular relevant third party documents on the ORR’s files provided by the ORR to the Defendant.
10. The parties to the proceedings shall only use the documents disclosed in these proceedings for the purpose of these proceedings except where:
 - (a) the document has been read to or by the Tribunal, or referred to, at a hearing which has been held in public;
 - (b) the Tribunal gives permission; or
 - (c) the party who disclosed the document and the person to whom the document belongs agree.
11. Any application for third party disclosure is to be made no later than four weeks after the production of copies of disclosed documents pursuant to [5] to [10] above.

CONFIDENTIALITY

12. The parties shall seek the assistance of the Tribunal in relation to any documents or category of documents if they are unable to resolve any confidentiality issue between them.

WITNESS STATEMENTS

13. Signed statements of any witnesses of fact are to be filed and served by 5.00pm on 29 May 2009.
14. Unless otherwise ordered, witness statements are to stand as the evidence in chief of the witnesses at trial, subject to each party being permitted in terms of witnesses of fact up to half an hour and in terms of expert witnesses one hour of evidence in chief to focus the Tribunal’s attention on the principal issues.

EXPERT EVIDENCE

15. Permission is to be obtained by further application for either party to file and serve any expert evidence, with the expectation that expert evidence will be confined to two experts for each party.
16. Subject to permission being granted, the Claimant is to file and serve the report of any expert on which it relies by 5.00pm on 19 June 2009.

17. Subject to permission being granted, the Defendant is to file and serve the report of any expert on which it relies by 5.00pm on 10 July 2009.
18. The experts shall hold a discussion for the purpose of:
 - (a) identifying the issues, if any, between them; and
 - (b) where possible, reaching agreement on those issues.
19. A meeting of both parties' experts shall take place to consider, principally with regard to the calculation of damages, what can be agreed between them, what is not agreed and to the extent there is no agreement, the reasons for disagreement.
20. If the experts' reports cannot be agreed, the parties are to be at liberty to call expert witnesses at the trial, limited to those experts whose reports have been exchanged pursuant to paragraphs [16] to [17] above.
21. The experts shall by 5.00pm on 24 July 2009 prepare and file a statement for the Tribunal showing:
 - (a) those issues on which they did agree; and
 - (b) those issues on which they disagree and a summary of their reasons for disagreeing.

HEARING

22. The main oral hearing in these proceedings is to be listed for 16 September 2009, with a time estimate of 4 days with a further 1 day in reserve.

SECURITY FOR COSTS

23. By 5.00pm on 16 January 2009, the Claimant shall provide a letter from its instructing solicitors to the Tribunal and the Defendant setting out the legal basis upon which the reservation of £500,000 (five hundred thousand pounds) for costs would in fact ensure that there is money available to pay any costs ordered.

COSTS

24. Costs shall be reserved.

LIBERTY TO APPLY

25. There shall be liberty to apply.

Lord Carlile of Berriew Q.C.
Chairman of the Competition Appeal Tribunal

Made: 14 January 2009
Drawn: 14 January 2009

Lord Carlile of Berriew Q.C.
Chairman of the Competition Appeal Tribunal

Amended: 25 March 2009
Drawn: 25 March 2009