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4 record.

5 **IN THE COMPETITION**
6 **APPEAL TRIBUNAL**

7
8 1304/7/7/19

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10 Salisbury Square House
11 8 Salisbury Square
12 London EC4Y 8AP

Tuesday 30th April 2024

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15 Before:

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17 Hodge Malek KC
18 Eamonn Doran
19 Hugh Kelly

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21 (Sitting as a Tribunal in England and Wales)

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24 **BETWEEN:**

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26 **JUSTIN GUTMANN**

Class Representative

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29 v

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31 **(1) FIRST MTR SOUTH WESTERN TRAINS LIMITED**
32 **(2) STAGECOACH SOUTH WESTERN TRAINS LIMITED**

Defendants

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36 **A P P E A R A N C E S**

37
38 Philip Moser KC, Stefan Kuppen & Alexandra Littlewood (instructed by Charles Lyndon
39 Limited) on behalf of Justin Gutmann.

40
41 Sarah Abram KC & Hannah Bernstein (instructed by Dentons UK & Middle East LLP) on
42 behalf of Stagecoach South Western Trains Limited.

43
44 James Bourke (instructed by Slaughter and May) on behalf of First MTR

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46
47 Digital Transcription by Epiq Europe Ltd
48 Lower Ground, 46 Chancery Lane, London, WC2A 1JE

49 Tel No: 020 7404 1400

50 Email:

51 ukclient@epiqglobal.co.uk

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(2.00 pm)

THE CHAIRMAN: Thank you very much, Mr Moser. I see you were very constructive yesterday and you have come up with a proposal which I already indicated yesterday would find acceptance by the Tribunal. But we have just two queries.

MR MOSER: Yes.

THE CHAIRMAN: Query one, which is my query, and there is another query from Mr Kelly.

The first one is that what happens to season ticket holders? Let's say I have three season tickets, or maybe an annual season ticket. It does not matter whether I travel every day or not, that is still the price for the season ticket. Are those people going to be required to itemise every journey they have made within the season ticket period because it would seem completely pointless for them to have to do so. Let.

MR MOSER: Well, my learned friend is very eager to --

THE CHAIRMAN: Let her answer.

MR MOSER: -- give you the answer.

MS ABRAM: So the answer is under pot one there will be enough to itemise the purchase of the season ticket.

THE CHAIRMAN: Yes. I agree.

The second query --

MR KELLY: It is a basic question on at what point the claimant's bank account details are secured. So in Epiq's notice and administration plan, they say they will email out to claimants once the claims have been assessed and ask them for their bank details, which seems to me to be putting in place a hurdle to making that payment. But in the settlement agreement that you sent us this morning, it says that for verification purposes you will be getting bank account details.

1 So I just wanted to clarify at what point the bank account details would be gathered.

2 **MR MOSER:** Well, it is the settlement agreement that sets out the position. If you
3 remind me where that is, sorry, in the settlement agreement.

4 **THE CHAIRMAN:** In the settlement agreement you have the schedule, haven't you?
5 That deals with that. And where this comes up is if you look at the Epiq report, it
6 seems to indicate that the bank details are only asked at the actual distribution stage,
7 whereas the point being made under the schedule looks as though you get it upfront
8 which seems a lot simpler to me and more practicable than doing it the other way.
9 Because if you are administrating it and you have, particularly in pot three, if you are
10 going to pay £30 for each person who is certifying six journeys, you must have the
11 bank details and just send them the money and that's it. I don't think there is any real
12 need for an additional step.

13 But we are talking about practicalities.

14 **MR MOSER:** Well, I see. So forgive me, I was wondering what you were referring to.
15 You are referring to the documentation stage where bank account details are one way
16 of supporting identity. Is that the --

17 **THE CHAIRMAN:** No. No. In the Epiq report, okay? It looks as though the structure
18 is that they only later on when they have got the claim they looked at it, then they will
19 send an email and say "please send us your bank details". What the suggestion is
20 actually it is probably a lot easier for everyone to actually have it on the form, you put
21 your bank details. It is just the wording of the Epiq report seemed to indicate there is
22 a two stage process, whereas it is probably easier to have a one stage process.

23 **MR MOSER:** Well, that may be so. I was just trying to identify what about the
24 settlement agreement had set that out. As I understand it, the reference to bank
25 account details was only for documentation. But it may well be that that is a convenient
26 moment. I will take instructions. **(Pause)**

1 The Epiq plan isn't before you yet. You will have seen there is an undertaking to get
2 it to you by 2 May, that is because it is in its revised form, that is because it is prepared
3 by a third party in the United States. So we are happy to --

4 **THE CHAIRMAN:** Yes. Well, maybe having considered that point -- it may be that
5 you will want two things, which is what was your bank at the relevant time, if you paid
6 through the bank.

7 **MR MOSER:** Yes.

8 **THE CHAIRMAN:** And then where do you want your compensation to be paid into: if
9 it is a different account, list here below, if it is the same account, tick the box.

10 **MR MOSER:** Well, I think we are happy to go with the way that Mr Kelly suggests,
11 provided my learned friend is happy with it.

12 **MS ABRAM:** In fact, our understanding was the same as the chair's, so that bank
13 details would be taken upfront. Whether or not you also have a bank statement as
14 a means of identification, you would get the bank details upfront. We are content with
15 that.

16 We think actually the Epiq report, it may say a different thing in the place you have
17 looked at. We think there may be a reference where it is consistent with that as well.

18 **THE CHAIRMAN:** That's fine.

19 **MS ABRAM:** We will make it work.

20 **MR MOSER:** It is very helpful to have raised it, because we will make absolutely sure
21 that it is.

22 **THE CHAIRMAN:** Yes. That is absolutely fine.

23 Looking at the wording of the order, we will come to that at the end. Is there anything
24 else that you want to say about the settlement agreement?

25 **MR MOSER:** No. I am happy to look at the wording of the word now, if the Chair is.

26 **THE CHAIRMAN:** We will do it at the end.

1 **MR MOSER:** Right.

2

3 **JUDGMENT(extracted)**

4 **MR MOSER:** Ms Abram wanted to make a point.

5 **MS ABRAM:** Just before we go to the form of order, can I point out one slip in --

6 **THE CHAIRMAN:** Of course you can. I am sure there are many slips. I will go
7 through it properly when I write the ruling.

8 **MS ABRAM:** I am really grateful. Just for when you do, just towards the very end of
9 your ruling, you said 11.2 when you meant 10.2.

10 **THE CHAIRMAN:** I meant 10.2.

11 **MS ABRAM:** Exactly.

12 **THE CHAIRMAN:** That is brilliant. But what we will do is hopefully when we get the
13 transcript, we can just convert that into a written judgment. We will send it to you.
14 I am away from Saturday for a while, so I don't know how quickly it is going to get back
15 to you. But for me, the ideal would be to sort out before I go. If that is not practicable,
16 it is not practicable. A lot depends on how long it takes to get the transcript back. I will
17 have to tidy this up a bit. I thought it is better I give my reasons today than you waiting
18 a month before something turns up.

19 **MR MOSER:** And we are very grateful. I think everyone has the more than gist. That
20 was the majority of the judgment there.

21 **THE CHAIRMAN:** It is the majority of the judgment. Yes.

22 **MR MOSER:** So coming to the draft collective settlement approval.

23 **THE CHAIRMAN:** Yes. Shall we look at the order?

24 **MR MOSER:** Yes. It is conveniently set out at least in my version in red line with the
25 changes from yesterday.

26 **THE CHAIRMAN:** Have we dealt with -- I looked at another draft order in relation to

1 the confidentiality. I made a change on that.

2 **MR MOSER:** No, we have not seen your changes. I am sorry.

3 **THE CHAIRMAN:** We are talking about the changes for the other party on the privacy
4 application in relation to the Lawrence report --

5 **MR MOSER:** Yes.

6 **THE CHAIRMAN:** -- other than paragraphs 4.1 to 4.5. I looked at a form of order; I
7 fiddled about with it at lunchtime. The Referendaire will send it back to them, but
8 obviously you will look at it before the order is actually being made. But you might as
9 well look at the Malek revised version than the one that was sent in.

10 **MR MOSER:** I am grateful.

11 **THE CHAIRMAN:** Let's look at your one now.

12 **MR MOSER:** Let's look at this one.

13 **THE CHAIRMAN:** Yes.

14 **MR MOSER:** Do you want me to take you through it?

15 **THE CHAIRMAN:** I do. Yes, please.

16 **MR MOSER:** So we have the first change.

17 **THE CHAIRMAN:** Yes.

18 **MR MOSER:** Which is on page 2. That refers largely to the fact that the revised notice
19 and distribution plan is not before us yet. The reason for that, as I mentioned briefly
20 earlier, is that is being prepared by a third party who are in the United States, namely
21 Epiq. It will be filed by no later than 2 May.

22 **THE CHAIRMAN:** Mr Moser, you will have to check it yourself anyway, to make sure
23 it reflects the ruling I have given and the discussions we have had.

24 **MR MOSER:** Yes.

25 **THE CHAIRMAN:** So I think it is perfectly reasonable. It is going to have to be emailed
26 to me and I will look at it. If you carefully review it, then that will give me some

1 confidence in the limited amount of time I will have to review it.

2 **MR MOSER:** I will. Others -- I see my learned friend nod. She will also --

3 **THE CHAIRMAN:** Yes, of course.

4 **MR MOSER:** Between us, we will make sure that it does and that we agree the

5 contents. It ought not to be a problem. In fact, the revisions will not be that extensive.

6 **THE CHAIRMAN:** But, Mr Moser, when you say it will be done by the 2nd, what time?

7 Because I am here on Friday.

8 **MR MOSER:** Yes. I don't know what time on the 2nd but certainly by no later than

9 the 2nd. Friday is the 3rd, so you will have it on Friday.

10 **THE CHAIRMAN:** Yes. I will have it on Friday. As long as when I come in on Friday,

11 because I'm not around tomorrow and Thursday.

12 **MR MOSER:** Fine. You will have it on Friday.

13 **THE CHAIRMAN:** As long as when I come in, at 10 am on Friday, it is done then I will

14 look at it at 10 am on Friday. All right?

15 **MR MOSER:** Absolutely. Certainly insofar as this is at all within our power, it will be

16 done by Friday.

17 **THE CHAIRMAN:** That is fine. As long as it is there, then I will do it. But the discipline

18 would be put no later than 4 pm on 2 May, which will encourage everyone to get it

19 done then.

20 **MR MOSER:** I am happy to insert "by no later than 4 pm on 2 May".

21 **THE CHAIRMAN:** Yes.

22 **MR MOSER:** In that spirit.

23 **THE CHAIRMAN:** Yes.

24 **MR MOSER:** Bearing in mind the United States is on a different time --

25 **THE CHAIRMAN:** It depends on where they are. That's fine.

26 **MR MOSER:** Right. There is a recital as to the joint application. Otherwise, we have

1 a few changes of the words notice and administration plan to revised. Over the page,
2 the insertion of a date. The changes to the non-ring fenced costs limit may be seen
3 on page 4. Yes?

4 **THE CHAIRMAN:** Yes. Just on paragraph 2 though, just --

5 **MR MOSER:** I am sorry, yes.

6 **THE CHAIRMAN:** Is that still going on, that dispute?

7 **MR MOSER:** Yes, it is. Obviously, we are perfectly confident that nothing would come
8 of it. But there it is. That has been in there from --

9 **THE CHAIRMAN:** Yes, I know it was from the beginning. I just wondered to what
10 extent that is still live.

11 **MR MOSER:** Oh, yes. It is still going on.

12 **THE CHAIRMAN:** It is still live?

13 **MR MOSER:** It is still live. We have already had reference to Jarndyce and Jarndyce
14 and here is another aspect of that.

15 **THE CHAIRMAN:** Yes. Okay.

16 **MR MOSER:** Sorry. I had rather skipped over the things that were unchanged.

17 **THE CHAIRMAN:** Don't worry. Now it comes to actually making the order, I am just
18 going through it.

19 **MR MOSER:** We have damages at paragraph 3, including the notified damages sum,
20 the date. The stay is at 4. That is important.

21 **THE CHAIRMAN:** On this?

22 **MR MOSER:** Yes. On this.

23 **THE CHAIRMAN:** There will be a report presumably once you have all the claims in
24 and an analysis of what is in and what is out and how it is all operated. Is that report
25 going to be supplied to the Tribunal?

26 **MR MOSER:** Yes, it is. That is in the plan.

1 **THE CHAIRMAN:** Yes. Because obviously, we would like to look at it.

2 **MR MOSER:** Yes.

3 **THE CHAIRMAN:** At that stage.

4 **MR MOSER:** Yes. I am not sure I am going to put my finger on it immediately --

5 **THE CHAIRMAN:** No. If you say it is there, it is fine.

6 **MR MOSER:** But I know it is there and the report is all part of the plan.

7 **THE CHAIRMAN:** Yes.

8 **MR MOSER:** Obviously, an opt in and out is dealt with at 5 with the cut-off date now
9 being 30 April 2024: today.

10 **THE CHAIRMAN:** Yes.

11 **MR MOSER:** And the consequential paragraph is paragraph 6.
12 We are then going to notify in accordance with the notice of distribution plan the detail
13 of that is, of course, all in the plan. That is largely unchanged or entirely unchanged
14 from the version that you have in your bundle.

15 **THE CHAIRMAN:** Yes.

16 **MR MOSER:** The costs are dealt with at 8, the figures at 8(a)(i) and (ii) have been
17 approved.

18 **THE CHAIRMAN:** I have approved 8(a).

19 **MR MOSER:** Yes. 8(a) (i) and (ii). There was a time limit of 21 days. I am not sure
20 where that came from, but it seems to have been a paragraph that did not make sense,
21 or was not needed anyway. Old 8(b) isn't there, as it were. What matters is new 8(b),
22 which is:
23 That to the extent the notified damages sum is less than what is now the
24 non-ringfenced costs limit, the CR may apply for a stakeholder hearing.

25 **THE CHAIRMAN:** Exactly.

26 **MR MOSER:** That has been mentioned.

1 **THE CHAIRMAN:** The time to have that is when we have got the report that lists all
2 the amounts claimed, et cetera, and we resolved all those issues.

3 **MR MOSER:** Exactly.

4 **THE CHAIRMAN:** We will look at all of them at the same time.

5 **MR MOSER:** And it may be much later, as you said in your judgment.

6 **THE CHAIRMAN:** Yes.

7 **MR MOSER:** Liberty to apply and then what happens at 10 to 17 is largely in relation
8 to parties not claiming further contributions from and against one another in costs.

9 **THE CHAIRMAN:** Yes. That is sensible.

10 **MR MOSER:** That was the wording that was also agreed with First.
11 That takes us to the end of the draft order.

12 **THE CHAIRMAN:** Yes.

13 **MR MOSER:** I am reminded that the GTR defendants and the South East defendants
14 shall not claim contribution and so on. But, yes.

15 **THE CHAIRMAN:** Yes.

16 **MR MOSER:** All of the relevant parties.

17 **THE CHAIRMAN:** I am reading that. That's fine.
18 Is there anything else that we need to deal with today?

19 **MR MOSER:** I will just take instructions. **(Pause)**
20 Yes. I am reminded, just for the sake of good order, that if we go back to paragraph 5,
21 I skated over the deletion in paragraph 8(b), page 5. The reason for the deletion of
22 the words "SSWT may make submissions on the application" that is the stakeholder
23 hearing, is because of the agreement that was reached yesterday that they would be
24 neutral.

25 **THE CHAIRMAN:** I saw that. I saw you sent me that sheet of paper that said that.

26 **MR MOSER:** Thank you very much.

1 **THE CHAIRMAN:** Ms Abram?

2 **MS ABRAM:** Just one other point to make, I think expressly, just for the sake of my
3 blood pressure and that of those all around me. It is paragraph 4 of the draft order,
4 which is the provision for an immediate stay of the proceedings against my client.

5 **THE CHAIRMAN:** Yes. I don't envisage what I will be seeing on Friday morning is
6 going to be a problem. We had that hiccup yesterday only because I didn't want to
7 step on someone else's toes. But now I have given the ruling, I think it is fairly safe.
8 Yes.

9 **MS ABRAM:** I am very grateful.

10 **MR MOSER:** I am grateful too. We have yesterday's email, which is the parties'
11 agreement. We have your ruling, which is the Tribunal's ruling.

12 **THE CHAIRMAN:** Yes.

13 **MR MOSER:** So we are belts and braces.

14 **THE CHAIRMAN:** You are in a good place. I think you are fine.

15 **MR MOSER:** Thank you very much and thank you for sitting an extra half day.

16 **THE CHAIRMAN:** Well, I am now going to go back to McClaren and finish off that
17 hearing. Hopefully, I will finish at a sensible time today but we will see. Just going to
18 get through the list.

19 Thank you very much, everyone, for your help.

20 **(The hearing adjourned)**

21 **(3.14 pm)**

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