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Net Zero, Energy and Transport Committee
The Scottish Parliament
Edinburgh
EH99 1SP

9th March 2022

By email

Re: Scottish Parliament Net Zero, Energy and Transport Committee - Transfer of Ownership of ScotRail

Thank you for your email message of 24th February 2022 received by our Communications Department in Scotland.

I am writing with TSSA's response on the matters that you raised for consideration by the Committee and would begin by saying that the union is supportive of the ending of the Abellio ScotRail Franchise and its transfer to public sector ownership from 1st April 2022. TSSA and others have long campaigned for this eventuality, seeing it as beneficial to Scotland on a number of levels, including the ending of profit extraction by the private sector which has been the subject of a number of UK wide and Scotland specific reports. Profit extraction means money that could have been reinvested in the railways in Scotland was instead paid out to shareholders or company groups like Abellio abroad in Holland.

TSSA is also a co-sponsor and contributor to the recent joint trade union report commissioned from UNITY consulting under the title of "A Vision for Scotland's Railways."¹ It calls for a "A People's ScotRail" that sets objectives that benefit workers and passengers, increases democratic accountability and reduces fares to encourage rail use after the Pandemic. It also highlights how investment in rail travel - both passenger and freight - will enable the Scottish Government to achieve its ambitious Climate Change Strategy.

¹ Available to download from: <https://www.unityconsulting.scot/insights/public-affairs-in-the-public-interest-pfy2g>

www.tssa.org.uk

Members' helpdesk **0800 3282673**

General Secretary **Manuel Cortes**

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In your message, you asked us to give an update on our views to the Scottish Parliament's Net Zero, Energy and Transport Committee regarding various aspects related to the transfer of ownership of ScotRail. The following is our response:

a). Whether the rail industry structures being put in place by the Scottish Government are conducive to good industrial relations?

TSSA is recognised for collective bargaining purposes within ScotRail and as such the company already has a procedural bargaining agreement structure in place. This will transfer under the TUPE (Transfer of Undertakings (Protection of Employment)) Regulations 2006 when staff move to the new company on 1st April 2022.

In our opinion, industrial relations in ScotRail are, however, characterised in many cases as opaque, obstructive, confrontational, closed and in many occasions conducted in bad faith, with a culture based on a lack of transparency and openness, underpinned by a deep mistrust.

This is how TSSA finds dealing with the current ScotRail management, including elements of their HR function, all of whom will also TUPE transfer in April.

It should be noted that consultations around re-organisations which benefit the company are excepted from the above approach and that the lack of willing engagement with TSSA does not appear to apply to all trade unions.

From our experience, our opinion is that the attitude and approach of the company means that many issues that could be resolved in an open and transparent way end up as the subject of conflict, disputes and industrial action ballots. In fact, ScotRail only begin to listen when an industrial action ballot has been run and a strike or some other action is about to commence.

Similarly, based on our experience of carrying out industrial relations with ScotRail, our opinion is best described as 'constantly banging your head on a wall' as the company sets out to find ways to frustrate day to day engagement.

An example we would highlight is that of TSSA's pay claim for 2022. The union's pay claims aren't just about pay but can also include a range of other matters that members feel need addressing. One of those has been that of seeking a policy for staff who work 'on call'. That policy would set guidelines over issues like frequency and types of on call, definition of on call, rest periods after being called, etc, and has been missing despite a number of employees having had to perform this duty for many years.

The pay claim discussions led to ScotRail agreeing to set up a joint working party in which TSSA and the employer could discuss and agree an on call arrangement that would be applied across the company. ScotRail have so far refused to produce a draft terms of reference which TSSA could then amend or add to and which would form the basis for the working party's objectives and output. When the TSSA officer submitted a draft terms of reference to get the ball rolling, the company objected stating that they would only agree to enter into a room to discuss the specific wording on the pay offer and indicated that the full time official would not be involved in any discussions. As a result, based on our experience, this issue could end up in a dispute situation because of the employer's approach which shows an unwillingness to enter discussion and a desire to frustrate the

process before it begins in earnest.

We hope to at least begin some sensible dialogue in the coming days and weeks having gone outside of the HR department, but it remains to be seen whether this will bear fruit.

The handling of the legally required TUPE consultations is another example. TSSA deals with a lot of TUPE matters being a union that principally operates in the railways where staff in different sectors can find themselves moving between employers every few years. The TUPE consultation meeting for the move of ScotRail staff from Abellio to the public sector company has, in the opinion of our highly experienced officer, been described as the worst he has ever had to deal with. Requests to provide names of transferring staff, their job titles and location of work were incomplete and did not include names, requests for copies of procedures that would transfer were challenged during one meeting despite being standard requests (and covered by TUPE), whilst consultation was, in our view, conducted in an adversarial way over three meetings after which it was deemed trade union consultation had been concluded (in early February) when it should run up to the date of transfer.

During the TUPE consultation TSSA have been given very little information on the actual structure of the holding company “Scotrail Holding Company Ltd” and it’s subsidiary “Scotrail Trains Limited” beyond that which we already know will transfer under TUPE. For example, it has not yet been confirmed what the corporate governance structure, policies or procedures for the holding company will be, how many directors will sit on the board of each organisation, how the boards will report, the balance of executive vs non executive directors in each organisation, whether either organisation will be covered under Freedom of Information. We have been given “indications” on some of the above points but not yet written confirmation.

We welcome the offer of a seat on the board of the holding company for the trade unions to nominate to but it has been made very clear to us that this is not a “trade union” or “employee representative” seat as this board member will have full responsibility and presumably a fiduciary duty to the shareholders and not trade union members potentially creating a conflict of interest. It is not possible to definitively comment as, to date, TSSA have not yet had sight of any formal proposal of what this position might look like or how either board will be constituted.

Our direct answer to the question before the committee is to query what is meant by rail industry structures? We are pleased about the change in ownership if that is what is in mind but can also see ‘structures’ as alluding to matters intended to improve industrial relations. If the latter is the intention, we have yet to see any such arrangements but believe that rather than structural, for which we have existing procedural documents, the issues within Scotrail are cultural and we welcome the opportunity for a radical change in that culture so that it becomes open, transparent and constructive, with negotiations conducted on a good faith basis, something that we would expect from a public sector organisation.

We would also like to see an end to the frustrations that many of our experienced members in the supervisory and management grades feel. In their view - shared by TSSA - is that this frustration originates from what can only describe as a lack of respect being afforded to them, with the result that they are put off applying for more senior roles. We would also hope that the new company would encourage autonomy to frontline managers

rather than what our members view as the unnecessary bureaucracy and micromanagement that currently takes place. These issues, as noted above, are more cultural than structural.

b). What impact the creation of Great British Railways might have on rail service provision within Scotland and on cross-border services?

It is unclear what will be the impact of the creation of GBR (Great British Railways) on rail services both in Scotland and from across the border with England.

GBR will absorb Network Rail together with functions from other railway organisations, including in relation to timetables, setting fares, procuring train services, etc. Some of these functions in Scotland may be affected because Network Rail's Scottish Region (Scotland's Railway) will become part of GBR. In fact, the Williams Shapps Plan explicitly states that ownership of the rail infrastructure will be transferred to GBR as it absorbs Network Rail.² It is not yet clear how, or whether, this will impact on future revenue streams from retail outlets which are currently managed by ScotRail.

One thing to stress at this stage is that the William Shapps Plan for Rail does recognise the devolved range of rail powers in Scotland and that these arrangements will continue to be exercised. As such, the Plan acknowledges that GBR will need to work with the Scottish Ministers and Transport Scotland to deliver a co-ordinated network³ across Britain. In the context of the various devolved authorities across Britain, The Williams Shapps Plan for Rail also describes how partnership working "includes supporting a single national network, including one website and app and delivering consistent branding and passenger standards, such as on accessibility and compensation."⁴ It is unclear what this may mean for Scotland.

It should also be noted that the Plan highlights how Network Rail will continue to have to achieve efficiency targets (£3.5bn (increased to £4bn from May 2021) in Control Period 6, ie, between 1st April 2019 to 31st March 2024) but GBR will have to make an additional cut of £1.5bn a year after five years.⁵

What we do know is that the plan in England is for passenger services to be operated on public service management contracts let by GBR which, given the functions moving into Great British Railways, could see staff transferring to that company (eg, ticket office staff, station workers, those employed on formulating Time Tables, etc). Those transfers could include staff at stations where Network Rail deploy teams at their twenty Managed Stations alongside Train Operating Company staff. In Scotland, Glasgow Central and Edinburgh Waverly are amongst the Managed Stations where Network Rail staff work alongside ScotRail employees.

We also see a potential impact on Barnett consequential funding in Scotland as a result of staff cuts (eg, in ticket offices) which would reduce budgets in Scotland and may lead the Scottish Government to cut rail funding as a way to maintain its focus on its declared

² Page 42, Williams Shapps Plan for Rail available to download from:

<https://www.gov.uk/government/publications/great-british-railways-williams-shapps-plan-for-rail>

³ Page 25, Williams Shapps Plan for Rail

⁴ Page 41, Williams Shapps Plan for Rail

⁵ See Page 36, Williams Shapps Plan for Rail at:

priority areas of education and health.

Another area is around revised ticketing systems and how GBR's adoption of new technology for online and SMART ticketing may cause issues for systems in Scotland. It may also produce problems if Scotland wants to make changes to fares in order to encourage a return to rail, perhaps through removing the morning and evening peak or in order to continue to set its own rail fare increase.

One other issue is that of how ScotRail could lose staff to other train operators in Scotland (eg, Cross Country) should the managed contract model lead to budget cuts and uncompetitive salaries. The drain of skilled staff could cause additional problems for ScotRail.

In an absolute worst-case scenario GBR could absorb roles which currently sit within Scotrail (e.g. train planning, ticketing, property and estates, etc) and from that point could either decide to transfer these roles under TUPE into a devolved "region" under GBR or centralise these functions from their new HQ (which if based on a public vote is unlikely to be located in Scotland). It is not beyond the realm of possibility that many existing railway jobs could be taken out of Scotland entirely given that GBR is essentially a cost cutting exercise designed to reduce staff costs through removing "duplication" in the railway.

Coupled with the potential removal of revenue streams from the retail estate, the potential for less control over ticket prices and the reduction of funding in Scotland through Barnett consequentials Scotland's Railway could find itself decimated financially and in railway experience.

c). How the rail industry can successfully cope with changes in travel patterns and the currently reduced farebox income caused by the coronavirus pandemic?

Passenger rail travel has been affected by the Coronavirus Pandemic and the knee jerk reaction of cutting services and staff can seem like an appropriate short term approach. The problem with that approach is that not only are skills lost from the railway industry but passengers return to their cars and other forms of more polluting transport.

However, as we tentatively emerge from the Pandemic and start to consider the future, we must take a longer term approach and realise that we cannot put off measures that will help in combatting the climate emergency that we all face. To deal with that growing threat, rail is seen as the transport solution because of its significantly lower carbon emissions. As a result, and encouraging the people of Scotland to return to their trains has to be the first priority.

The rail trade unions' commissioned report, "A Vision for Scotland's Railways" calls for a number of actions⁶, all of which could get people back on their trains, especially if it was the subject of a media campaign:

- Reduce prices for all ScotRail passengers
- Offer free rail travel for all under 24's and over 60's

⁶ See Section 3.4, Pages 49-50 of "A Vision for Scotland's Railways"

- Improve accessibility for older and disabled people and their carers
- Abolish peak fares
- Create an integrated, simplified, open and transparent ticketing system

In addition, we would point out the need for a concessionary travel scheme as exists for bus users.

At a time of surging energy prices, further incentivisation could also come from staff who are still working from home realizing that it may actually be cheaper to go by train to their employer's premises. That message also has an environmental benefit.

All of these measures should be supported by the Scottish Government as they will both get people onto rail and ultimately increase revenue.

Yours sincerely

Manuel Cortes
General Secretary