

TO: ALL INDUSTRY PARTIES
CC: BOARD MEMBERS, SECRETARY ADC
FROM: CHAIRMAN, DELAY ATTRIBUTION BOARD
SUBJECT: **ADA33 ATTRIBUTION EXPLANATION**
DATE: 26TH FEBRUARY 2019

Dear Industry Colleagues

As you may all be aware, since the publication of Access Dispute Determination ADA33 there has been significant debate and concern raised over interpretation and particularly the wider scope of its application.

Delay Attribution Board and Access Dispute Committee representatives had a joint review session on the 13th November 2018 to discuss these concerns and formulate a way forward to provide a relevant explanation of attribution to Industry.

The initial clarification to be made that this Access Dispute Adjudication determination should be taken as being specific to the incident raised at that hearing and not interpreted and applied to wider scenarios. In effect any similar incident should be reviewed and decided on its own merits.

It should be reaffirmed that the DAPR (and the DAG before) is a contractual document as contained within the Network Code and thus should be applied for attribution.

In relation to ADA33 specifically, the key facts of the matter that led to the determination were as follows: -

- The incident involved a train failure that was demonstrated (by video footage) to be the result of an (unknown) object strike on the previous day.
- The Train Operator was unaware of the object strike occurring at the time.
- The Operator was deemed to have had no opportunity to mitigate the effect of the incident due to being unaware of the object strike and due to the unit being stabled in network sidings (rather than a maintenance depot).

Clarifications relating to variations to the facts of the matter, to limit interpretation and wider application: -

- Had the Operator been aware of the object strike but was unable to mitigate its effect on the next (or subsequent) days, then responsibility would normally* be that of the Train Operator. This includes a subsequent failure in service, the non-provision of a train at start of service or delays the result of a service being short formed.

**Note: This would exclude instances where the Operator has been prevented from mitigating the incident impact due to circumstances within the control of Network Rail – e.g. requesting a stock move to balance stock that was prevented due to a line block or possession (See the ‘Exceptions’ under DAPR L2.3 and L2.6)*

- Had the Operator been aware of the object strike and was able to mitigate its effect, but chose not to (for whatever reason), the responsibility would be that of the Train Operator. This includes a subsequent failure in service, the non-provision of a train at start of service or delays the result of a service being short formed
- Had the Operator been in a position to have identified the object strike overnight (e.g. unit was stabled in a maintenance depot or its on-board systems should indicate an issue), the responsibility would be that of the Train Operator.

Whilst no timeframe is stipulated in ADA33 it is acknowledged that as the number of days pass then the demonstration, likelihood and effect of a previous object strike are greatly reduced, particularly if the train has subsequently been running in traffic with no relevant identified issues.

The above attribution explanation is provided by the Delay Attribution Board to clarify the appropriate application of ADA33 principles. The content of this document has been reviewed by the presiding ADA33 Hearing Chair and his feedback reflected.

The DAPR will be reviewed to identify where improvements can be made to enhance the clarity of such incidents.

It should be noted that the above explanation is non-binding and does not preclude any Party progressing any similar incident through the normal dispute escalation process through to an Access Dispute Adjudication to either challenge or to confirm the above with regard to the facts of any particular incident.

Regards,
Richard Morris, Board Chairman

On behalf of the Delay Attribution Board.