

## **Delay Attribution Board Meeting of September 26th 2017**

### **Summary of Meeting**

#### **Request for Guidance**

The Board had received a Request for Guidance from Network Rail and Govia Thameslink Railway (GTR). The subject matter was regarding the attribution of responsibility for a train failure which was as a result of an object strike occurring on the train the previous day.

The Request for Guidance and associated appendices had been circulated to Board members in advance with the opportunity to ask the Parties any questions prior to the meeting.

GTR's representative gave an overview of their submission and relevant points therein, adding that this particular Guidance Request relates to the interpretation of reasonableness in Delay Attribution.

GTR believe they had no reasonable opportunity to inspect the train in question during the time between the object strike (on the 29th March) and the unit failing (30th March) due to the location of the trains overnight stabling.

It was also pointed out that the object strike was only identified (and agreed) as the cause after the actual failure on the 30th March and reviewing the Pantograph Camera footage. Therefore there was no reason for GTR to undertake any inspection on the unit whilst it was stabled overnight on the 29th March.

GTR believed that whilst there was no immediate failure as a result of the object strike, the damage caused, resulting deterioration and failure are a direct consequence of the strike.

Network Rail's representative gave an overview of the issues and covered in Network Rail's submission and relevant points therein, stating that from a Network Rail perspective it is believed that this is clearly a 'Day 2' incident and that the failure of the unit is separate from the causal object strike by virtue of GTR ultimately having the choice whether they take the opportunity to inspect their units whilst stabled.

In Network Rail's view, it is GTR's responsibility to provide train crew and rolling stock resources as required for the plan of the day and that any train entering service in an unfit state (albeit unknown at that time) is GTR responsibility. Network Rail cannot stipulate what GTR do (or don't) do in terms of unit checks prior to entering service.

After clarification was received on various aspects of the Request, the Board went on to discuss its views and formulate conclusions.

Considerations by the Board included, but were not limited to, the following:-

- The definition of Prime Cause as set out in DAPR 2.7.1 and Process Guide PGD1
- Previous Access Dispute Determinations including AD39 (Colchester Train Fire) that defined a distinction between events leading up to a delay event and the delay event occurring.

- That no delay event occurred at the point of the object strike
- That it is an Operator's responsibility to ensure that trains entering service are fit for traffic
- The difference between liability and culpability of a delay cause
- Whether from the point of the object strike to ultimate failure is considered as one delay incident or the timeframe is construed as being the same day
- Any network restrictions at the start of service are accepted as the responsibility of Network Rail regardless of the reason for that restriction being in force
- Principles set out in Section 5 of Schedule 8 '...whether or not a Party is a fault'
- Reasonableness is subjective and cannot be defined in the DAPR
- Interpretation of DAPR R2.4(i) relating to the use of Delay Code Code JX

The Board agreed that a review should be conducted looking on improving clarity in the DAPR regarding the application of the principles in these situations (Root Cause and Prime Cause being on different days).

The Board ultimately agreed by majority vote that, based on the information provided within the papers and presentations made at the meeting, the responsibility for the incidents should be allocated to GTR with Delay Code M1.

The full record of the submission and guidance will be set out in the DAB44 Guidance Paper.

### **ORR CP6 Delay Attribution Comments**

An ORR Economist joined the meeting by phone to provide feedback on behalf of the ORR.

The Board were provided with a brief introduction as to the origins and reasons for ORR including comments on Delay Attribution in its Conclusions.

This included the decision not to progress with the proposed change to the Schedule 8 mechanisms from TOC on Self to TOC on TOC.

ORR concerns were regarding reactionary delay – definition of and management of - as well as the cost to Industry of carrying out the Delay Attribution process.

It is envisaged that ORR will setting up Industry consultations and working groups to discuss the perceived issues with the current delay attribution process with a view to developing options for improvement and assessing those options. DAB will certainly play a role in those discussions.

It is accepted that this will be a longer term project rather than part of the PR18 Review

### **DAB Survey Questionnaire**

The Board were provided with a draft Survey Questionnaire designed to enable the Board to gain feedback from Industry Parties of their views on the DAB as well as the DAPR and supporting Process Guides.

The questionnaire will be distributed to Industry towards the end of the year with the results being utilised as part of the Board's proposed Industry Event in early 2018.

## **KPI Review**

The Board were presented with an overview of the KPI data highlighting the key aspects.

Members were reminded that whilst the ranking is by Operator it is used as for indication purposes only to identify which Operator / Route relationship to consider for further review.

Of most concern currently is the situation in Scotland with an unprecedented lack of a Network Rail Measurement team at Level 2 and 3 resulting in the Scotrail disputes remaining unresolved since May. Whilst plans are in place to alleviate the situation it will unfortunately not be an overnight fix.

Southeastern have the highest percentage of disputed incidents taken back by Network Rail at 43% which may suggest very targeted disputed driving a higher success rate or possible other issues relating to attribution quality or general resolution by Network Rail. This was suggested as being an indicator that the Board should inquire into.

ATW were highlighted regarding the number of incidents over 6 months old which is believed to be related to autumn 2016. The Board considered that ATW and Wales Route should be asked to confirm that these disputes are in relation to autumn but also to ascertain how they are being progressed and if the Board can provide any assistance.

GTR were mentioned in relation to the number of disputes over six months old but a work stream is in place to review and resolve those outstanding incidents including arrangement of a 'Southern' sign-on for GTR to enable resolution of inherited Southern disputes.

Northern were highlighted in the disputes over six months which was believed to be due to resourcing. The Northern representative on the Board suggested this is more Network Rail resourcing than Northern but agreed to provide the Board with a position statement after discussion with the respective Route teams.

DB Cargo are still a concern for outstanding disputes, believed to be down to its recent reorganisation, but resolution of the backlog, particularly in the SE Route, is continuing.

Merseyrail have the highest Commercial Takeback figures but this is as a result of a documented commercial agreement in place with Network Rail but currently under review.

C2C were highlighted because of the increase in disputes registered and disputes outstanding at Day 42. The Board considered that due to the change identified it would be worth understanding what is driving that change.

### **Proposals for Amendment**

The Board were provided with, and reviewed, the consultation responses to the following Proposals for Amendment;-

#### ***DAB P294 – Infrastructure Failures on – off network***

The Board agreed the Proposal for Amendment

A rejection to the Proposal submitted by HEX was reviewed by the Board but agreement reached that the current attribution relating to HEX was considered a commercial arrangement between the relevant Parties. The DAPR, whilst utilised by other Infrastructure networks, as part of their Network Code, should not reflect their practices and has to stipulate 'off network' as being off the Network Rail network to which the DAPR applies.

#### ***DAB P295 – Stock Swaps***

The Board agreed the Proposal for Amendment

#### ***DAB P296 - TRUST Errors***

The Board agreed the Proposal for Amendment

#### ***DAB P297 – Service Recovery***

The Board agreed the Proposal for Amendment.

A rejection to the Proposal submitted by GWR was reviewed by the Board, which concluded that the perceived mis-application of the current DAPR should be considered a commercial arrangement and therefore not affect this Proposal for Amendment.

Concern was also raised that GWR had cited the DAB were 'changing attribution to a new prime cause' given that the base principle of attribution is to attribute to Prime Cause and that the Proposal reiterates what is already contained within the DAPR.

A suggestion to formulate a supporting flow diagram to this Section of the DAPR was agreed for development.

#### ***DAB P298 – Process Guides***

The Board agreed the Proposal for Amendment.

#### ***DABP299 – Vandalism Tidy Up,***

The Board agreed the Proposal unanimously being a non-material change and thus did not require Industry Consultation.

The above Proposals for Amendment will be submitted to the ORR for approval.

### **Investigation Proforma Process Guide**

Building on the fire investigations proforma resulting from the West Coast Railways Request for Guidance (DAB43), the Secretary presented a paper to the Board covering a draft proposal setting out a proforma for this and other similar incident investigations.

The Board were asked to review the proposals, particularly for object strikes and OHLE related incidents and provide comments and suggestions.

The Board proposed various amendments that will be incorporated into the Process Guide by the Secretary and re-submitted for sign-off at the October Board meeting.

### **Behaviours and Part H**

Combining the recent review of Part H and the issues discussed at the August Board meeting relating to attribution driving behaviours, the Secretary provided a paper to the Board building on the scenario relating to train failure recovery.

The Board were asked to review the scenarios and the proposed attribution and, where prompted, review and discuss any questions posed to aid clarification.

The Board discussed the various scenarios as presented considering DAB33 Guidance and the provisions set out in the Network Code and ROC.

Agreement was reached on a majority of the scenarios with proposals made to improve the guidance being provided. The Secretary will incorporate the feedback and re-submit the paper to the October Board meeting for a second review.

### **Short Notice Platform Changes**

Network Rail raised a concern of Operators disputing delays caused by late platform change requests, with a definitive reason for the requests, due Network Rail either not following the train plan or being authorised through Control. A recent example being a platform change request due to a passenger of reduced mobility which was disputed quoting the principles of PGD16 Stock Swap Scenarios.

It was highlighted that there are certain situations such as that mentioned above where the Signaller should abide by the request from the Operator and that by doing so it is perverse for Network Rail to then take the any resulting delay.

The Board agreed that it cannot be seen to create perverse incentives in situations where it is clearly the right thing to do and noting there is a clear difference between activities that should be planned (such as fleet requiring stock changes) against those that are previously unknown or unavoidable short notice requests.

The official minutes will be available to Industry after sign-off at the 24<sup>th</sup> October meeting

### **Mark Southon**

Secretary to the Delay Attribution Board