
Guidance No: DAB-44

Attribution of Responsibility for train failures as a result of damage sustained by an object strike on the previous day

1. Introduction

The Delay Attribution Board (the Board) received a Request for Guidance in connection with the attribution of TRUST incident number 013036 involving in a unit failure (ADD activation) as a result of damage sustained following an object strike that occurred on the unit's previous day in service.

- 1.1. The Board received the joint Request for Guidance from Govia Thameslink Railway (GTR) and Network Rail Infrastructure Ltd (Network Rail) on the 10th August 2017.
- 1.2. The Board was asked the following:
 - 1.2.1. Guidance from the Board is sought for the resolution of an issue which despite discussion at the required levels of escalation a solution has not been agreed.
 - 1.2.2. To provide guidance regarding the responsibility and attribution of an incident where a train failure was as the result of damage sustained by an object strike the previous day.
 - 1.2.3. Whether, in this circumstance, attribution would be to Operator responsibility in respect of the unit failure or to Network Rail as an object strike.

2. Information Received

- 2.1. The Parties have discussed the issues relevant to this matter, in accordance with the agreed procedures for obtaining agreement in relation to disputed attribution as set out in Part B of the Network Code. However, they have been unable to reach a common position. The Parties are therefore both agreed that the issues raised should be referred to the Board for guidance and have prepared a joint submission accordingly, incorporating their respective interpretations.
- 2.2 GTR was unaware of any damage sustained (on the 29th March 2017) until the failure of the train the following day and believe a degree of reasonableness should be applied. GTR therefore believes that Network Rail should be responsible and the incident allocated to Delay Code JX (MISC OBJ) or XO (EXT OBJECT) as appropriate.
- 2.3 Network Rail believes the incident should remain allocated to GTR responsibility as the unit entered service with a defect (whether known or unknown) resulting in an ADD operation and attributed to Delay Code M1 (PANTO/SHOE)

3. Factual Background to the incident

- 3.1. The Parties submitted the agreed factual background and their respective views on how the incident should be attributed:
 - 3.1.1 On 30th March 2017, 1C27 (Unit 387126) experienced an ADD activation in the Potters Bar area coming to a stand in New Barnet station.
 - 3.1.2 The unit, number 387126, was travelling from Cambridge to Kings Cross.
 - 3.1.3 The driver examined the pantograph from ground level at 22:30 hours but was unable to see any damage.
 - 3.1.4 At 23:05 it was logged by the SSM Kings Cross PSB that the down fast, down slow and up slow have been examined and normal running had resumed.
 - 3.1.5 Unit 387126 was assisted to Hornsey Depot where damage was found to the carbon and the external metal of the pantograph.
 - 3.1.6 Pantographic camera footage was subsequently reviewed and the damage was found to have been sustained the previous day (29th March 2017) whilst the unit was working 1C63 Cambridge to Kings Cross between Potters Bar and Alexandra Palace on the up fast line.
 - 3.1.7 The camera footage showed a foreign object striking the pantograph but the origin and identity of this object is unknown.
 - 3.1.8 The unit did not incur any problems at this point and it continued in service for the rest of the day, finally being stabled overnight at Peterborough Nene sidings after arriving there at 22:15.
 - 3.1.9 On 30th March 2017 at 05:33 the unit worked 5P03 to Peterborough Station to form 1P03 Peterborough to Kings Cross.
 - 3.1.10 387126 went on to work one return trip from Kings Cross to Peterborough before being stabled at Welwyn Garden City sidings later that morning.
 - 3.1.11 The unit was at Welwyn Garden City sidings from 11:19 to 16:35, when it returned to service working three more return trips between Cambridge and Kings Cross before the ADD activation occurred.
- 3.2 The incident was attributed to GTR responsibility (M1 Delay Code) based on the information available at the time of the incident occurring under DAG reference 4.4.1.2(a) and 4.12.4.2(e)
- 3.3 The cause of damage was identified (and is not being disputed by Network Rail) as damage sustained due to an object strike the previous day (29th March 2017).

4. Operator's View

- 4.1 GTR has supplied Network Rail with several pieces of evidence to support the GTR view that it is unreasonable to believe GTR should or could have prior knowledge of the damage which had been caused.
- 4.2 GTR provided the following appendices to support this submission but they are not replicated in this Guidance Note:-
- Appendix 1 - 387126 Unit diagram for 29th and 30th March 2017
 - Appendix 2 - Still shots taken from the Pan camera
 - Appendix 3 - Unit maintenance history.
- 4.3 GTR believes it was not possible to mitigate the ADD activation as GTR was unaware of the damage caused the previous day. Diagnostics cannot be used to find this type of issue and so could only have been identified during a specific visual inspection.
- 4.4 Information from GTR was requested by Network Rail as to why the pantograph was not checked before the unit went into service 30th March 2017, GTR responded that the train was stabled overnight in Peterborough Nene sidings. There are no facilities at this location to check pantographs, the lighting is poor and most importantly an isolation would have to be taken which would affect other Operators both on and off Network. GTR does not believe it is reasonable for Train Operators to check pantographs each time a train comes into or out of service when there is no prior knowledge of any unit issues.
- 4.5 Whilst GTR has investigated and demonstrated that the train was struck by a foreign object neither GTR nor Network Rail have been able to ascertain what the object was, where it originated from or how it came to be in contact with the train.
- 4.6 As the object and its origin are unidentified a specific cause code cannot be cited. Therefore GTR believes this incident should be coded to either Delay Code XO as a general external object or in accordance with the guidance and principles set out in DAG 4.15.2.4(g or i) where the Parties agree the train has struck an unidentified object and apply Delay Code JX.
- 4.7 GTR does not believe DAG 4.4.1.2(a) or 4.12.4.2(e) applies in this instance as GTR does not believe the cause of the incident to be a unit fault as the cause of the damage has been identified.
- 4.8 It is unreasonable and unrealistic to assume Train Operators should be able to check every pantograph prior to entering service. There are not enough Depots in which to stable every train overnight and the Network and its sidings do not provide adequate safety and lighting for staff to do a visual inspection of the pantograph. Overhead power needs to be isolated each time a staff member checks a pantograph. If Network Rail expects Train Operators to check every pantograph prior to entering service a lot of work will have to be done on the timetable to ensure each unit can be returned to Depot and checked each evening before being sent back out to the sidings where they will be stabled until the next duty.

5. Network Rail's View

- 5.1. Network Rail acknowledges that the root cause of the failure may well have been the object strike the previous day as identified in the CCTV footage.
- 5.2. As no infrastructure damage was sustained or any reports received on the day of the object strike, Network Rail was not aware of it and therefore did not attend site to examine possible causes or identify the object. Network Rail was advised of the GTR findings through the dispute process on 31 March 2017 – 2 days after the strike and therefore had no opportunity to examine the lineside. No delays were incurred as a result of this event.
- 5.3. Network Rail cannot confirm what the object was or how it came to be in contact with the train nor can Network Rail categorically conclude it was the ultimate cause of the failure and ADD activation.
- 5.4. Network Rail has reviewed the photographs forwarded by GTR of the damaged Pantograph and finds it remarkable that the ADD did not operate at the time of the impact. Particularly as the GTR Performance Support Engineer stated that the damage caused a large air leak.
- 5.5. Similarly Network Rail acknowledges GTR's view that it could not effectively identify that there was any damage to the unit prior to entering service, but ultimately it is GTR's responsibility to carry out any relevant pre-service checks and the unit did enter service with a (subsequently identified) defect. It is the Train Operators responsibility to ensure any train entering service is fit to do so.
- 5.6. The unit ran all the next day with no adverse effects or defect reports until the ADD activation. Potentially this train could have run around for days with this defect before finally succumbing to the damage sustained from the object strike.
- 5.7. The object strike and failure are not instantaneous and it is believed that GTR is the only Party that could mitigate the incident from occurring. Network Rail therefore believes that DAG (as in play at the time) 4.4.1.2a applies in this scenario and the incident should be coded to M1 as GTR responsibility.
- 5.8. Network Rail believes that guidance on the correct attribution of this incident exists in the following sources:
 - 5.8.1. The Delay Attribution Guide (now DAPR) requires attribution to prime cause. This is defined as "The immediate cause or event that results in delay to a train is known as 'Prime Cause'. Until a Prime cause has occurred there will be no delay to a train service. For the avoidance of doubt, 'Prime Cause' cannot be a reaction to a previous incident."

- 5.8.2. Examples of the Application of Prime Cause can be found in DAB Process and Guidance Document PGD1. Example 9 and example 10 in PGD1 illustrate circumstances where an event on one day has impact on a following day and the attribution is to the cause of delay on the following day, not the cause of the incident on a previous day.
- 5.9. Network Rail understands that precedent has been set for the attribution of responsibility for incidents of this type, such as:
- 5.9.1. Guidance note: DAB-5 refers to an incident on a day where a unit failed and, although it was established the root cause originated from a Network issue the previous day, the DAB found the TOC responsible because the delay was “circumstance originating from or affecting rolling stock operated by or on behalf of the Train Operator (including its operation)”.
- 5.9.2. Determination: ADP 11 reached the same conclusion as DAB-5. ADP11 applied the principle that responsibility under Schedule 8 was allocated in relation to the circumstances at the time that the delay commenced – not an event that occurred the previous day.
- 5.9.3. Determination: ADP30 (object strike at Elstree Tunnel) the incident was deemed the responsibility of Network Rail as it was established that the unit entered service in a fit state and that the object strike (no object was located) was instantaneous with the failure which caused the delay (air loss and brake application).
- 5.10. Network Rail believes the events of the 29th March 2017 are separate to those on the 30th March 2017 and that Network Rail had no opportunity to have prevented the delay. The object strike incident occurring on the 29th March 2017 resulted in no delay being incurred.
- 5.11. Network Rail believes that Schedule 8 Paragraph 5.3a (ii and iii) apply in this instance and specifies that an Operator is deemed responsible where an incident;
- (a) is caused wholly or mainly:
- (ii) whether or not the Train Operator is at fault) by circumstances within the control of the Train Operator in its capacity as an operator of trains; or
- (iii) (whether or not the Train Operator is at fault) by any act, omission or circumstance originating from or affecting rolling stock operated by or on behalf of the Train Operator (including its operation),
- 5.12. Network Rail therefore asserts that the delay attribution and subsequent responsibility for TRUST incident 013036 should be based on the known facts. The delay incident was caused by the ADD activation on 1C27 on the 30th March 2017. Attribution should therefore be to GTR with Delay Code M1.

6. Locus of the Board

- 6.1 The Board reviewed its locus in respect of providing guidance on this issue. The Board's locus to provide guidance is set out in the Network Code Conditions B2.4.3 and B6.1.3.
- 6.2 The Board noted that while it could offer guidance to the Parties regarding how incidents of this nature should be attributed, this guidance was not binding on either Party. If either of the Access Parties were dissatisfied with the guidance provided they could refer the matter to Access Dispute Adjudication (ADA).
- 6.3 If the issue was referred to ADA, then an Access Dispute Adjudication Panel (ADA Panel) would be formed to consider the dispute. In doing so, the ADA Panel would take account of the guidance provided by the Board but would not be bound by it. The ADA Panel would then make a determination that was binding on the Parties concerned. This document is therefore being prepared as the vehicle for providing the guidance and the reasons for how the Board arrived at its position both to the Parties and, if necessary, to the relevant ADA Panel.
- 6.4 The Board agreed that it should seek to provide guidance that meets with the delay attribution vision:

“For all parties to work together to achieve the prime objective of delay attribution – to accurately identify the prime cause of delay to train services for improvement purposes”.
- 6.5 The Board would need to consider if, in providing guidance, an amendment to the Delay Attribution Guide should be proposed, to improve clarity.

7 Consideration of the Issues

- 7.1 The Board at its meeting on 26th September 2017, considered the Request for Guidance and took account of the following:
- 7.1.1 The facts provided by both GTR and Network Rail in connection with the incidents disputed between the Parties and their Request for Guidance.
 - 7.1.2 The information provided by the representatives in response to questions raised by the Board prior to the Board Meeting (Set out in Appendix A).
 - 7.1.3 Additional information provided by the representatives of GTR and Network Rail at the Board Meeting (Set out in Appendix B).
 - 7.1.4 The guidance provided within the Delay Attribution Guide (that was in place at the time of the incident occurring, prior to the name change in this case) and any prior related DAB Guidance.
- 7.2 In coming to its conclusion the Board regarded the following points as particularly relevant:
- 7.2.1 The definition of Prime Cause as set out in DAG 2.7.1
 - 7.2.2 The conclusion of and principles prescribed in Access Dispute Determination AD39 (Colchester train fire)
 - 7.2.3 No delay event occurred at the point of the object strike.
 - 7.2.4 It is an Operator's responsibility to ensure that trains entering service are fit for operation.

8 Guidance of the Board

- 8.1 Based on the information presented in respect of the disputed incidents the Board agreed by majority vote (9 in support, 2 not in support), the following:
- 8.1.1 That GTR should be wholly responsible in terms of Delay Attribution for the incident;
 - 8.1.2 That in line with the Delay Attribution Guide in force at the time, the incident should be attributed to the Operator;
 - 8.1.3 The DAPR requires reviewing to ensure that the principles and rules that should be applied to incidents of this nature (prior day issue causing a next day delay event) is clearly prescribed.
- 8.2 In line with the Delay Attribution Guide in force at the time, the incident should be allocated to Delay Code M1

This guidance was approved by the Delay Attribution Board on 24 th October 2017	Richard Morris (Chairman)
Signature:	

APPENDIX A

Questions submitted by Board members and the respective responses from GTR and Network Rail in advance of the meeting.

Questions for GTR:-

Q - Did the unit traverse that specific piece of line since the object strike?

A - Not as far as GTR is aware. However, GTR do not believe this question is relevant.

Questions for Network Rail:-

Q - Does Network Rail expect Train Operators to inspect all aspects of a train before entering service from a non-depot location?

A - Network Rail would expect trains to enter operation fit for service and without inherent risk to failure on the Network. Network Rail would expect train crew to inspect trains in a manner that is compliant with relevant safety and regulatory standards. The due diligence of such inspections is out-with Network Rail responsibility.

Q - Where does the reference to the air leak come from mentioned in Bullet 5.4, as there is no other reference – is this actually relevant to the ADD or not?

A - The source of the reference is from the GTR Performance Support Engineer. The relevance of this reference from the Network Rail perspective is that where the impact was sufficient to cause a large air leak it was remarkable that the ADD did not operate at the time of the impact

APPENDIX B

Additional information provided by Network Rail and GoVia Thameslink Railway during further questioning by Board members at the meeting.

Q – How regularly does GTR review the PAN CAM footage – is it proactively or reactively?

A – Believed it is reviewed as required.

Q – How regularly does GTR examine the pantographs on trains?

A – Pantographs are checked when trains are on the maintenance depots using cherry pickers but obviously require OLE isolations to do so otherwise will be as required.

Q – What do both Parties feel is ‘reasonable’ in terms of the number of days between an object strike and train failure?

A – (NR) – Same day as next day there is opportunity to mitigate overnight, it is just up to the TOC if they take that opportunity.

A – (GTR) – Had the train gone into a depot that night and the opportunity to examine the train wasn’t taken then GTR would agree with the NR stance. Usually trains go to depot every 2 days.

Q – Can GTR confirm there was no trigger to examine the pantograph?

A – No, until the pantograph camera footage was reviewed there was no indication that the train had struck anything.

Q – Does GTR believe that it has a contractual obligation to provide stock for service in a fit state?

A - Yes GTR does believe that it has a contractual obligation to provide stock for service in a fit state but in this case no damage was known about so it did not enter service with a known defect.

Q – What do the Parties believe to be the Prime Cause in this instance?

A – (NR) – Train failure. The object strike is seen to be the Root Cause

A – (GTR) – Train failure but as caused by the unknown object strike.

Q – On the day of the incident occurring, which Party is believed to be in the best position to mitigate that incident?

A – (NR) – Train Operator as a defective pantograph.

A – (GTR) GTR could not mitigate as the defect was not known about or possible to identify whilst stabled.

Q – Did NR examine the OLE and site of the incident?

A – Yes, the site was examined.

Q – Can NR clarify the site exam – was it at the location of the object strike or ADD activation?

A – It was at the site of the ADD activation as the object strike was not known about at the time of the incident.

Q – Was the object strike and train failure at the same location?

A – They were in the same section but on the UP and DOWN lines

Q – Is it agreed beyond doubt that the object strike on the previous day caused the train failure on the next day?

A – (GTR) – The pantograph camera was fully reviewed and the object strike was all that could be identified. The failure itself occurred at night so as it was dark nothing could be ascertained at that point.

Q – NR mentions the 22.00 cut off for agreeing the plan of the day. Does NR believe that as the train was still in service post 22.00 that could constitute a same day incident?

A – Regardless of the 22.00 cut off in this instance GTR provided a train for service with a defect. NR will accept incidents to infrastructure defects in similar circumstances. For example a train hit the buffer stops at Kings Cross on a Thursday. The resulting delays on the Friday due to the resulting infrastructure restriction were taken by NR, regardless of the known cause.