
Delay Attribution Board

Guidance No. DAB-1

1. The Board was asked by the parties, Great Eastern Railway Ltd (trading as First Great Eastern (FGE)) and Network Rail, to provide guidance as to how delays associated to an Incident (Incident No. 549080) that occurred on March 11th, 2003 should be attributed.
2. The Board noted that the incident involved an FGE Class 312 unit, stabled in a network siding at Colchester, being set on fire.
3. The concern of the parties in bringing the issue to the Board for guidance was that they could not agree what causation code to attribute the incident to and by association which party should hold responsibility.
 - 3.1 Network Rail held the position that delay should be attributed as per section 4.11 of the Delay Attribution Guide where it states that a fire on a passenger train (caused by vandalism) is coded “VB” and the incident is attributed to the operator of the train involved.
 - 3.2 FGE held the position that delay should be attributed to the prime cause, which in this case was deemed to be vandalism, and should therefore be attributed to causation code “XV” and the incident be attributed to Network Rail.
 - 3.3 As the incident had been attributed to FGE by Network Rail and this was disputed by FGE the incident had remains in TRUST in “dispute”.
4. The Board reviewed its locus in respect of providing guidance on this issue:
 - 4.1 Its locus to provide guidance was defined in Condition B, 2.4.3.
 - 4.2 The Board noted that while it could offer guidance to the parties as to how this incident should be attributed, this guidance was not binding on the parties. If one or both parties were dissatisfied with the guidance provided they could refer the matter to ADRC, who would determine the matter.
 - 4.3 If the case is referred to ADRC, then ADRC is required to take into account the guidance provided by the Board. 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 ADRC;
 - 4.4 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”

- 4.5 The Board would need to consider if, in providing guidance, an amendment to the Delay Attribution Guide should be proposed, to improve clarity.
 - 4.6 The incident could either be changed in its entirety to a new attribution code / responsible manager code, or changes would need to be by edit-sets in downstream systems. The Board noted that if guidance was provided that required the incident to be split between the parties then this could not be reflected in the mainframe systems due to system constraints.
5. The Board noted that, at the centre of the dispute, was the different interpretation of what the prime cause of the incident was. It noted that:
- 5.1 The Fire Brigade and British Transport Police had not provided any conclusive evidence as to how the fire started;
 - 5.2 Both parties were however in agreement that the fire started on the train and was caused by vandals;
 - 5.3 Neither party could ascertain as to how the vandals accessed the train;
 - 5.4 Lineside fencing adjacent to the siding was replaced with high security fencing by Network Rail following the incident, though both parties accepted that this was, previous to this incident, a low risk site for vandalism;
 - 5.5 Network Rail indicated that the lineside fencing in place before being replaced met the minimum requirements for distinguishing the network from other land.
6. The Board noted that it could provide guidance such that the incident was attributed:
- 6.1 To FGE in its entirety;
 - 6.2 To Network Rail in its entirety;
 - 6.3 Jointly between the parties.

On the basis of the evidence presented to it and the relevant sections of the Delay Attribution Guide, the Track Access Conditions and Schedule 8 of the Track Access Agreement, the Board were unable to reach an immediate conclusion on which of the above options was appropriate. The Board therefore decided to seek legal assistance to see if there were some legal principles that needed to be taken into account before arriving at a decision.

7. Wragge & Co as the Board's legal advisers considered:
- The written submission provided by FGE and Network Rail;
 - The Track Access Agreement in place between the two parties;
 - Track Access Condition B;

- The Delay Attribution Guide;
- The reported fact that the rolling stock affected had worked the 19.02 Liverpool Street – Witham terminating at 19:51 (check for passengers done at Witham). Then moved off as empty stock from Witham to Colchester Carriage Sidings arriving 20.32 (main Carriage Sidings). Train cleaned between 22.00 and 23.00 (time varies). At approx 23.30 it is shunted from Carriage Sidings to Bridge Road Sidings arriving approx: 23.38. These are Scheduled Times. What happened on the night may have been slightly, but not substantially different as no delays were recorded.

After taking all the factors into consideration Wragge & Co produced a report recommending that responsibility lies with Network Rail because the fire was an act of vandalism and that is something for which Network Rail is responsible.

8. The Delay Attribution Board considered the report from Wragge & Co at its meeting on July 27th, 2004 and, after discussion, unanimously agreed to issue guidance to the two parties that Network Rail should accept responsibility for this incident on the basis of the reasoning contained in Wragge & Co's report.
9. A copy of Wragge & Co's report is attached to this guidance for information.