
Delay Attribution Board

Guidance No. DAB-10

1. Introduction

- 1.1 The Delay Attribution Board (Board) received a request for guidance in relation to the Attribution of Delay to Incidents connected with the sharing of Rolling Stock and/or Traincrew where the shared resources belong to the same owning group operating under a joint timetable. This request was received from First Group (First) and Network Rail Infrastructure Ltd (Network Rail) on November 4th, 2005.
- 1.2 The Board considered this request for guidance at its meeting on November 22nd, 2005.
- 1.3 This paper summarises the request for guidance received from First and Network Rail and the guidance provided by the Board.

2. Information Received

- 2.1 This submission concerns the correct attribution of delays to departing services, caused by the late arrival of either rolling stock or traincrew, where those incoming services form or operate services by or on behalf of another Train Operating Company and where the root cause of the delay is not the responsibility of either Train Operating Company. This situation is almost identical to a previous submission which gave rise to determination DAB2. Network Rail appealed DAB2 to Access Disputes Panel whose determination was issued as ADP07 (see Appendix A).
- 2.2 The operators concerned are First Great Western (FGW) and First Great Western Link (FGWL). These Operators share an owning group and, since 12 December 2004, have operated a Joint Timetable but, because of the franchising process, have two entirely separate Track Access Contracts. This issue will be resolved with the introduction of the Greater Western Franchise in 2006.
- 2.3 There are currently a considerable number of disputed incidents in TRUST which relate to services shared between FGW and FGWL. Since First Group assumed responsibility for running the former Thames Trains franchise, they have introduced a extensively modified timetable which involves a certain number of shared services, principally involving First Great Western services arriving at London Paddington, with the rolling stock then forming a First Great Western Link service. Consequently, any delay to the inbound FGW service can cause a late departure of the outgoing FGWL service and it is this circumstance which has led to the disputes.
- 2.4 They have arisen because, under the circumstances outlined above, Network Rail have attributed all late departures caused by the late inward arrival of previous services in accordance with determination ADP07, i.e. to FGWL. First Group are of the view that ADP07 does not apply to all such incidents. They are of the view that, as both operators share a common Owing Group and are planned in common, the delay should be attributed to the root cause of the late arrival. Both parties have therefore agreed that it should be

referred to the Board for guidance. The parties requested the Board to consider the following

3 Summary of the position of Network Rail

- 3.1 Network Rail held the view that the determination in respect of ADP07 does apply in the scenarios disputed by FGW and FGWL, as paragraph 18.1 of the determination states:-

“allocation of the responsibility for delay at any boundary point shall be determined as between Network Rail, and the Train Operator whose Track Access Right supports the continuing service”

and, notwithstanding that both Operators have a common owner and that the services are planned in common, FGW's and FGWL's services are supported by totally separate regulated and model-clause based Track Access Contracts. Thus, allocation of the responsibility for the delay to the departure from Paddington (the boundary point under these circumstances) rests with FGWL (a totally separate Access Party under the terms of Part A, Paragraph 1.2 of the Network Code), the Train Operator whose Track Access Right supports the continuing service.

4 Summary of the position of First Group

- 4.1 First Group held the view that the delay should be attributed to the prime cause of the incident causing the delay even if this delay was due to inward stock/traincrew of a different operator at a terminus station. Emphasising that in this case the two operators belong to the same owning group and are operating as part of a “Wider Benefits Timetable”.

- 4.4 The only incidents that form part of this dispute are ones where Network Rail is responsible for the delay to the second train. Delays that are a result of a failure of First Group have already been accepted, as they would have already been within a First Group incident.

5. Locus of the Board

- 5.1 The Board reviewed its locus in respect of providing guidance on this issue. The Board's locus to provide guidance was defined in the Network Code B2.4.3 and B6.1.3.
- 5.2 The Board noted that while it could offer guidance to the parties as to how incidents of this nature should be attributed, this guidance was not binding on any party. If one or both parties were dissatisfied with the guidance provided they could refer the matter to Access Disputes Committee (ADC).
- 5.3 If the issue were referred to ADC, then an ADC Panel would be formed to consider the dispute. In doing so, the ADC Panel would take account of the guidance provided by the Board but were not bound by it. The ADC 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 ADC Panel.
- 5.4 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”

5.5 The Board would need to consider if, in providing guidance, an amendment to the Delay Attribution Guide should be proposed, to improve clarity.

6. Consideration of the Issues

6.1 The Board at its meeting on November 22nd, 2005 considered the request for guidance and took account of the following

- i). The paper submitted by First Group and Network Rail setting out the issues and their respective positions;
- ii). The wording in the Delay Attribution Guide;
- iii). The guidance previously given by the Board to Arriva Trains Wales/Wessex and Network Rail under DAB-2.
- iv). The ADRC determination in respect of reference ADP07
- v). The wording in the Franchised Passenger Template Track Access Agreement;

4. Guidance of the Board

4.1 The Board agreed unanimously that the identity of the entity or entities which own TOCs is not relevant to the interpretation of track access agreements, performance regimes or the Delay Attribution Guide. The parties to the contracts are the TOCs themselves, not their parent organisations. The rights and obligations, including the calibration of the performance regimes, therefore applies to each TOC individually.

4.2 The Board concluded that, although several different types of incident were described in the submission, nothing in the submission would justify it in issuing guidance which would be at variance with the ADP07 determination.

This guidance was approved by the Delay Attribution Board on 17 January 2006	John Rhodes (Chairman)
Signature:	