

---

---

# Delay Attribution Board

## Guidance No. DAB-12

---

---

### **1. Introduction**

- 1.1 The Delay Attribution Board (Board) received a request for guidance in relation to the Attribution of Delay to an incident (TRUST reference 560629), in which the police attended West Hampstead Thameslink railway station to apprehend three individuals on board 2T71 2050 Bedford to Brighton Thameslink-service on May 25<sup>th</sup> 2005. Significant train delay was incurred as a result of the train being held outside the station at the request of the police, whilst they made their way to and secured the station. This joint paper was received from Thameslink Rail Limited (Thameslink) and Network Rail Infrastructure Ltd (Network Rail) on January 3<sup>rd</sup>, 2006.
- 1.2 There is no suggestion that either party had failed to mitigate the impact of the incident, or that trains had incurred any form of avoidable delay not attributable to the situation described above.
- 1.3 The Board considered this request for guidance at its meeting on January 24<sup>th</sup>, 2006.
- 1.4 This paper summarises the request for guidance received from Thameslink and Network Rail and the guidance provided by the Board.

### **2. Information Received**

- 2.1 In the early evening of 25 May 2005, an aggravated burglary took place in the Leagrave area. The three individuals involved made their escape from the scene, by taxi, to Leagrave railway station where they boarded the 2T71 2050 Bedford to Brighton Thameslink-service. A witness to the crime overheard a conversation and was able to report to the police that the individuals were thought to be heading to the London area.
- 2.2 At 2124, the West Hampstead signalling centre's Duty Manager was contacted by the police requesting information on train movements into London at or around 2050, as the suspects were thought to be on-board a train and may be armed. The police were subsequently advised that 2T71 was the only service between Harpenden and St Albans at this time.
- 2.3 Following a subsequent conversation between the police and the British Transport Police ("BTP"), Network Rail was requested to hold the train outside West Hampstead Thameslink station until the civil police were able to attend.
- 2.4 All lines were subsequently blocked to traffic at 2150; with the station evacuated at 2157 by the civil police waiting for the armed response unit to attend. The Duty Manager at West Hampstead signalling centre was requested to tell the driver to make an announcement to passengers that the delay to the service was as a result of a signal failure.
- 2.5 2T71 was held at the signal just outside of the station from 2142, and eventually proceeded into West Hampstead Thameslink at 2226, where the three suspects were then successfully apprehended. Train movements on adjacent lines were permitted from 2237, with the station re-opened to the public from 2252.

- 2.6 Total train delay minutes associated with the incident totalled 278 minutes, of which 211 were to Thameslink-passenger services.
- 2.7 Network Rail originally attributed the incident to delay code 'VZ – other passenger/external causes the responsibility of TOC', with this being disputed by Thameslink in accordance with the timescales described within Schedule 8.

### **3 Summary of the position of Thameslink**

- 3.1 Thameslink originally believed that it was Network Rail's decision to block train movements, albeit at the request of the police, and that the subsequent delays to services should, therefore, be allocated in accordance with Paragraph 5.2 of Schedule 8 of the Track Access Contract (TAC) to which both are party to, namely that Network Rail shall be allocated responsibility for an incident other than a planned incident, if that incident is caused wholly or mainly...:
- (b) (whether or not Network Rail is at fault) by circumstances within the control of Network Rail in its capacity as operator of the network; or
  - (c) (whether or not Network Rail is at fault) by any act, omission or circumstance originating from or affecting the network (including its operation)...
- 3.2 Despite allegedly having committed a serious criminal offence earlier in the evening, the suspects behaved in an acceptable manner whilst on-board the 2T71 service, including during the act of purchasing Penalty Fare tickets from an on-train Revenue Protection inspector during their journey and prior to their apprehension.
- 3.3 In line with the above, the most appropriate delay code for this incident is thought to be 'XI – security alert affecting Network Rail network', as no blame can be apportioned to Thameslink for its part in the creation of this incident.
- 3.4 However, having re-considered the circumstances, Thameslink is now of the belief that neither party could have either prevented this incident, or the circumstances that led to its creation. It would be unjustifiable to expect Network Rail to refuse the closure request of the police and in the same way it would be unreasonable for Thameslink to prevent the suspects boarding its train services. Therefore, Thameslink now considers that the delay should be allocated in accordance with paragraph 5.4 (a) (ii) of Schedule 8, namely 'Network Rail and the Train Operator shall be allocated joint responsibility for... any incident in respect of which Network Rail and the Train Operator are equally responsible and for which neither Network Rail nor the Train Operator is allocated responsibility under paragraph 5.2 or 5.3'.

### **4 Summary of the position of Network Rail**

- 4.1 Network Rail clearly does not feel that the circumstances described were caused 'by an act, omission or circumstance originating in connection with or at a station ...', as the delay incurred was clearly a result of the train being held outside the station and, therefore, does not believe this meets the criteria fulfilling a joint-responsible incident as per Schedule 8 Clause 5.4 (a) (i).
- 4.2 Thameslink's motives for possible allocation in line with the definition of a 'joint-responsibility' incident in accordance with Clause 5.4 (a) (ii) of Schedule 8 are noted, with Network Rail certainly agreeing that neither party is to 'blame' for the train delay incurred. It does not, however, feel this approach would meet the very criteria for such a form of allocation. Indeed, AD39 clearly states: 'the process that, in accordance with the terms of the Track

Access Agreement, attributes an incident that causes Delay to one or the other contracting parties, is something totally different in kind from the discovery and attribution of the cause of that Incident'. Network Rail does, however, believe this contractual definition to be crucial to identifying where the allocation should lie under Schedule 8.

- 4.3 Paragraph 5.3 (a) (iii) of Schedule 8 states 'a train operator shall be allocated responsibility for an incident... if that incident is caused wholly or mainly (whether or not the Train Operator is at fault) by any act, omission or circumstance originating or affecting rolling stock operated by or on behalf of the Train Operator (including its operation)...' and therefore Network Rail, believes, the DAG is correct as this incident clearly appears to have 'originated from the rolling stock' given the presence of the on-board suspects who were the focus of police attention, and, the incident, therefore, should be coded and attributed accordingly.

## **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 is set out 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 January 24<sup>th</sup>, 2006 considered the request for guidance and took account of the following
- i). The paper submitted by Thameslink and Network Rail setting out the issues and their respective positions;
  - ii). The wording in the Delay Attribution Guide;
  - iii). The responses provided by the parties to questions;

## **7. Guidance of the Board**

- 7.1 The Board agreed unanimously that the incident should be coded as two separate incidents the first commencing at 2142 when the train was held at the signal outside the station. The second incident should commence at 2150 once the train arrived in the station and the police declared a security alert at

the station restricting access for passengers due to the probability that the suspects were armed.

- 7.2 The Board concluded that the guidance above is consistent with the wording of the Delay Attribution Guide and that the first incident of the 2T71 being held at a signal outside West Hampstead Thameslink and all delays associated with it should attributed to delay code VI in line with paragraph 4.27.1 (j), while the second incident relating to the security alert at the station should be coded VI in line with paragraph 4.27.1 (d) of the Delay Attribution Guide.

This guidance was approved by the Delay Attribution Board on 21st February 2006	John Rhodes (Chairman)
Signature:	