
Delay Attribution Board

Guidance No. DAB-15

1. Introduction

- 1.1 The Delay Attribution Board (Board) received a request for guidance in relation to the Allocation of Cancellations to an incident (TRUST reference 992639). The incident occurred on 13 July 2007 involving a train (1T64 1556 King's Lynn to King's Cross) reported hitting an individual on the Up Fast at New Barnet. Train delay and a number of full- and part- cancellations were incurred as a result, with the station also evacuated and lines also blocked to traffic, for a specific period of time.
- 1.2 The Board is asked to provide guidance as to whether "cancelled stops" equates to cancelled train services. If "cancelled stops" do equate to cancelled train services, is the train cancelled at the time it is scheduled to stop or at the time it arrives/departs or passes through the point of the incident.
- 1.3 The Board received the joint request for guidance from First Capital Connect (FCC) and Network Rail Infrastructure Ltd, London North Eastern Route, (Network Rail) on 5th September, 2007.
- 1.4 The Board considered this request for guidance at its meeting on 2nd October 2007.
- 1.5 This paper summarises the request for guidance received from FCC and Network Rail and the guidance provided by the Board.

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 a disputed attribution. 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 DAB for guidance and have prepared a joint submission accordingly, incorporating their respective interpretations.
- 2.2 The Board is asked to give guidance in this reference as to which is the correct attribution, for delay attribution and Schedule 8 purposes, of an incident (TRUST reference 992639), in which a train (1T64 1556 King's Lynn to King's Cross) reported hitting an individual on the Up Fast at New Barnet. Train delay and a number of full and part cancellations were incurred as a result, with the station also evacuated and lines also blocked to traffic, for specific periods of time.
- 2.3 There is no suggestion that either party had failed to mitigate the impact of the incident.
- 2.4 A number of other related incidents (TRUST references 12786 (19 July); 11941 (19 July); 23313 (22 July); 128327 (24 Aug); 343033 (27 Oct) & 551696 (18 Dec)) are also currently 'in dispute' pending the outcome of the Board's decision. The incident in question was purely chosen at random from those currently in dispute.
- 2.5 At 1723 on 13 July 2007, (FCC) 1T64 1556 King's Lynn to King's Cross reported hitting an individual on the Up Fast at New Barnet on the East Coast

Main Line (South), with the train stopping to a stand just short of Oakleigh Park Station – all train movements were subsequently at a stand.

- 2.6 At 1730 the driver of (GNER) 1A34 1405 Newcastle Central to King's Cross service reported the body was under the middle of his train – arrangements were made to send (FCC) 2V29 1655 Moorgate East to Welwyn Garden City forward for Oakleigh Park station, (FCC) 2V30 1705 Moorgate East to Welwyn Garden City service back to New Southgate station, (FCC) 2Y55 1710 Welwyn Garden City to King's Cross service back to Hadley Woods Station, with all other train services diverted via the Hertford Loop.
- 2.7 At 1804 the incident was confirmed as being 'non-suspicious', with 1T64 moving forward to Oakleigh Park with Police permission. At 1830, the attending RIO opened the Down Slow line from Oakleigh Park to New Barnet to 20mph, with trains not stopping at New Barnet. Similarly, at 1841 the Up Slow was re-opened, with trains also not stopping at New Barnet. At 1842, 1T64 departed to Wood Green and subsequently to Hornsey for exam purposes. At 1847, the Up & Down Slow was opened to line-speed, with trains continuing not to stop at New Barnet. At 1854, all lines were opened to line-speed, with no trains stopping at New Barnet, awaiting track and platform cleaning.
- 2.8 At 2058, FCC advised New Barnet station was open to traffic following the completion of cleaning works.
- 2.9 Two TRUST incidents were created for this incident, in accordance with DAG 4.10.2 (a) & (b) Fatalities and Injury caused by being hit by a Train and Schedule 8 Paragraph 5.4 Joint Responsibility, the second of which (992639) remains in dispute. The first was coded to 'XC – Fatalities / injuries caused by being hit by a train' i.e. NR-responsibility, with the second incident to delay code 'VC – fatalities' and responsible manager code 'DEGL – FCC Stations External', i.e. 'dual-coded'.
- 2.10 Total train delay minutes associated with this second incident totalled 33 minutes, all of which were to FCC-passenger services, with a further nine full-cancellations and eight-part cancellations.
- 2.11 The parties are in agreement that the minutes delay associated with the 'VC' are correct. However, they remain in disagreement over the cancellations, hence the referral to the Board.

3. FCC Position

- 3.1 FCC believe all cancellations (either partial or full) are due to the 'root cause'. Cancelled stops in FCC's view apply to the failure to stop at scheduled locations. This does not encompass cancelled trains, either partially or in full. The train can still run, albeit late, if a station is temporarily closed. However to recover the service, trains are cancelled because of the "root cause", which in this case was a fatality. In summary; FCC believes "cancelled stops" are precisely what it says. Cancelled stops are not cancelled train services.
- 3.2 These trains were cancelled to assist Network Rail with service recovery. Had these trains been allowed to continue, the delay minutes would have been attributed to Network Rail as the station closure was for a minimal amount of time. FCC should not be penalised.
- 3.3 The portion of the Track Access Contract being cited by Network Rail is: Unless and to the extent otherwise agreed, Minutes Delay or Cancelled Stops caused by incidents for which Network Rail and the Train Operator are allocated joint responsibility pursuant to paragraph 5.4(a) shall be allocated 50% to Network Rail and 50% to the Train Operator. However, FCC is not

allocating "minutes delay or cancelling stops". We have cancelled entire journeys due to a fatality. We have not cancelled trains because of access to one station.

- 3.4 It is FCC's interpretation that "cancelled stops" is only applicable when a train is allowed to pass through a station, but not allowed to stop. Example events could be fatality or fire, which should be attributed in TRUST as FTS. A cape or pine (*full cancellation or part cancellation*) should be considered differently.
- 3.5 It is FCC's belief that if a train is cancelled before reaching the point of the dual coded incident, then it should be coded to root cause, because that is the reason for service recovery being necessary.
- 3.6 DAG 4.10 'Fatality on Network Rail Infrastructure including the track in stations or in the vicinity of a station which prevents both the passage of a train at the time it is scheduled to stop and the access of passengers to/from the train....' should be coded 'VC – D***' Clearly, this text is applicable when the train continues in service, before and after the affected station.

4. Network Rail Position

- 4.1 Network Rail believes that the circumstances outlined meet the criteria as outlined by Schedule 8 Paragraph 5.4 -

(a) Network Rail and the Train Operator shall be allocated joint responsibility for:

(i) any incident which is not a planned incident (as defined in paragraph 5.7), caused by an act, omission or circumstance originating in connection with or at a station which:

(1) is an act, omission or circumstance which affects the Network, or its operation, and prevents a Train entering or passing through a station at the time it is scheduled to do so; and

(2) prevents the access of passengers through the station to or from the Train;

and paragraphs 5.2 and 5.3 shall not apply to any such incident; or

(ii) any identified 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.

(b) Unless and to the extent otherwise agreed, Minutes Delay or Cancelled Stops caused by incidents for which Network Rail and the Train Operator are allocated joint responsibility pursuant to paragraph 5.4(a) shall be allocated 50% to Network Rail and 50% to the Train Operator.

- 4.2 Network Rail believe that DAG 4.10.2 (b) supports this: a 'Fatality on Network Rail Infrastructure including the track in stations or in the vicinity of a station which prevents both the passage of a train at the time it is scheduled to stop and the access of passengers to/from the train....' should be coded 'VC – D***', as this particular example is.
- 4.3 Whilst Network Rail acknowledges the purposes for these cancellations, i.e. to aid service recovery following the incident, it cannot see any reason as to why they should be attributed any differently to the minutes delay within the same incident provided the specific circumstances are met, as they clearly are in this particular circumstance (and all other incident currently in dispute).

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 2nd October 2007 considered the request for guidance and took account of the following:
 - 6.1.1 The paper submitted by First Capital Connect and Network Rail setting out the issue and their respective positions.
 - 6.1.2 Printouts of TRUST Incident 992639.
 - 6.1.3 Response to written questions/comments from the Board.
 - 6.1.4 The wording in the Delay Attribution Guide.
 - 6.1.5 The oral presentations made by the parties to the Board.
- 6.2 In particular the Board noted:
 - 6.2.1 According to the joint paper submitted; the Board are asked to provide guidance as to whether the term 'cancelled stops' has the same meaning as 'cancelled train services' and, if this is true, is a train deemed to be cancelled at the time it is scheduled to stop or at the time it arrives/departs or passes through the point of the incident.
 - 6.2.2 Template Schedule 8 states that 'Cancelled Stop' means in relation to a Train scheduled in the Applicable Timetable to stop to set down passengers at a Monitoring Point, the Train failing to trigger that Monitoring Point (except where the failure of the train to trigger the Monitoring Point is due to a malfunction of the Monitoring Point).

6.2.3 Additionally, the Board were asked at the hearing to give guidance as to whether cancellations made to recover train services (which are jointly agreed cancellations) should be allocated to the 'joint incident' in accordance with Schedule 8 Paragraph 5.4 -

"(a) Network Rail and the Train Operator shall be allocated joint responsibility for:

(i) any incident which is not a planned incident (as defined in paragraph 5.7), caused by an act, omission or circumstance originating in connection with or at a station which:

(1) is an act, omission or circumstance which affects the Network, or its operation, and prevents a Train entering or passing through a station at the time it is scheduled to do so; and

(2) prevents the access of passengers through the station to or from the Train;

and paragraphs 5.2 and 5.3 shall not apply to any such incident; or

(ii) any identified 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.

(b) Unless and to the extent otherwise agreed, Minutes Delay or Cancelled Stops caused by incidents for which Network Rail and the Train Operator are allocated joint responsibility pursuant to paragraph 5.4(a) shall be allocated 50% to Network Rail and 50% to the Train Operator."

6.2.4 Or whether cancellations made to recover train services (which are jointly agreed cancellations) should be allocated to the 'first incident' in accordance with Schedule 8 Paragraph 5.5 -

"Responsibility for Minutes Delay and Cancelled Stops on a day caused by incidents for which Network Rail is allocated responsibility pursuant to this paragraph 5.2 shall be allocated to Network Rail. Unless and to the extent otherwise agreed, Network Rail shall be allocated responsibility for an incident other than a planned incident (as defined in paragraph 5.7), if that incident is caused wholly or mainly:

(a) by breach by Network Rail of any of its obligations under this contract; or

(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), including, subject to paragraph 5.3(b)(i), any incident in connection with rolling stock on the Network for which any train operator other than the Train Operator would be allocated responsibility if it were the Train Operator under this contract."

6.2.5 All the disputed cancellations are related to trains that were booked to call at New Barnet.

6.2.6 The attribution (coding and identification of the responsible party) of the two incidents relating to the tragic fatality at New Barnet is not in dispute.

6.2.7 The Board are pleased to note that the creation of two TRUST incidents following the circumstances of the fatality incident is consistent with the guidance given in DAG section 4.10.

6.2.8 The timeline of events surrounding the decision to cancel train services was significant in responding to the request for guidance.

6.2.9 The disputed cancellations made to aid service recovery.

6.2.10 The Board were informed by FCC that the New Barnet station and the running lines were closed and reopened more than once during the overall duration of the incident. Network Rail did not contest this fact.

7. Guidance of the Board

- 7.1 The Board reviewed the relevant definitions for 'cancellations' given in the template Track Access agreements. (*Paragraph 1.1, Interpretation, Definitions. Section 4, Recording of performance information. Section 5, Allocation of Responsibility for Minutes Delay and Cancelled Stops*).
- 7.2 The Board can confirm that, for the purposes of Delay Attribution, a 'cancelled stop' means in relation to a Train scheduled in the Applicable Timetable to stop to set down passengers at a Monitoring Point, the Train failing to trigger that Monitoring Point (except where the failure of the train to trigger the Monitoring Point is due to a malfunction of the Monitoring Point).
- 7.3 Whilst cancellations (or cancelled stops) to aid service recovery are likely to be agreed well in advance of the time the trains are booked to call, the allocation of those cancellations must take consideration of the circumstances at the station at the time the trains are booked to call. Therefore;
- 7.4 The Board unanimously agreed that any cancelled stops allocated to the joint responsibility incident should be those cancelled stops where the train *would not have been* able to call (stop) at the time it is scheduled to do so and the access of passengers to/from that train *would have been* prevented (in this case by the closure of the station).
- 7.5 Delays falling within category a. of 4.10.2 of the DAG (ie except where both access of passengers to/from trains and the passage of trains at the times they were due to stop is prevented) should be coded to Network Rail.
- 7.6 The Board understood that the station concerned (New Barnet) may have closed and reopened more than once during the overall duration of the incident. The Board therefore requests the parties to review the allocation of cancellations to each of the two incidents, taking into consideration the previous paragraphs 7.1 - 7.5.
- 7.7 The Board concluded that there was no requirement to amend the Delay Attribution Guide.

This guidance was approved by the Delay Attribution Board on 30/10/27	John Rhodes (Chairman)
Signature:	