
Delay Attribution Board

Guidance No. DAB-17

1. Introduction

- 1.1. At the meeting of the Delay Attribution Board (Board) on the 17th February 2009 a request for guidance was received from Freightliner Heavy Haul on behalf of Freightliner Group. The request was in relation to the interpretation of Section 4.38.3 (a) of the February 2009 issue of the Delay Attribution Guide (DAG). This section of the DAG had been amended in this issue and gives guidance on the attribution of incidents in connection with the arrival of train crew on late inward services.
- 1.2. The request for guidance was supported at the meeting by DB Schenker.
- 1.3. Network Rail also asked that the Board provide clarity on the interpretation and application of this section of the DAG as it incorporated an amendment approved by the Board and there was a possibility that this amendment was being applied in a way in which the Board had not intended.
- 1.4. First Great Western also voiced concern over the commercial impact on Passenger train operators of the way in which the amendment to Section 4.38.3(a) was being applied.
- 1.5. Specifically, the Board was asked the following:
- 1.5.1. What is the correct interpretation of Section 4.38.3(a) of the February 2009 DAG as given below;

4.38 WAITING TRAINCREW

4.38.1 Delays caused by traincrew late booking on-duty for whatever reason is the responsibility of the Train Operator.

4.38.2 Normally the Minutes Delay should be coded FE for freight trains or TG/TH/TI for passenger trains and attributed to the Operator.

4.38.3 Exceptions:

No.	Circumstances	Delay Code	Incident Attribution
a.	If the Operator confirms that the traincrew were on a late inward working, provided they had booked on duty prior to travelling on it <i>and both incoming and outgoing services are the responsibility of the same operator</i>	YJ	Attributed to principal TRUST Incident causing inward train to be late
b.	If a train running significantly late is further delayed waiting traincrew and the Operator confirms that the booked crew have not waited or events where Traincrew Resources Managers have to provide traincrew (or "step up") to mitigate delays.	YN	Attributed to principal TRUST Incident causing train to be late

1.5.2. Specifically, does 4.38.3(a) apply when train crew were booked as part of their turn of duty to travel 'passenger' on the train of another operator in order to reach the location where they are required to work their own train.

1.6. The Board considered this request for guidance at its meeting on the 17th February 2009.

2. Information Received

2.1. The submission from Freightliner is as follows:

To : Lee Amass
Professional Head of Delay Attribution
14 th February 2009

DAG 4.38.3 (a) Waiting Traincrew

Freightliner Group are concerned over the interpretation being applied by certain NetworkRail Routes in connection with the amended DAG 4.38.3 (a) which was amended in the February 2009 version of the DAG. The interpretation being placed by Network Rail on this DAG amendment is having a detrimental effect on the way certain incidents are now being attributed which may have a material effect on freight operators Schedule 8 payments and benchmarks. Network Rail did not include this implication on freight operators in its proposed change, and therefore, should not be able to interpret and apply the amendment in the way that it has. Freightliner Group is asking the Delay Attribution Board to consider this matter urgently.

We do not believe that the wording was meant to be applied to Freight Traincrews(or other Freight train staff), who have already signed on duty and are diagrammed to go passenger on other Passenger Operator's services, to pick up their next working en-route from another location. Until the amendment to DAG 4.38.3 (a) was implemented, it has always been recognized and so attributed that if the booked passenger service on which the traincrew(or other staff) were travelling becomes delayed(or cancelled) en-route, and leads to the Freight Operator's service being delayed, the delay is attributed to the incident which has caused the delay to the passenger service and not as a late start or delay to the Freight Operator's service being delayed, irrespective of whether the delay has been caused by a NetworkRail/TOC or FOC incident.

The alteration which was agreed by the DAB to the February 2009 DAG, did not refer to any change of responsibility in connection with this altered wording.

As mentioned earlier, if Network Rail is permitted to continue to apply its interpretation of 4.38.3 (a) to such incidents and attribute accordingly, it will have a serious effect both on our Schedule 8 payments received and paid out, and could ultimately affect our benchmarks. We do not believe this was made

clear by Network Rail when proposing its change and suspect that the ORR would not have accepted this alteration had Network Rail explained how it was going to interpret the change and apply it to the way that it attributes such incidents. The reason for the change was cited as 'these changes are for clarification only' It was not envisaged that other Operators not directly concerned by the ADP7 and ADB16 rulings would be affected by this, as this alteration stated 'There are no commercial implications. Plainly this is not the case.

We would ask that these concerns are discussed and considered by DAB and how they may be addressed. Freightliner Group is aware that DB Schenker is similarly concerned in this regard.

R.G.Baller
Performance Manager
Freightliner HeavyHaul

2.2. The Board notes the following factual information:

2.2.1. A proposal to amend this section of the DAG was approved by the Board on the 10th October 2009 and subsequently approved by the ORR on the 15th December 2009.

2.2.2. The approved proposal (DAB/React/07b) was to insert the following text at the end of 4.38.3 (a):

"and both incoming and outgoing services are the responsibility of the same operator".

2.2.3. The 'impact statement' given by the sponsor in the proposal stated that there are no commercial implications - these changes are for clarification only.

2.2.4. The reason stated for the proposal was to bring the guide into line with determinations ADP7 and ADP16.

2.3. It appeared to the Board and to various Access Parties that currently a much wider interpretation is being applied to this amended section than the circumstances to which the previous ADP determinations had applied to 'inward working' train crew and was contrary to the basis on which performance regimes had been benchmarked.

2.4. The Board understood that since 1st February 2009, Network Rail had been interpreting Section 4.38.3(a) not to apply when train crew were booked as part of their turn of duty to travel as passengers on the train of another operator in order to reach the location where they are required to work their own train. Therefore, a new incident was now being created for the train starting late and attributed to the operator of that train rather than being attributed as a reaction to the incident that caused the delay to the train the train crew was travelling on.

3. Freightliner, DB Shenker, and Network Rail Position

3.1. The parties requesting guidance considered that this Section of the DAG was intended to be applied to circumstances where train crews were booked on duty and travelling passenger on another train operators service.

4. Locus of the Board

4.1. 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.

4.2. 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 any of the Access Parties were dissatisfied with the guidance provided they could refer the matter to Access Disputes Committee (ADC).

4.3. 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.

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.

5. Consideration of the Issues

5.1. The Board at its meeting on 17th February 2009 considered the request for guidance and took account of the following:

5.1.1. The desire of the Access Parties to remove what it believed to be the unintended commercial impact of the approved change to Section 4.38.4(a) of the DAG.

5.1.2. The sponsor's intention that the amendment would have no commercial impact.

5.1.3. The amendment to this section of the guide was approved by the Board and ORR on the basis and understanding that there would be no commercial impact.

5.1.4. It has come to light since implementation of the February 2009 DAG that the application of this guidance has had unintentional

commercial impact when applied to train crew already booked on duty but travelling 'on the cushions' i.e. as a passenger on a service operated by another operator.

6. Guidance of the Board

6.1. Until further notice and pending any possible referral to the Board, the reference to inward working of crews in 4.38.3 (a). must also be applied to Freight and Train Operator crew where they are diagrammed to travel as a passenger - i.e. the correct coding should be 'YJ'.

For example:

Train A (operated by TOC A) has train crew for Train B (operated by TOC B) on board who have been diagrammed to travel as 'passenger' on Train A. Train A arrives at a location late and therefore the train crew are late boarding Train B at that location. Train B incurs lateness departing that location directly due to the late arrival of the train B train crew. The late start and consequent delay to Train B should be allocated to the prime incident causing the late arrival of Train A.

6.2. The Board considers that attribution in this way formed the basis on which the industry performance benchmarks were determined and therefore attribution practice in the above circumstances must return to how it was before the February 2009 DAG came into effect.

6.3. The Board considered that an amendment to the DAG is required to provide clarity in Section 4.38.3(a).

This guidance was approved by the Delay Attribution Board on 13 th March 2009	John Rhodes (Chairman)
Signature:	