
Delay Attribution Board

Guidance No. DAB-2

1. Introduction.

- 1.1 The Board received a request for guidance from Network Rail Infrastructure Ltd as to how delays associated with incidents involving traincrew working for more than one operator within a shift should be attributed. The issues raised specifically related to traincrew working for Arriva Trains Wales and Wessex Trains, however a point of principle was sought.
- 1.2 The Board at its meeting on March 8th, 2005 considered this issue and the guidance that should be given.

2. Information Received

- 2.1 The Board noted that the request for guidance was not a joint submission, with a report only being submitted by Network Rail. As a result the Board sought comments from both Arriva Trains Wales and Wessex Trains who had responded in writing jointly prior to the meeting.
- 2.2 Nic Coome (Network Rail) and Mike Tapscott (Arriva Trains Wales) attended the meeting and were invited to present their respective positions. The Board then asked questions.
- 2.3 In identifying the nature of the incidents in dispute it was identified that some related to the transfer of traincrew and some related to the transfer of rolling stock.
- 2.4 This was not reported to have been an issue prior to franchise remapping as incidents are understood to have been attributed to prime cause.
- 2.5 When franchise remapping took place the issue of shared traincrew does not appear to have been taken into account during any recalibration of the relevant Schedule 8 performance benchmarks.

3. Network Rail Position

- 3.1 The concern of Network Rail in bringing the issue to the Board for guidance was that they could not agree what causation code to attribute incidents to involving traincrew working for more than one train operator and by association which party should hold responsibility.
- 3.2 Network Rail held the position that delay should not be transferred from one train operator to another i.e. where traincrew switched TOCs then a separate incident should be created and attributed to the second TOC. This position was in part arrived at on the basis of paragraph 5.3 (b) (ii) of Schedule 8 in the model franchised passenger Track Access Agreement that specifically excluded the transfer of delay from one TOC to another where rolling stock transferred between the TOCs.

3.3 Network Rail also contended that agreements between TOCs on the deployment of traincrew were third party agreements over which Network Rail had no control.

4. Arriva Trains Wales / Wessex Trains Position

4.1 Arriva Trains Wales / Wessex Trains held the view that the delay should be attributed to the prime cause of the incident causing delay even if this was due to delay that occurred to the same traincrew whilst working previously in the same shift for a different TOC.

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 Condition B2.4.3. The use of the term "they shall seek guidance" within that Condition was questioned as in this instance only Network Rail had sought guidance. On the basis that the Board could only provide guidance it was felt unreasonable not to provide guidance to a party if a request to do so was received. In any event both Arriva Trains Wales and Wessex Trains had subsequently responded to a request for their views.

5.2 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 make a determination that was binding on the parties concerned.

5.3 If the case is referred to ADRC, then ADRC would consider the guidance provided by the Board but were not bound by it. 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;

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 In considering the issue put before it the Board noted the following points:

- a) Section 4.38 on "Waiting Traincrew" in the Delay Attribution Guide was silent on traincrew changing operator whilst on duty;
- b) Section 4.17 on "Late Arrival of Inward Working" appeared to be in contradiction to paragraph 5.3 (a) (ii) of Schedule 8 of the model franchised passenger Track Access Agreement i.e. the Delay Attribution Guide suggests that late inward stock should be assigned to the prime cause and by remaining silent on rolling stock changing TOC could be taken to imply in all circumstances;

- c) The Network Code (Condition B2.1) requires Network Rail to “determine and record the persons and causes which are responsible for the delay or cancellation and where more than one, so far as is practicable, the extent to which each person or cause is so responsible.”
- d) The purpose of delay attribution is to identify the prime cause as this provides the best opportunity for performance improvement – this principle is consistent with the Delay Attribution Guide as currently worded.
- e) The ADRC ruling on AD39 to see if there were any lessons that could be learned, as this overturned the first guidance that the Board had provided. The Board concluded that AD39 had no specific relevance in the context of the guidance sought on this occasion because the determination in AD39 was specific to an incident which had occurred before the Delay Attribution Guide had been adopted as a contractual document.

6.2 Under the obligation set out in c) above, the flexibility exists to identify one or more causes (causation codes) and / or one or more persons (responsible manager codes), but systems capability inhibits the use of this flexibility.

6.3 There tends to be commercial pressure to amend the causation code to reflect the commercial mapping to responsible manager code when in fact the process should allow an incident to be set up where more than one responsible manager code could be allocated to reflect the responsibilities of the parties.

7. Board Guidance

7.1 The Board therefore agreed (by majority) that the key principle that delay should be attributed to its prime cause should be adhered to, except:

- a) Where the transfer of rolling stock occurs between operators then all delay associated with the incident should be attributed to the prime cause and where this produces a financial result at variance with the TOCs contract with Network Rail, a separate financial settlement should be agreed by the parties outside the Delay Attribution process, so as to put the parties in the position which the contract intended. Ideally the Board recommends that the delay attribution process is changed to enable all the delay to be attributed to the prime cause and the responsibility for paragraph 5.3 (a) (ii) of Schedule 8 being shown by allocating the appropriate delay to separate Responsible Manager Codes within the incident.
- b) Where the transfer of traincrew occurs between operators then:
 - i) If this occurs in association with the transfer of rolling stock then the provision for the attribution of rolling stock defined in 7.1 a) above applies;
 - ii) If it is not associated with the transfer of rolling stock then the delay should be attributed to the prime incident only.

This guidance was approved by the Delay Attribution Board on April 19 th , 2005	John Rhodes (Chairman)
Signature:	