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## Delay Attribution Board

### Guidance No. DAB-20

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#### 1. Introduction

- 1.1. The Delay Attribution Board (the Board) received a request for guidance in relation to the attribution of an incident (TRUST reference 668821) whereby a member of the public was seen to have illegally boarded ('surfed') a wagon on 6Y33 (12.54 from Holybourne to Eastleigh Yard) at Swanwick as it slowed through the platform,
- 1.2. The Board received the joint request for guidance from DB Schenker Rail (UK) Ltd (DB Schenker) and Network Rail Infrastructure Ltd, Wessex Route, (Network Rail) on the 9<sup>th</sup> September 2009
- 1.3. The incident is currently attributed to FZ/FOC OTHER – DB Schenker
- 1.4. Specifically, the Board was asked the following:

'Network Rail and DB Schenker Rail (UK) Ltd ask that DAB provide guidance on suitable attribution of responsibility for the incident that occurred on the 28th November 2008, whereby a member of the public was seen to have illegally boarded ('surfed') a wagon on 6Y33 (12.54 from Holybourne to Eastleigh Yard) at Swanwick as it slowed through the platform.

'There is no dispute over allocation of delays to the prime cause incident, just purely the allocation of responsibility. Should the incident reside with DBS as a delay causing event involving the operation of a train? Or should the incident reside with Network Rail as a trespass event?'
- 1.5. The Board considered this request for guidance at its meeting on the 6<sup>th</sup> October 2009.
- 1.6. This paper summarises the request for guidance received from DB Schenker and Network Rail (the parties) 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 formal 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 Board for guidance in accordance with Network Code Condition B2.4 and have prepared a joint submission accordingly, setting out their respective positions.
- 2.2. The parties provided the following factual background (condensed to relevant facts) in relation to TRUST incident 668821.

At 1521 hrs on the 28<sup>th</sup> November 2008, a report was received by Eastleigh electrical control from the station staff at Swanwick, informing that a middle aged man, with a red rucksack and a 'Russian style' hat had climbed on board a wagon of head code 6Y33 train, the 12:54 Holybourne to Eastleigh Yard service, at Swanwick. Upon receiving this report, an emergency isolation was taken.

At 15:24 hrs two National Radio Network (NRN) emergency calls were sent to the Driver of head code 6Y33 train, with no response received.

At 15:27 Eastleigh ASC advised that they had spoken to the driver of head code 6Y33 train at E804 signal at Hamble, and that he would examine the train.

At 15:34, Eastleigh electrical control advised that the current had been restored after the driver reported back, informing that the person had jumped off the wagon at Hamble station.

## **3. DB Schenker Rail (UK) Ltd Position**

- 3.1. DB Schenker considers that this incident should be treated as trespass under DAG Section 4.36. It is clear from the factual events set out above that the individual was a trespasser as he had no valid ticket for travel. He also had no authority to board and travel on 6Y33. Later in the day he also travelled on 2E48 without a ticket and was arrested by BTP.
- 3.2. The definition of trespass includes '*the unlawful entry to a person's land or property*'. DB Schenker submits that clearly this was the case here with this individual.
- 3.3. DAG Section 4.36 does not specifically mention circumstances where a trespasser unlawfully boards a freight train at a station and alights at a subsequent station when the train was stopped for examination. However, DAG 4.36(j) and (n) make it clear that FOCs are only attributed with delay caused by persons alighting onto Network Rail

infrastructure after having travelled on freight trains where such trespassers boarded within a freight terminal.

- 3.4. Whilst the individual concerned appears to have exited the railway at Hamble station, it is not clear whether he jumped off the train onto the track first or straight onto the platform at that location. However, DB Schenker considers the convenience of Hamble station was mere coincidence as 6Y33 had been stopped E804 signal which happens to be at the end of the platform. Had 6Y33 been stopped at another signal not adjacent to a station, which could quite have easily been the case, the individual may have 'jumped off' the train onto the track.
- 3.5. Furthermore, DAG Section 4.36(m) states that threats of trespass from station/footbridge resulting in the cautioning of trains should also be attributed to Network Rail.
- 3.6. DB Schenker submits that the prime cause of the delay was due to Network Rail cautioning the driver of 6Y33 to check the train and taking an isolation of the traction current following the report of trespass. Whilst DB Schenker is not criticising Network Rail's actions taken in this respect, it argues that for delay attribution purposes Network Rail is the party best placed to manage and mitigate delay arising from such incidents and this responsibility is contemplated in the provisions of DAG Section 4.36, in particular DAG Section 4.36 (j), (m) and (n).
- 3.7. Another contributory factor that DB Schenker considers should be taken into account is the fact that 6Y33 was being cautioned under signals resulting in its slow progress through Swanwick station allowing the trespasser to climb aboard the train. Had it been travelling at line speed, the trespasser would not have been able to gain access without extreme danger.
- 3.8. DB Schenker disagrees with Network Rail's view that the cause of the delay is wholly as a result of an individual compromising the operation of the train, not the infrastructure. DB Schenker argues that the infrastructure was compromised by the incident as Network Rail took an isolation of the traction current, thereby affecting a far greater number of trains than those that would have been directly behind 6Y33.
- 3.9. In conclusion, therefore, as a result of the above, DB Schenker submits that this incident should be attributed to Network Rail under code 'XA' Trespass.

#### 4. Network Rail Position

Network Rail has used all sources of information available to investigate the cause of the delay and subsequently coded the incident to DB Schenker Rail (UK) Ltd, reason code FZ, responsible manager code FWAK.

Network Rail maintains that;

- 4.1. At no point did the individual trespass on the infrastructure. The prime cause of the delay was a safety report being made by station staff at Swanwick of a person climbing aboard a wagon on 6Y33. DBS make reference in section 4.1, “delays caused by people travelling on trains without a ticket” these instances are not the responsibility of Network Rail
- 4.2. The individual boarding the freight wagon did not compromise track access, so therefore the incident is not the responsibility of Network Rail. DBS view 4.2 highlights that the fact that the person concerned gained unlawful entry to the property of DBS, namely, 6Y33. With reference to DBS view 4.6 [3.6 above], in this instance the only means of mitigation must lay with the DBS. Network Rail cannot be held responsible for the security of freight trains. The view of DBS in section 4.4 [3.4 above] is pure speculation, and not based on any factual information.
- 4.3. The prime cause of the delay to 6Y33 was the driver stopping the train to investigate the allegation. With reference to DBS view 4.7 [3.7 above], this is irrelevant, and not the cause of this delay or indeed this incident. The DBS view in 4.8 [3.8 above] is inaccurate as the only reason that a current isolation was taken was due to the report received and a necessary consequence of the circumstances of the incident – a safety report.
- 4.4. The cause of the delay is wholly as a result of an individual compromising the operation of the train, not the infrastructure, and to this end, the Network Rail view is that incident should be attributed to DBS as an incident within the control of the train operator as an operator of trains.

## **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 Conditions 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 any of the Access 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 6<sup>th</sup> October 2009, considered the request for guidance and took account of the following:
  - 6.1.1. The paper submitted by DB Schenker (UK) Ltd and Network Rail setting out the issue and their respective positions.
  - 6.1.2. The oral presentations made by the parties to the Board.
  - 6.1.3. The Delay Attribution Guide.
  - 6.1.4. Network Rail's responsibility under the Rule Book.
- 6.2. In coming to its conclusion the Board regarded the following points as particularly relevant:
  - 6.2.1. The parties do not dispute the facts of the incident.
  - 6.2.2. The Board agrees with DB Schenker that the prime cause of the incident was an act of trespass.

- 6.2.3. The report of the act of trespass caused an isolation to be taken, which is a requirement under 'Rule Book'
- (Module DC section 6.1 states that the Electrical Control Officer must be immediately contacted if **“you become aware of a person in contact with or in danger of coming into contact with the conductor rail equipment (CRE).”**)
- 6.2.4. This isolation caused other trains to be delayed. Train 6Y33 was diesel powered but was held at caution to enable the driver to inspect it.
- 6.2.5. Instructions to DB Schenker drivers ask them to use their rear view mirrors at regular intervals during the course of their journey to try to identify any problems which affect the train en route. There was no suggestion by the parties that the driver of 6Y33 had failed to observe this instruction.
- 6.2.6. Section 4.36.1j of the September 2007 Delay Attribution Guide gives guidance to the attribution of delays caused by “Persons having alighted on Network Rail infrastructure having travelled on freight trains – where they boarded within a freight terminal, non Network Rail infrastructure (or outside the country i.e. Channel Tunnel)” - Delay Code AZ (Other Freight Operating Company, caused to be specified). Other events of trespass are necessarily the responsibility of another party which, in the case of this incident, could only be Network Rail.’

## 7. Guidance of the Board

- 7.1. The Board agreed unanimously that for purposes of delay attribution, the prime cause of the incident in dispute TRUST reference 668821 was the report of trespass on a freight train which took place neither in a freight terminal not on Network Rail's infrastructure, nor the Channel Tunnel.
- 7.2. The incident cannot therefore be attributed to the train operator and should be attributed to Network Rail as a trespass event as it is responsible for the security of the network. The Board decided that Delay Code XA and Responsible Manager Code XQ\*\* should be used for the attribution of this incident.
- 7.3. The specific circumstances of this event are not covered by the DAG. The Delay Attribution Board recommends that a proposal for change to the DAG be made for the purposes of clarity

Minutes were approved as being accurate by the Delay Attribution Board on 3 <sup>rd</sup> November	John Rhodes (Chairman)
Signature:	