Delay Attribution Board

Guidance No. DAB-22

1. Introduction

The Delay Attribution Board (the Board) received a request for guidance in relation to the Attribution of TRUST delay incidents 849978 (3rd February 2009), 849986 (3rd February 2009), 849982 (3rd February 2009), 846385 (2nd February 2009, 846856 (2nd February 2009).

1.1. The Board received the joint request for guidance from West Coast Trains Limited (Virgin Trains) and Network Rail Infrastructure Ltd, London North West Route, (Network Rail) on the 24th November 2009.

1.2. In some cases Network Rail have investigated the loss in running as per DAG 4.21.1 and had reasonable grounds to believe that the Minutes Delay were not caused by signalling or other infrastructure restrictions. Network Rail later received reports from Virgin Trains that the Minutes Delay were a direct result of the drivers adhering to Rule Book Instructions TW1 section 18 and TW2 section 7 and reducing the speed of the train during falling snow to a maximum of 100mph or 10mph below line speed.

1.3. **The Board was asked the following:**

DAB is asked to give guidance with regard to the correct attribution of incidents related to services that have reduced their speed as a result of drivers applying rule book sections TW1-14, TW1-18 and TW2-7; specifically that the Board provide guidance on whether delays associated with these types of issues should be attributed to an "Operator" responsible code as "VW"/"MW" as the Operator of the trains involved, or if they should be attributed to Network Rail responsible code as the Operator of the Network.

Virgin Trains believe that the best means of reflecting this type of delay would be code VW and 'shared responsibility' with a relevant incentive to both parties agreed in a similar fashion to adhesion as per ADP 11. Virgin Trains are seeking guidance from the Delay Attribution Board with regard to this.

Both parties would ask the Delay Attribution Board to consider that the Delay Attribution Guide should provide clearer guidance on this particular issue following the decision of the Board.

1.4. The Board considered this request for guidance at its meeting on the 8th December 2009.

1.5. This paper summarises the request for guidance received from West Coast Trains Limited (Virgin Trains) and Network Rail Infrastructure Ltd, London North West Route (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 incidents 849978, 849986, 849982, 846385 and 846856.

2.3. An incident coded MW MHFA (Fleet defect due to weather) was then created TDI 846385 to capture delays Network Rail believed were due to Virgin Train's implementation of rule book requirements TW2 section 7. Trains allocated to this incident by Network Rail had been affected by reduced speed due to poor visibility from falling or disturbed snow in different locations across the network at different times.

2.4. Some incidents occurred on 3 February 2009 as follows. TDI 849978 1R11 0605 Liverpool – Euston lost three minutes, Nuneaton to Rugby, TDI 849882 where the following service 20 minutes behind 1R11 lost three minutes. The train being 1R15 0635 Manchester Piccadilly-London Euston. Then 10 minutes behind 1R15 a third train 1R17 lost three minutes Nuneaton – Rugby creating TDI 849886.

2.5. The drivers of all three services did not make any report to the signallers that their trains were experiencing problems as this is not required to comply with the Rule Book or other operating practices given speed was reduced to ensure safe operation. To have unnecessarily reported the hazard of falling snow would only have exacerbated delay.

2.6. **The incidents were originally coded "TO" as per DAG 4.21.1**.

2.7. The drivers later reported that they were driving at a reduced speed (100mph) due TW2 section 7 during falling snow. Virgin Trains then challenged the attribution as a Network Rail cause.

3. West Coast Trains Limited (Virgin Trains) Position

3.1. Virgin Trains has used all sources of information available to the company to investigate the cause of the delay and found the cause to be compliance with Rule Book TW2 section 7 and TW2 18.3. There were no defects with the rolling stock involved and Pendolino trains exceed the requirements of the relevant group standards in operating in snow both through braking capability and maximisation of visibility through headlights and windscreen clearance equipment. The drivers were experienced and competent over the route concerned.

3.2. Virgin Trains believe the fact that the Rule Book mandates that drivers should reduce their speed during falling snow to no more than 100mph or 10mph below line speed constitutes a fixed instruction and is thus driven by the need to operate the 'Network'. It is not a subjective decision to be left for the driver to ensure safe 'operation of train services' thus they feel clause 5.3 of schedule 8 cannot apply. Therefore, 5.4 (a) (ii) should be applicable.

3.3. Virgin Trains believe that this may constitute a Network Rail delay cause under DAG and Schedule 8. However this is not clear and given the challenges of either party to effectively mitigate this phenomenon in an economically sustainable manner whether by infrastructure alteration or rolling stock or operational behaviour it may be more appropriate to consider a 'shared responsibility' of these delays in a similar way to that which adhesion 'wet rail' is following ADP 11.

3.4. A determination in this fashion would allow for local conditions and mitigations to be considered in allocating an effective incentive based on a split of delays. Falling snow is in many areas of the UK an infrequent event thus it would be a challenge to create economically viable mitigations for this scenario for either party. However, this is not necessarily relevant in all cases as factors such as rolling stock, route altitude, and prevailing weather may mean that one party should have a 'greater' incentive.

3.5. Network Rail believe that one of the possible measures to mitigate delays incurred by falling snow is through the introduction of "in cab signalling" which is not considered to be a an economical or viable option for Network Rail or Virgin Trains at this present time. Additionally, Network Rail also believe that it is unreasonable to allocate the responsibility for the loss in running caused by drivers reducing the speed of their train during external, weather related issues, to Network Rail. Virgin disputes this given Virgin drivers are operating to a specific Rule Book instruction relating to network operation.

4. Network Rail Position

4.1. Network Rail has used all sources of information available to the company to investigate the cause of the delay and found no known cause within Network Rail.

4.2. Network Rail acknowledge the fact that the Rule Book does state that drivers should reduce their speed during falling snow to no more than 100mph or 10mph below line speed. Network Rail do not believe that compliance with the Rule Book constitutes a Network Rail delay cause in the Delay Attribution Guide and in Schedule 8. However, having stated this, the three relevant sections of the Rule Book (TW1-14, TW1-18 and TW2-7) shown in appendix 2 of the case presented to the Board all refer to the "responsibility of the driver". The emphasis is that the responsibility lies with the driver's professional judgement on whether to reduce the speed and the management of his/her train.

With specific regard to TW1-18 and TW2-7, the ruling is directly related to the braking of trains during snow conditions i.e. the provision of running brake applications and for trains with "disc-braked" vehicles to run at 10mph below the permitted speed. There were no infrastructure defects and Network Rail has not failed in any respect in the normal operation of the network. In these circumstances, Network Rail believe Schedule 8 paragraph 5.3 (a) (iii) is applicable – "(whether or not the Train Operator is at fault) by an act omission, or circumstance originating from or affecting rolling stock operated by or on behalf of the Train Operator..." Again, this relates to the professional judgement of drivers with regard to the safe management of their train.

With specific regard to TW1-18.3, Network Rail would note that this is only applicable to and only affects trains that are running more than 100mph. Again, Network Rail believes this a requirement of the braking characteristics of the rolling stock when operating in snow conditions.

4.3. Network Rail acknowledges that in specific circumstances associated with weather, namely high winds and flooding, that resultant delays are the responsibility of Network Rail. However, in these circumstances the key factor is that the network is affected and resultantly, it is Network Rail that has introduced "cautioning" on the network. Network Rail accepts responsibility for delay in these circumstances in its capacity of "operator of the network" as the resultant delay is a direct result of the actions taken by Network Rail to safeguard the infrastructure and rolling stock operating on the network. With specific regard to the incidents that we are seeking guidance on in this paper, Network Rail did not introduce "cautioning" or any restrictions on the network.

4.4. There are two references to signal sighting related delays in the DAG where Network Rail is deemed responsible. The first is 4.37.5 (o), "Sun shining upon signal aspects, rendering drivers unable to clearly see aspects" This is accepted as a Network Rail responsible cause

code as Network Rail are in a position to mitigate the delay by installing a signal "hood". The second issue relates to DAG 4.37.5,(p) where it states "Trains delayed due to operating under fog or falling snow regulations for semaphore signalling" This is specifically for areas of the network with semaphore signalling and there is no mention of areas of the network with modern signalling operations and with equipment such as AWS and TPWS. Network Rail is not in a position to mitigate delays occurring as a result of signal sighting during falling snow.

4.5. Network Rail believe that one of the possible means of mitigating delays incurred by falling snow is through the introduction of "in cab signalling". This is not considered to be an economical or viable option for Network Rail or Virgin Trains at this present time. However, Network Rail would add that the introduction of "in cab signalling" would not negate the requirement for running break tests or the requirement for disc-braked trains to reduce their speed. Network Rail would re-iterate that this is an issue related the operation of rolling stock. Additionally, Network Rail believe that it is unreasonable to allocate the responsibility for the loss in running caused by drivers reducing the speed of their train, as a result of weather related issues, to Network Rail.

In summary, Network Rail believes the delays were caused as a direct result of drivers reducing the speed of their trains and the requirement of rolling stock to operate at reduced speed. As such, Schedule 8 paragraph 5.3 (a) (ii) *"(whether or not the Train Operator is at fault) by circumstances within the control of the Train Operator in its capacity as an operator of trains"* and 5.3 (a) (iii) *"(whether or not the Train Operator is at fault) by an act omission, or circumstance originating from or affecting rolling stock operated by or on behalf of the Train Operator..."* are applicable and consequently the delays should be attributed to the Train Operator.

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 8th December 2009, considered the request for guidance and took account of the following:

6.1.1. The facts provided by both Network Rail and Virgin Trains on the incidents disputed between the parties and their respective requests for guidance.

6.1.2. The guidance provided by the Delay Attribution Guide.

6.1.3. The Rule Book module TW1-14 – Reducing speed in poor visibility. TW1-18 – Working trains during snow conditions. TW2-7 Preparation and movement of multiple-unit passenger trains – Working trains during snow conditions.

6.1.4. The working of the Pendolino rolling stock.

6.2. In coming to its conclusion the Board regarded the following points as particularly relevant:

6.2.1. The parties have not disputed the facts of the incidents.

6.2.2. The rules surrounding Modules TW1-14, TW1-18 and TW2-7.

6.2.3. The Delay Attribution Guide – 1st February 2009 edition. Section 4.39.6d.

6.2.4. Pendolinos are fitted with brakes whose operation is protected from reduced effectiveness in snow. However, no derogation had been sought from the Rule Book in respect of the operation of these trains in snowy conditions.

6.2.5. Drivers did not report specific visibility issues, although visibility was considered a factor in the delays.

6.2.6. The parties have agreed that the most appropriate coding in the DAG for incidents of this kind at present is VW.

6.2.7. The DAG provides only limited guidance on the attribution of delays of this kind.

6.2.8. The Driver was exercising his professional judgment in concluding that the relevant section of the Rule Book applied. The Rule Book prescribe the course of action that the Driver must take in these circumstances.

6.2.9. The response to colour light signalling in snowy conditions in these incidents was within the control of the Driver and not mandated by Network Rail as a restriction on the operation of the network.

6.2.10. DAB 18 and ADP39 incidents involving fog, were not relevant. In the case of fog both the conditions themselves and the appropriate response to it are within the professional judgement of the Driver. However, the Rule Book does not determine attribution.

7. Guidance of the Board

7.1. The Board came to a majority decision that there was no reason to disagree with the view of both parties that VW was the most appropriate delay code to use for these specific incidents as set out in the February 2009 edition of the DAG and in the current edition. Whether any commercial agreement should be made between the parties to cover these incidents is a matter which falls outside of the Delay Attribution Board's remit.

7.2. The Board agreed that the DAG would benefit from a consideration of the underlying principles which should inform attribution of delay to incidents of this kind and agreed that a sub-group should be set up to make recommendations to the Board, taking account of current and prospective designs of rolling stock.

7.3. The current Rule Book provisions covering the operation of trains in snow predate the introduction into service of Pendolino trains. It is for the parties to consider whether its provisions remain appropriate for all modern designs of rolling stock.

This guidance was approved by the Delay Attribution Board on 26th January 2010	John Rhodes (Chairman)
Signature: