

Guidance No: DAB-24

1. Introduction

The Delay Attribution Board (the Board) received a request for guidance in relation to the Attribution of TRUST delay incident 715839 (8th January 2010)

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 7th April 2011.

- 1.1. The Board was asked to give guidance with regard to the correct attribution of incident 715839 related to a train service that was delayed due to the Train Manager booking off duty late the previous night due to severe weather conditions and requiring the minimum 12 hours rest prior to the departure of 1M84, the next service rostered for the Train Manager.
- 1.2. The Board considered this request for guidance at its meeting on the 19th April 2011
- 1.3. 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 incident 715839.
- 2.3. On the 8th January 2010, 1M84 (14:00hrs Glasgow Central to Birmingham New Street service) was delayed departing from Glasgow Central for 26 minutes. The delay to the departure was attributed by Network Rail to Virgin Trains to "TZ" "TOC Other". Virgin Trains disputed the incident stating that the weather conditions which had delayed the arrival of 1S06 on the previous night by 102 minutes to Glasgow Central had impacted on the 12 hour rest period that the Train Manager required prior to the departure of 1M84. On the 12th January, The delay code of the incident was changed by Virgin Trains to "TI" "Rostering". Virgin Trains requested that incident 715839 be merged with incident 711187 to form one incident. Incident 711187 was coded to Network Rail as XT (Severe cold weather affecting infrastructure).

3. West Coast Trains Limited (Virgin Trains) Position

- 3.1. Virgin Trains considered it had used all sources of information available to the company to investigate the cause of delay and had identified the root cause of the delay within reasonable time.
- 3.2. Virgin Trains acknowledges that guidance is provided in the Delay Attribution Guide section 4.36.1 “delays caused by train crew booking late on duty for whatever reason is the responsibility of the Train Operator” but notes that the Guide also provides for exceptions to this in sections 4.36.3 (a) through (c).
- 3.3. The incident was attributed to Level 1 (the Virgin Trains Control Office) for initial attribution. On this date (a Saturday) the majority of services nationally were being delayed because of the extreme weather conditions being experienced across the country. The Virgin Trains Control were guided to concentrate on Train service provision as in general delay attribution was poor as the industry (rightly) focused on service delivery.
- 3.4. Incidents that are disputed by Virgin Trains at Level 1 (on the day) are followed up the following working day by the Level 2 team – in this instance the Virgin Trains Performance Team. Incidents attributed on Saturdays and Sundays and then disputed will not be actioned by Level 2 (Virgin Trains Performance Team) until the next working day (in this case Monday 10th January) and the local operations team (the On Board Manager) was asked to provide feedback on why the delay occurred.
- 3.5. The root cause was confirmed as the Train Manager completing duty extremely late the previous night and requiring the minimum 12 hours rest. Because of the extreme weather Virgin Trains considered that it was difficult to re-arrange crews and traincrew diagrams were re-arranged to mitigate delay to as many services as possible and Virgin Trains believes it did all it could to mitigate against unnecessary delay.
- 3.6. Virgin Trains agrees in principal that In addition to there being guidance in the Delay Attribution Guide related to train crew booking on duty late, section 4.1.7 also states that when agreeing attribution of minutes delay, the contractual responsibilities of Network Rail and Train Operators to mitigate the effects of an incident should be taken into account. In this particular case, Virgin Trains considered that the Train Operator is the only party that can mitigate the delay. The root cause of the inward working being delayed was severe weather causing signalling problems near Warrington which required to be mitigated by Network Rail.
- 3.7. Virgin Trains believed that Section 4.36.3 (b) should apply with attribution to the root cause of the delayed inward working (both trains operated by Virgin Trains)

- 3.8. Virgin Trains also acknowledged that section 4.36.4 of the DAG refers to train crew taking their Physical Needs Break (PNB) but ask that this should recognise the minimum rest time between duties.

4. Network Rail Position

- 4.1. Network Rail considered it had used all sources of information available to the company to investigate the cause of delay and found no known cause within Network Rail.
- 4.2. Network Rail believed that full guidance is already available within section 4.36.1 of the Delay Attribution Guide (DAG) in that delays caused by train crew booking late on duty for whatever reason is the responsibility of the Train Operator.
- 4.3. In addition to there being guidance in the Delay Attribution Guide related to train crew booking on duty late, section 4.1.7 also states that when agreeing attribution of minutes delay, the contractual responsibilities of Network Rail and Train Operators to mitigate the effects of an incident should be taken into account. In this particular case the Train Operator is the only party that can mitigate the delay.
- 4.4. Network Rail acknowledges that section 4.36.4 of the DAG refers to train crew taking their Physical Needs Break (PNB) but would contend that this only relates to the turn of duty that the member of staff has already booked on to work.

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 Adjudication (ADA)
- 5.3. If the issue were referred to ADA, then an Access Dispute Adjudication panel would be formed to consider the dispute. In doing so, the ADA panel would take account of the guidance provided by the Board but would not be bound by it. The ADA panel would then make a determination that would be binding on the parties concerned. This document is therefore 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 ADA 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 19th April, 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 incident disputed between the parties and their respective requests for guidance.
6.1.2. The guidance provided by the Delay Attribution Guide.

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

- 6.2.1. The parties had not disputed the facts of the incident.
6.2.2. DAG Section 4.36.1 states that “Delays caused by train crew late booking on-duty for whatever reason is the responsibility of the Train Operator” and that both parties acknowledge that this is the guidance provided.
6.2.3. DAG Section 4.36.3 provides exceptions to the guidance given in Section 4.36.1 and that Virgin Trains considered that 4.36.3 (b) was the applicable circumstance and that therefore Virgin Trains considered the incident should be attributed Delay Code ‘YN’. The Board did not consider this reference to be valid as 1M84 was not running significantly late to be further delayed until it actually did depart late, and the delay was not due to ‘stepping-up’ train crew.
6.2.4. Virgin Trains confirmed that they believed the delay to 1M84 to be a Reactionary Delay and sought to give relevance to the fact that the root cause of the inward working was severe weather. The Board considered that the late departure of 1M84 could not have been a Reactionary Delay as in excess of 12 hours had passed since its arrival at the station.
6.2.5. Network Rail confirmed they considered the delay to be a new Primary Delay as the train scheduled for the 1M84 service had been at the platform 12 hours and 12 minutes. Network Rail considered that this period of time represented the opportunity for Virgin Trains to mitigate the delay.
6.2.6. Virgin Trains recognised that as the Train Operator it was responsible for mitigating the delay to 1M84.
6.2.7. Virgin Trains considered that an amendment was required to the DAG to provide clear guidance where circumstances were described as given in this incident, specifically that minimum rest time between duties should be recognised.
6.2.8. Virgin Trains confirmed that the train crew were not lodging at Glasgow and had simply booked-on late.

7. Guidance of the Board

- 7.1. The Board considered that DAG Section 4.36.1 was wholly applicable to the circumstances of the incident and that DAG Section 4.1.7 reiterated the responsibility of Virgin Trains to have taken action to mitigate delay in the 12 hour period before the departure of 1M84.
- 7.2. The Board concluded that there was no reason to disagree with the view of Network Rail and that the incident should be attributed to Virgin Trains.
- 7.3. The Board concluded that the Guide was clear and unambiguous as it stood but invited Virgin Trains to consider proposing an amendment to cover the circumstances of this case if they thought it appropriate.

This guidance was approved by the Delay Attribution Board on 17 th May 2011	John Rhodes (Chairman)
Signature:	