
Delay Attribution Board

Guidance No. DAB-28

1. Introduction

- 1.1. The Delay Attribution Board (the Board) received a request for guidance in connection with the Attribution of TRUST incident 253013 '2B07 SUN BEHIND L84 SIG BORMKJ' which was created on 3rd October 2011 where the driver was unable to see a signal aspect due to the sun being directly behind the signal.
- 1.2. The Board received the joint request for guidance from London & South Eastern Railway Limited (Southeastern) and Network Rail Infrastructure Ltd, Kent Route, (Network Rail) on the 16th January 2012.
- 1.3. The Board was asked to provide guidance as to which is the correct interpretation, for delay attribution and Schedule 8 purposes, of signal obscured by sunlight incidents (TRUST reference 253013).
- 1.4. Specifically, Southeastern and Network Rail asked the Board to consider the circumstances and facts set out in the submission and give guidance on:
 - 1.4.1. Whether the Board believe this scenario is suitably covered in the Delay Attribution Guide (DAG).
 - 1.4.2. The Board's interpretation of the DAG on the relevant clause that should be applied and the appropriate Delay Code and responsibility.
- 1.5. The Board considered this request for guidance at its meeting on the 24th January 2012.
- 1.6. This note summarises the request for guidance received from Southeastern and Network Rail (the parties) and the guidance provided by the Board.

2. Information Received

- 2.1. Date: 03/10/2011
Time: 17:44hrs
TRUST Incident Number: 253013
Location of incident: L84 Signal, Borough Market Jn.
- 2.2. At 1744hrs the driver of 2B07 1701 Dartford to Cannon Street approached L84 signal at Borough Market Junction which was displaying a Red aspect due to the preceding train (2C57) entering Cannon Street platform 4.

- 2.3. Whilst stopped at the signal the driver contacted the signaller to report that the signal was obscured because the sun was shining through the signal at that moment and he could not see what aspect was showing.
- 2.4. The signaller asked the driver to remain on the line while he confirmed the signal aspect.
- 2.5. After L84 signal was confirmed at around 1748hrs by the signaller to now be showing a proceed aspect, the train continued into Cannon Street.
- 2.6. The line speed throughout this section is 20mph reducing to 15mph upon approach to Cannon Street platforms.
- 2.7. Form RT3185 was subsequently completed by driver at Cannon Street who recorded that the sun was directly behind L84 signal and he was unable to see the aspect without looking directly in to the sun.
- 2.8. At 17:49hrs the Signaller contacted the driver of 2051 16:17 Cannon Street to Cannon Street (2nd train) via the CSR at L88 signal who confirmed that the sun was directly behind L84 Signal causing the driver to look directly in to the sun. The driver then confirmed that the sun was right behind the signal and would be worse if a red aspect was displayed.
- 2.9. At 17:52hrs the driver of 5P97 17:26 Grove Park CSD to Cannon Street (3rd Train), reported to the signaller from L64 signal that L84 signal was "No worse than any other Signal in the area" when he passed, and that "the sun was low in the sky with a few clouds." The driver also further reported that "although the sun was still bright and in your face", he was now able to distinguish the aspect on L84 signal as "two yellows and route indicator 4".
- 2.10. Normal Working then resumed.
- 2.11. The parties had agreed that there was no suggestion that either of them had failed to mitigate the impact of the incidents, or that trains had incurred any form of avoidable delay not attributable to the situation described above.
- 2.12. The incident is currently attributed to Southeastern with Delay Code TG and Responsible Manager Code THUN as per DAG 4.37.5(ab)
- 2.13. Appendices provided in the joint submission from the parties were:
 - RT3185 - signal irregularity form completed by the driver of train 2B07.

- Photo of L84 signal.
- Record indicating the escalation of the Level 3 dispute.
- Network Rail Maintenance Signal Failure and Incident Testing form.
- Extract from Rule Book Module S3 Section 3.3

2.14. The parties also provided a printout of the associated TRUST incident and digital voice recordings of conversations between the Cannon Street signaller and the drivers of the trains mentioned in this request.

2.15. In addition to the information provided above, the parties responded to two questions of clarity from Board Members in advance of the Board meeting by providing the following information:

2.16. The driver had his sunglasses but he was not wearing them at the time.

2.17. The AWS was working normally.

3. Southeastern View

3.1. At the time the driver arrived on L84 signal, he was unable to determine the signal aspect, as the sun was behind it and shining through it. The position of the sun meant that looking at the signal was tantamount to looking directly into the sun.

3.2. The driver acted in accordance to the driver's rule,

3.2.1. GE/RT8000/Issue S3/ Train warning systems(AWS and TPWS) and reporting signalling failures and irregularities/section 3.3/page 13: Signals difficult to see because of sunlight, streetlights or light reflections, states, "If a signal is difficult to see because of sunlight, streetlights or light reflections, you must tell the signaller immediately, stopping the train specially if necessary"

3.3. This rule instructed the signaller to:

3.3.1. tell Operations Control who will arrange for the signalling technician to check the sighting of the signal

3.3.2. tell the driver of the next approaching train what has happened

3.3.3. instruct that driver to report the state of the signal.

3.3.4. signal the train in the normal way

If the driver you have instructed to check the signal reports to you that the signal is not difficult to see, you may signal the following trains in the normal way. However, if that driver reports that the signal is difficult to see because of sunlight, streetlights or light reflections, you must treat the signal as defective and carry out the instructions in module T1A.

3.4. Southeastern's view is that the principle outlined in DAB 18 7.3 and 7.4 is not applicable in this instance because:

3.4.1. The delay occurred after a report of impaired visibility of L84 signal due to sunlight.

3.4.2. Normal operation of the network was affected as a result of the sun obscuring the signal at the time. This made it impossible for the driver to determine the signal aspect. The driver had to stop to confirm the signal aspect from the signaller.

Although to a large extent this scenario is covered by the provision of DAG 4.37.5(o) which states, "Sun shining upon signal aspects, rendering drivers unable to clearly see aspect" should be code "XU" and attributed to NR, on this occasion, the sun was 'behind' rather than 'upon' the signal aspect, but it had the same effect that the 'driver was unable to clearly see the aspect' which caused the delay.

3.5. The provision in DAG 4.37.5(ab) states, "Delays caused by sun shining on to the driver's cab where the driver has not taken all preventative measures e.g. using company issued sun glasses" is attributable to the operator. This is not applicable because the sunglasses would not have prevented this issue and asking the driver to look directly into the sun even if he is wearing glasses will be detrimental to his health.

3.6. According to Schedule 8 , 5.2 "Unless and to the extent otherwise agreed, Network Rail shall be allocated responsibility for an incident other than a planned incident (as defined in paragraph 5.7), if that incident is caused wholly or mainly:

(a) by breach by Network Rail of any of its obligations under this Agreement; or

(b) paragraph 5.2.b.-: whether or not Network Rail is at fault) by circumstances within the control of Network Rail in its capacity as operator of the Network; or

(c) whether or not Network Rail is at fault) by any act, omission or circumstance originating from or affecting the Network (including its operation), including, subject to paragraph 5.3(b)(i), any incident in connection with rolling stock on the Network for which any train operator other than the Train Operator would be allocated responsibility if it were the Train Operator under this Agreement"

- 3.7. Although Network Rail has no control over the movement of the sun (just as it does not have control over other adverse weather conditions), the effective operation of the Network was restricted when the sun shone through L84. The driver was able to see and acknowledge all the preceding and subsequent signals in this section at the time.
- 3.8. In as much as the Train Operator cannot ask drivers to look directly into the sun while wearing sunglasses, Network Rail can still mitigate to a reasonable extent.
- 3.9. Therefore, Southeastern believes that the attribution of this incident should be XU/XQMA, and the wording of the DAG amended to reflect the scenario described in this request.

4. Network Rail View

- 4.1. Network Rail believes that the current guidance contained in the "Delay Attribution Guide", Sections "4.37.5.o", "4.37.5.ab" and "4.37.6.e" is clear and indicates that incidents due to the sun shining from behind a signal (into the driver's eyes / on to the cab windscreen) is the responsibility of the Train Operator.
- 4.2. DAG section "4.37.5.o.", states that only delays due to "Sun shining upon signal aspects, rendering drivers unable to clearly see aspects." Should be Coded 'XU'. In this instance the Sun was reported and confirmed as shining behind the signal and therefore not directly upon the signal's aspects.
- 4.3. DAG section "4.37.5.ab and the flow chart in "DAG 4.37.6.e" both show that delays due to the sun shining on to the Cab Windscreen should be coded 'VR / TG'. Southeastern at Level 3 disputed this position stating that the position of the sun directly behind the signal shining in to the cab was an assumption by Network Rail. (See Appendix 7.2 & 7.3 for photo of signal and L3 record of dispute).
- 4.4. Network Rail believes that in this occurrence due to the driver of the affected train, and the subsequent drivers of the following trains, reporting that the sun was directly behind the signal, not shining upon the signal aspect, then DAG 4.37.5.o does not apply. The signal was facing in the same direction as the sunlight and so the sun could not both be behind the signal and shining upon the aspect at the same time. Network Rail therefore believes that DAG 4.37.5.ab and 4.37.6.e apply as the drivers all reported that they were being blinded by having to look directly into the sun to see the signal aspect, and therefore the sun was shining into the Cab Windscreen and so should be coded 'VG / TG'.
- 4.5. In response to Southeastern's 3.1, although the Driver did report orally to the signaller that the aspect was difficult to see due to the sun shining through the signal, his subsequent written report

- 4.6. RT3185 form stated the actual cause as “Sun was directly behind signal. Unable to see aspect without looking directly into sun”. As a result of the report of L84 signal being affected by the sunlight, an examination was made of the affected signal by Network Rail engineers. The conclusion of this was that the signal was both sighted and working correctly, sealed, secured and undamaged.
- 4.7. Network Rail accepts that signal aspects rendered difficult to see when the sun shines directly upon the aspect is a Network Rail responsibility as there is mitigation by the use of longer hoods or total replacement with LED signal heads for example. It is near impossible for Network Rail to mitigate the effects of sunlight shining from behind a signal into the driver’s eyes and / or reflecting off the windscreen. This can reasonably only be mitigated by the Operator of the train as it is the driver’s vision which is affected and not the aspect directly.
- 4.8. Southeastern reported that the driver was acting within the rules and regulations outlined in the Rule Book, quoting “GE/RT8000/S3, Module 3. Network Rail believes that the principle for this has already been outlined in Delay Attribution Board’s Guidance DAB-18 section 7.3 & 7.4. DAB-18, 7.3 states that “neither Party was in a position to mitigate the cause of the delay” and the driver was “following the instructions in the Rule Book and is not to be criticized for doing so”. DAB-18, 7.4 highlights the fact that “the normal operation of the network was not affected” and the incident should accordingly be attributed to the Train Operator.
- 4.9. Schedule 8 Paragraph 5.3(a)(ii) sets out responsibility of the Train Operator as:-
- “(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; or”
- Network Rail believes this scenario is covered by this clause.
- 4.10. Network Rail’s view is that the incident should be attributed to Southeastern under either delay Code ‘TW’ due to the driver adhering to company professional driving standards or policy, or to Delay Codes ‘VR’ or ‘TG’ as per DAG 4.37.6.e.
- 4.11. Network Rail believes that DAG 4.37.6e (flowchart) ultimately delivers the correct responsibility and guidance should reflect the DAG as it currently stands. It is believed the Southeastern stance is ultimately challenging 4.37.6e to be changed to suit this circumstance.

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 the parties had requested guidance on which is the correct interpretation for delay attribution and Schedule 8. The Board could give guidance only on attribution and the appropriate application of the DAG as the Board has no remit with regards to issuing guidance on the application of Schedule 8 of the Track Access Agreement.
- 5.3. 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 Dispute Adjudication (ADA).
- 5.4. If the issue is referred to ADA, then an Adjudication Panel (the Panel) would be formed to consider the dispute. In doing so, the Panel would take account of the guidance provided by the Board but would not be bound by it. The 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 which explain how the Board arrived at its position both to the parties and, if necessary, to the Panel.
- 5.5. 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”

- 5.6. The Board would need to consider if, in providing guidance, an amendment to the DAG should be proposed to improve clarity.

6. Consideration of the Issues

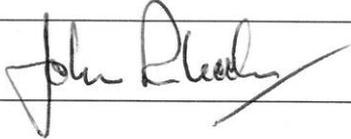
- 6.1. The Board at its meeting on 24th January 2012, considered the request for guidance and took account of the following:
 - 6.1.1. The written evidence provided by both Network Rail and Southeastern in connection with the incident disputed between the parties.
 - 6.1.2. The oral information provided by the representatives of Network Rail and Southeastern at the Board meeting.
 - 6.1.3. The relevant provisions of the DAG.
- 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 incident.
- 6.2.2. The parties agreed that the driver had carried out actions in line with the industry rule book.
- 6.2.3. The signal L84 was not a multiple SPAD signal and that the inspection following the incident had not identified any faults and had not recommended any modifications to any equipment or change to sighting of the signal.
- 6.2.4. The DAG indicates that XU is the Delay Code to use where a delay is caused by the driver being unable to see aspects because the sun is shining upon the signal aspect.
- 6.2.5. The DAG indicates that, depending on specific circumstances, one of four Train Operator allocated Delay Codes is used where delay is caused by the sun shining on the driver's cab.
- 6.2.6. The parties agreed that the driver was looking through his cab windscreen when trying to ascertain the signal aspect and that the sun was shining in his eyes at that time.
- 6.2.7. Sunglasses had been issued to the driver and he was not wearing them at the time of the incident.
- 6.2.8. The parties agreed that the sun was not shining on the signal aspect.
- 6.2.9. Southeastern emphasised at the meeting that there appeared not to be a definitive 'box' in the DAG which addresses the specific circumstances of the incident.
- 6.2.10. The DAG is not intended to cover every particular circumstance but provides guidance on generic types of incident.

Guidance of the Board

- 6.3. The Board agreed unanimously that for the driver to have had the sun shining directly in his eyes he must have been looking through the cab windscreen towards the sun and that this was a normal driving position. The generic principle followed in the sections of the DAG where sunlight affects visibility is that if the sun is shining on to a signal, making it difficult to identify the correct aspect, responsibility is attributed to Network Rail. Where the sun is shining directly towards the driver, however, and affects the driver's visibility, responsibility is attributed to the Train Operator. In the case of this incident, application of the flowchart in DAG Section 4.37.6e therefore correctly leads to attribution to a Train Operator Delay Code.
- 6.4. The Board agreed that the flowchart in DAG 4.37.6e indicated that the Delay Code TG or VR was applicable depending on whether Southeastern considered that 'all reasonable preventative measures had been taken' and that this may include the driver's use of the sunglasses issued to him.

- 6.5. The Board wished to emphasis that there was no criticism of the actions of the driver or signaller both of whom were acting in accordance with the Rule Book.
- 6.6. The Board considered that in the specific circumstances of this incident, Delay Code TW (Driver adhering to company professional driving standards or policy) might better represent the cause of the delay. However, this has not been provided for in the section of the DAG referring to poor visibility due to sunlight.
- 6.7. The Board agreed that the Secretary should be asked to propose an amendment to the DAG for the Board to consider which incorporates the option of Delay Code TW in the flowchart in DAG Section 4.37.6e.

| | |
|--|---|
| This guidance was approved by the Delay Attribution Board on 21 st February 2012. | John Rhodes (Chairman) |
| Signature: |  |