
Delay Attribution Board

Guidance No. DAB-37

1. Introduction

- 1.1. The Delay Attribution Board (the Board) received a request for guidance in connection with the attribution of incidents due to a unit failure on the Dawlish wall, caused by sea water spraying on a forecasted 'green day'.
- 1.2. The Board received the joint request for guidance from Cross Country Trains and Network Rail Infrastructure Ltd, (Network Rail) (the Parties) on the 15th August 2014.
- 1.3. The Parties asked the Board the following general questions:
 - 1.3.1. *"DAB is asked to give guidance to what is the correct attribution for delays caused by sea spray disabling a unit on the sea wall at Dawlish on a forecasted "green day".*
 - 1.3.2. *What is the delay code for incidents caused by sea spray disabling a train when the weather forecast was reverted to a green day?*
 - 1.3.3. *Should responsibility for the delays lie with Network Rail as the infrastructure owner and provider of the forecast or, Cross Country as the Operator of the train and the susceptibility of the units to sea water ingress?*

2. Information Received

- 2.1. The Parties have discussed the issues relevant to this matter, in accordance with the agreed procedures for obtaining agreement in relation to a disputed attribution as set out in Part B of the Network Code. However, they have been able to reach a common position. The Parties are therefore agreed that the issue raised should be referred to the Board for guidance.
- 2.2. The Parties submitted the agreed factual background and their respective views on how the incident should be attributed.

3. Factual Background to the matter

The Parties provided the following agreed facts:

- 3.1. Examples of the TRUST incidents in questions are not limited to 027647-027563-027654-044038-224021- (green day events) and 327991 (where a watchman was in place and re-graded the day from red to amber).
- 3.2. The railway along the Dawlish sea wall in Devon, England, is unique. As such, it has a specific monitoring process carried out by Network Rail. The process is undertaken daily to ensure the integrity and safety of the infrastructure.

- 3.3. Network Rail using a “Mouchel” monitoring/warning system. This system takes in to account 5 factors
- Tide height
 - Wind speed
 - Wind direction,
 - Air pressure on sea levels
 - Ocean swell dynamic.
- 3.4. Air pressure on sea levels and ocean swell dynamic can not be measured by Network Rail staff as it requires specialist measurement and analysis tools; hence the use of Mouchel.
- 3.5. The system was introduced to enable informed decisions regarding the safety of the infrastructure and the operation thereof as well as to ensure that maintenance staff could be available on site in advance of any actual event.
- 3.6. The forecast is provided in hourly segments and is carried out daily at 03:00hours and 15:00hours. Each hourly segment is allotted a colour according to what risk the waves may have of affecting the infrastructure.
- 3.7. Due to Voyager units being susceptible to sea spray, Cross Country requested that Network Rail introduce a further colour warning. This colour warning was designated a “blue” status.
- 3.8. The colour warnings and their meanings are as follows:
- Green - infrastructure is available - all trains run.
 - Blue - Infrastructure is available - Voyager trains do not run.
 - Amber - Level 1 working implemented at times on the forecast.
 - Red - Level 2 working implemented for times on the forecast.
 - Black - Level 2 working implemented for times on the forecast (infrastructure potentially unavailable/no trains run).
- 3.9. A Watchman may be deployed on Amber days if it is believed that conditions could deteriorate (to red or black) and therefore the infrastructure could be at risk. Maintenance staff is deployed on Red or Black days as a matter of course. Once the risk to the infrastructure has reduced to green, the Watchman stands down. A Watchman is not deployed on days which are forecasted to be green or blue as there is no perceived risk to the infrastructure.
- 3.10. It should be noted that the traction affected by the sea spray is that used by Cross Country, specifically, the Voyager. There is an agreed Dawlish Sea Wall adverse weather working arrangement process in place between Cross Country Trains and Network Rail.

4. Cross Country's view

- 4.1. Cross Country's view is that it can not effectively mitigate against delay over and above what has already been carried out (i.e. by including software modifications to the Voyager units to overcome some of the more common issues with sea spray ingress). The final line of defence to militate against a Voyager train from being disabled by sea spray during conditions where the railway would otherwise remain open would be to withdraw services during a "blue" forecast when sea spray is expected to be the height of a Voyager roof. Cross Country has jointly signed up to the Dawlish Protocol. It provides the appropriate mitigations. The protocol fulfils the requirements of paragraph 5.1(a) (i) of Schedule 8 of its track access agreement with Network Rail in terms of mitigation in place. There is a realistic expectation when a "green" day is forecast that Voyagers are not at risk of disablement by sea spray.
- 4.2. Network Rail is the custodian of the Mouchel forecast software and it is the opinion of Cross Country that Network Rail must bear the responsibility if this mitigation fails. (As per Schedule 8, paragraph 5.2(b) of the track access agreement).
- 4.3. Whilst accepting that other traction types that operate along the sea wall are not affected in the same way as the Voyager, cognisance should be given to the fact that the Voyager units have been approved for operation along the Dawlish Wall route, nominally without restriction. It is reasonable therefore that during a "green" forecast, safe passage along the line of route should be provided without intrusion from external factors. Cross Country has no more control of the sea than Network Rail, however the sea spray is not train borne and prevents the passage of the train.
- 4.4. With reference to incident number 327991 where a Watchman over-ruled the Mouchel forecast and a Voyager unit was disabled by the sea spray, Cross Country consider this incident to be the responsibility of Network Rail. A clear directive given by Network Rail to Cross Country to allow Voyager trains to run, proved to be inappropriate and an error on Network Rail's part; as sea spray caused a Voyager unit to fail.
- 4.5. Cross Country consider incident 327991 to be the responsibility of Network Rail and its delays ought to be coded to *JL -Network Rail or other infrastructure staff or OD - Delayed as a result of Route Control Directive*. Cross Country believe this matter is covered within Schedule 8, paragraph 5.2(b) of the track access agreement.

5. Network Rail's View

- 5.1. Network Rail believe that the mitigation involving warning mechanisms being put in place are more than adequate for this unique stretch of railway, especially as they were introduced solely for making safety related decisions regarding the infrastructure. The "Blue" day code was introduced at the request of and to assist Cross Country in their decision making, in terms of risk to their Voyager units running along the sea wall. Cross Country are also aware that on green days, there is a risk of spray just by the nature of the location.
- 5.2. The decision to run sits firmly with the operator. A Mouchel system forecast is purely a forecast. Network Rail could in essence be considered a third party contractor who provide a forecast as would be the case if Cross Country were to utilise a system of their own or any other outside party.
- 5.3. On a "green" (and indeed blue) day, the infrastructure is fully available with no restrictions or risk to the infrastructure and thus meets Network Rail's obligations for the purposes of the track access contract. The restriction on a "blue" day is solely there for the non operation of Voyager units as they are susceptible to sea spray.
- 5.4. No other operator or class of train that currently operates on this section of line is affected by the sea spray. Network Rail believes that this is the key fact relating to the responsibility of the aforementioned incidents.
- 5.5. Network Rail do not take any responsibility for the unit failures as there was no failure of any infrastructure equipment along the Dawlish Wall, or a restriction of its capability and thus Schedule 8 paragraph 5.2(b) is not applicable in these circumstances.
- 5.6. With reference to incident number 327991, where a Watchman had been deployed, the reversion from "amber" to "green" was always in relation to the threat to the infrastructure and not whether it would be safe for a Voyager to run as that decision would always be made by Cross Country.
- 5.7. Network Rail believes that it does all it can to assist Cross Country with the provision of the "blue" forecast and indeed, the Mouchel system is continually monitored and adjusted to provide more accurate readings. Ultimately, Network Rail believe that it should not be made responsible for the actions taken by other parties when using a weather forecast which its sole purpose is to provide information to allow for decisions to be made regarding the safety and integrity of the railway infrastructure.
- 5.8. Whilst it is accepted that Cross Country are not in a position to modify the Voyagers to withstand sea spray, Network Rail believes that Cross Country Voyager units disabled by sea spray which cause delay should be allocated an M* code - with the **prime** cause of the delay as the failure of the unit (whether it manifested in the failure of the motor or doors as per other recorded incidents).

5.9. Network Rail believe that these circumstances are covered by Schedule 8, paragraph 5.3(a)(iii). (whether or not the Train Operator is at fault) by any act, omission or circumstance originating from or affecting rolling stock operated by or on behalf of the Train Operator (including its operation).

6. Locus of the Board

6.1. 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.

6.2. 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 the matter should be referred for resolution in accordance with the ADR Rules.

6.3. 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”.

6.4. In considering any request for guidance, the Board will always consider if an amendment to the Delay Attribution Guide (DAG) should be proposed, to improve clarity.

7. Consideration of the Issues

7.1. The Board considered the request for guidance at its meeting on 2nd September 2014 and took account of the following:

7.1.1. The facts provided by both Network Rail and CrossCountry in connection with the incident and their respective requests for guidance.

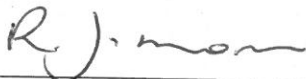
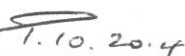
7.1.2. The oral information provided by the representatives of Network Rail and Cross Country at the 2nd September 2014 Board meeting.

7.1.3. The guidance provided by the DAG.

7.1.4. The process that was in place to inform Cross Country's decision as to when they would permit their units to travel along the Dawlish Wall.

8. Guidance of the Board

- 8.1. The Board considered the guidance request and unanimously agreed the following:
- 8.2. That Cross Country were responsible for the delays caused by unit failure due to sea water spraying onto their Voyager units on a forecasted 'green day' on the Dawlish Wall.
- 8.3. That the relevant M*code to reflect each failure be used to record these delays. The Board believed that the Mouchel system used by Network Rail was in place to determine the safety of the infrastructure and although Cross Country used the same forecasting system to aid their decision making process, it was the responsibility of Cross Country to make sure that the data they used to aid the decision to run their trains was as up to date as possible
- 8.4. The Board suggested that the parties review the current protocol document that is in place, in order to tighten up the process and fill in any known gaps as it is clear that it currently does not meet the requirements of the parties.

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| This guidance was approved by the Delay Attribution Board on 30 th September 2014 | Richard Morris (Chairman) |
| Signature:  |  |