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## **ACCESS DISPUTE RESOLUTION COMMITTEE**

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### **Determination No. AD29**

(Hearing held at Kings Cross on 24<sup>th</sup> April 2003)

*[Note: no determination has yet been issued in respect of reference no. AD28;  
the previous published determination is no. AD27]*

1. The Committee was asked by the parties, Great Eastern Railway Ltd (trading as First Great Eastern (FGE)) and Network Rail, to rule as to which was the correct interpretation to be placed on the wording of paragraph 5 of the Revised Template of Schedule 8, in relation to the delays to trains operated by FGE and others, following an incident where FGE's 17:22 Liverpool Street to Southminster service (1J32), made an out of course stop near Romford, on 13<sup>th</sup> June 2002.
2. The parties bringing the reference could not agree which party should bear the responsibility for the attributed delay to trains resulting from the incident.
  - 2.1. Network Rail considered that the FGE should be allocated responsibility for the above incident, because,
    - 2.1.1. in the terms of paragraph 5.3(a)(iii) of the new Schedule 8, the incidents were caused "*wholly or mainly...by circumstances originating from or affecting rolling stock operated by... the Train Operator...*". Furthermore
    - 2.1.2. in the terms of paragraph 5.3(a)(ii) ("*circumstances within the control of the Train Operator in its capacity as an operator of trains*"), where there is no substantive proof that the cause is external to the rolling stock, then the incident cannot be deemed to be subject to the control of any party other than the Train Operator.
  - 2.2. FGE considered that Network Rail should be allocated responsibility for the above incident, because
    - 2.2.1. 1J32 had come to a stand because the valve on the main reservoir pipe at the rear of the 7<sup>th</sup> vehicle of the train had moved from its normal "in service" position, leading to a progressive loss of main reservoir air pressure, and an application of the brakes;
    - 2.2.2. for such a situation to arise, FGE contended that the train must have struck an obstruction on the track, with sufficient force to "partially knock open" the main reservoir pipe cock, and that therefore
    - 2.2.3. because Network Rail has the responsibility for ensuring that the tracks are free from obstructions, delay should be allocated to Network Rail on the basis of paragraph 5.2(c) of the new Schedule 8, because the incidents were caused "*wholly or mainly... (whether or not [Network Rail] is at fault) by any act, omission or circumstance originating from or affecting the Network (including its operation);* and that
    - 2.2.4. Network Rail should further be allocated the delay because prevention of obstructions was "*within the control of [Network Rail] in its capacity as operator of the Network*" (i.e. paragraph 5.2(b)).

3. The Committee reviewed its locus in relation to disputes of this nature:
  - 3.1. it emphasised that its response to this reference related solely to questions of delay attribution for the purposes of the Performance Regime, and that any decision of the Committee, on this matter of delay, should not be construed as having any significance for any other aspect of this incident;
  - 3.2. its locus to hear the matter of the interpretation of Schedule 8 was as defined in clause 11.3 of the Track Access Agreement;
4. The Committee noted that there was no dispute that the root cause of the incident was the coming to a stand of 1J32. At first sight, therefore, the resulting delay had to be allocated to the Train Operator in accordance with paragraph 5.3(a)(iii) of the new Schedule 8, the incidents were caused “*wholly or mainly...by circumstances ... affecting rolling stock operated by the Train Operator*”.
5. It was not, however, impossible that the train could have been disabled because it had encountered an obstruction (which might only have been loose ballast), and that that obstruction might have disturbed the main reservoir cock in a way that was beyond “*the control of the Train Operator in its capacity as an operator of trains*”. In which case the presence of such an obstruction might be construed as a “*circumstance originating from or affecting the Network (including its operation)*” (i.e. paragraph 5.2(c)), and an allocation of the incident and the resulting delay such as that advocated by FGE could be appropriate because prevention of obstructions was “*within the control of [Network Rail] in its capacity as operator of the Network*” (i.e. paragraph 5.2(b)).
6. To help it decide which of these positions was the more reasonable in the specific circumstances of this case, the Committee reviewed the evidence, both as presented by the parties, and established under questioning, and found that
  - 6.1. 1J32 itself was only stationary for approximately 11 minutes, but because of the location and time of day, this had resulted in a total of 846 minutes delay spread between 71 trains (TRUST reference number 463943): this delay had been initially allocated to FGE;
  - 6.2. FGE had challenged this allocation: because of the amount of delay, any agreement had been considered to be outside the scope of the discretions normally exercised at levels 1 and 2 in the delay allocation process, and no allocation could be agreed at the level 3 meetings;
  - 6.3. the main reservoir valve in question, if properly maintained and operated, locks into the service position such that, for it to be moved at all, it must first be subject to downwards pressure (in order to release the lock), and then thrust upwards;
  - 6.4. it is possible for a train to be in traffic with the valve in the service position, but without the lock being engaged, in which case the valve is no longer prevented from moving; FGE conceded that, on the day of the hearing, a unit on shed had been observed in this condition;
  - 6.5. there was presented no statement by the driver of 1J32;
  - 6.6. there was presented no statement in respect of any examination of the vehicle concerned to establish, at the time, the extent of any damage (if any), in particular to the main reservoir valve;
  - 6.7. a passenger had allegedly heard a loud bang under the train whilst in the Romford area but that it was not clear in which coach the passenger had been travelling, and no statement was presented to clarify or support this assertion;
  - 6.8. no evident obstruction had been reported either by any of the trains that had run over the line before 1J32, nor by either of the trains that had carried out “Examination of the Line” after 1J32 reported its problems.

7. The Committee also gave consideration as to whether it would be reasonable to describe the incident as a “*Joint Responsibility Incident*” in accordance with the terms of paragraph 5.4, but considered that this incident could not reasonably be described as one where “[*Network Rail*] and the Train Operator were equally responsible and for which neither [*Network Rail*] nor the Train Operator is allocated responsibility under paragraphs 5.2 or 5.3” (paragraph 5.4(a)(ii)); not least because the Committee could see no evidence that Network Rail had contributed to the incident in any way.
8. The Committee therefore determined that the incident reported under TRUST reference number 463943, and resulting from the out of course stop by 1J32 on Thursday 13<sup>th</sup> June 2002, should be allocated to FGE, as an allocation in accordance with Schedule 8 paragraph 5.3(a)(iii) as “*originating from or affecting rolling stock operated by...the Train Operator*”.

**Tony Holland,**

**Chairman,**

**24<sup>th</sup> April 2003**