
ACCESS DISPUTE RESOLUTION COMMITTEE

DETERMINATION No. 3

The Access Dispute Resolution Committee was asked to determine, in response to a joint submission from North West Regional Railways, and the North West Zone of Railtrack, how acts of vandalism, in particular stone throwing, that lead to delayed trains, should be dealt with in relation to the Fault Attribution process, and the operation of Schedule 8 of the North West Regional Railways Passenger Track Access Agreement.

The Committee gave some thought to its locus to make a Determination on this matter, and concluded that, although the Trust DA process is not directly part of the Track Access Agreement, it is the means by which parties have agreed that the requirements of Track Access Condition B, and Passenger Track Access Agreement Schedule 8, should be implemented, and that therefore disputes as to the applicability or interpretation of the Trust DA Fault Attribution system do fall to be resolved by reference to the Access Dispute Resolution Committee.

In reaching a Determination the Committee took account of the following features:

1. The submission related to the treatment of delay which may result from an act of stone throwing, where the stone thrower has not gained access to Railway premises. Where the malicious act had taken place from within Railway premises, the parties were agreed that the attribution of fault should be to the party that controlled access to those premises.
2. The submission relates specifically to the practical question of who is held accountable for delays to trains; provisions within the Track Access Agreement in regard to liability for damage do not have any bearing on this question of delay.
3. The Passenger Track Access Agreement is framed in a way which does not admit, for the purposes of monitoring of train performance, any concept of “force majeure”: all forms of train delay must, by definition, be attributed either to the Train Operator named in the individual Track Access Agreement, or to Railtrack.
4. There is an obligation on the parties to the passenger Track Access Agreement to use reasonable endeavours to counter all acts of vandalism.
5. A test of reasonableness of endeavours, where two parties are involved, must relate to the relative opportunity, and authority, of the two parties to take action to counter a particular threat.
6. An incident of stone throwing may not actually lead to damage, but does require that the train crew aware of the incident, takes action, which may lead to delay to their or other trains.

7. Once an incident has been identified, and responsibility attributed and accepted, the current practice is that the total sum of delay that accrues to that incident includes all elements of reactionary delay.
8. Account needs to be taken of the economic signals and incentives within the attribution process; for example, parties responsible for ensuring adequate policing of premises should be required to accept the penalties where events occur that showed policing to have been ineffective. Similarly, train crew should be encouraged to report vandalism; where this reporting is not a Rule Book obligation, but is left to the responsible discretion of train crew, it would be unhelpful if the act of reporting attracted delay attribution.
9. Any judgement should not complicate the task of real time Control Offices, by introducing distinctions that either add directly to the processes for administering the Trust DA system, or require onerous additional enquiries to be made.

The Committee concluded that:

- i) Any determination in relation to Fault Attribution in relation to train delay should relate solely to that matter and should not be interpreted as implying any ruling on responsibility for damage (e.g. in relation to the indemnities contained in Section 8 of the Passenger Track Access Agreement).
- ii) Of the parties in this case, Railtrack is the only one placed to use reasonable endeavours to obtain the support of Police and infrastructure maintenance contractors, to ensure that opportunities for acts of vandalism to take place from within given premises, or from adjoining premises, are controlled to a minimum.
- iii) All consequential delay, i.e. all delay other than to the train initially affected, is influenced by the actions taken by the infrastructure controller, in response to whatever report may be received from the crew of the original train affected.

The Committee therefore determined that:-

In the case of Trust Attribution code XA applied to incidents of vandalism, including stone throwing, taking place from without Railway premises, the attribution should be to:

- a) Railtrack, if delay is caused to trains on tracks controlled by Railtrack;
- or
- b) the Train Operator, if delay is caused to its train on tracks controlled by other than Railtrack.