

### **4.3.9**

## **Extracts From Access Dispute Resolution Committee**

### **Determination No. AD29**

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

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;

6.8. 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*”.