Chapter 10

THE IMPACT OF HIGH SPEED RAIL ON LABOR RELATIONS AND COLLECTIVE BARGAINING

M. David Vaughn*

This presentation addresses the projected impact of high speed rail (HSR) on collective bargaining and arbitration: the places in railroad industry labor relations where the flanged wheel meets the steel rail.

High speed rail is generally defined as rail systems where trains operate at speeds of 110 miles per hour or more. To achieve safe and reliable operations at and above that speed, special rights-of-way and equipment are required. Trains operating at and above that speed are generally separated from conventional, slower moving freight and passenger trains, both because of the special requirements of the physical plant—equipment, track, catenary, signaling, train management, and the like—and for safety.[1]

Rail operations at speeds higher than conventional trains but less than 110 miles per hour (termed "intermediate" or "higher speed" service) can be accommodated on upgraded, existing rights-of-way and shared with freight trains. Although modern mainline freight trains operate routinely at mile-a-minute speeds—and there are no reasons why trains hauling freight could not be operated at high, or at least higher speeds, in theory—virtually all high speed rail projects involve the transportation of passengers between population centers.

High speed rail has been seen as critical to ease ever-increasing road and air congestion between urban areas, to reduce pollution, increase efficiency, and shorten travel times. A number of countries have undertaken significant high speed rail projects. Japan's Tokaido line, with its "bullet" trains, was the first, beginning in the

*NAA Member.

[1]The separation of rights-of-way has its own impact on industry performance, as there are ordinarily no grade crossings with highway traffic on HSR lines, effectively eliminating accidents; reducing injuries, damage, and maintenance costs; and improving performance and reliability.

1960s. More recently, France and China have developed extensive networks of high speed rail lines.

The scope of these high speed rail networks is hard to comprehend. Japan's network includes 1,350 route miles, with 900 more under construction. The Tokaido line can operate as many as 12 trains per hour. Four thousand passenger cars are used to provide the service. In France, there are over 500 high speed rail train sets. Train speeds of 180 miles per hour or more are common in foreign HSR operations.[2] As dramatic as these foreign HSR networks are, their operation and expansion are subject to interruption by safety and economic problems.[3]

The United States has lagged behind other countries in the development of HSR. The only high speed rail line in the country worthy of the name is Amtrak's Northeast Corridor, running between Boston and Washington through New York City. This line, built on right-of-way dating back well over a century, has been progressively upgraded and new equipment has been added, increasing maximum speeds to 150 miles per hour in some areas and reducing downtown-to-downtown travel time between Washington and New York, for example, to two and one-half civilized hours, a trip competitive with flying. Schedules will be even faster as upgrades in physical plant and rolling stock are completed.

A number of American high speed and higher speed rail projects have been proposed over an extended period of time—President Obama's 2010 economic stimulus package included several billion dollars to develop and construct such projects across the country.[4] Projects also include both HSR intermediate rights-of-way, equipment, and service. Some of these intermediate corridors may be improved to HSR standards over time. Although several states turned down stimulus monies for high speed rail, others have eagerly embraced the projects and reallocated funds. Project design, right-of-way development, and equipment construction are already underway. Projects of this size are having or will soon have an impact on jobs to design, engineer, and build equipment,

---

[2]Data taken from the United Transportation Union's (UTU's) presentation as part of the HSR panel presentation. The UTU presentation is included in conference materials for the National Academy of Arbitrators' San Diego meeting and is available for review and download at the NAA website, www.naarb.org.

[3]Subsequent to this presentation, China's HSR operations and development have been adversely impacted by accidents causing examination of quality and technology issues, and by disparities between escalating costs and lagging passenger volume.

[4]See the UTU's presentation for identification of specific corridors and costs.

right-of-way, and infrastructure. Indeed, for the monies appropriated as part of the stimulus, that is the immediate purpose for which the funds have been appropriated.[5]

The future of new or improved HSR projects has been placed in doubt as a result of the ongoing political impasse between President Obama and Congress. Although the president's further stimulus proposals allocate additional monies, the House of Representatives has "zeroed out" HSR funds for the upcoming years. The larger philosophical debate as to the role of the federal government in funding infrastructure is likely to continue past the immediate conflict, especially in the face of economic difficulties and tight budgets. To be sure, much of the interest in HSR originates with local and state concerns about traffic congestion, air pollution, and economic efficiency—which should override short-term political deadlocks—but the enormous capital costs of HSR make federal involvement important and, in most instances, determinative in the undertaking of these projects.

What will be the impacts of HSR on railroad industry labor relations, collective bargaining, and arbitration? The answers are neither simple nor certain, and necessarily include some generalized speculation. That having been said, the scope and promise of high speed rail will certainly impact on industry labor relations. The impacts will not, however, be either quick or dramatic. Indeed, if collective bargaining remains the flexible and innovative mechanism it has been in the past, high and higher speed rail may be expected to be incorporated into the larger labor-management relationship and dispute resolution mechanisms in an orderly and reasonably predictable manner.

In the first instance, it must be understood that, notwithstanding the enormous influx of capital, the development of high speed rail will be a lengthy process. Except as parties currently in a collective bargaining relationship are dealing with high speed/higher speed projects operating or underway—which most outside of Amtrak's Northeast Corridor are not—the issues in labor relations resulting from HSR will arise five to ten years out. A similar timeline will apply to the adjudication by arbitration of HSR issues arising under Section 3 of the Railway Labor Act.[6]

---

[5]The economic impacts of significant additional engineering, manufacturing, and construction of components and facilities will be blended into the larger economy and will take place for the most part outside the railroad industry. They are not further addressed.

[6]45 U.S.C. §153.

Consistent with the larger premise that the labor relations process accommodates change, legislation, collective bargaining, and perhaps a few lead court cases and arbitration awards are likely to establish paths in the accommodation of high speed rail issues, to the point that those issues will be normalized and their resolution routine. I note, in this regard, that courts in recent years have interpreted existing contract provisions expansively, have treated even major issues of first impression as involving the interpretation and application of contracts, and have sent them to arbitration, rather than through the Railway Labor Act (RLA) bargaining process.

Second, the impact of high speed rail on railroad physical plant, employment, and labor relations will be incremental, not simply because the improvements will take time and be phased in but because many projects may be higher speed but not high speed, and will be achieved, at least initially, using existing terminals, carriers, rights-of-way, equipment, and employees: 59-mile-per-hour track gets upgraded to 79, 90-mile-per-hour track gets upgraded to 110, and so on. Improvements in operations and schedules are likely to lead to gradual increases in the utilization of the physical plant and in railroad employment.

This is important for purposes of projecting the impact of HSR on labor relations because the evolving HSR and intermediate corridors are likely to be operated within the existing structure, with employees in the same crafts and classes represented by the same labor organizations, working under the same agreements for the same employers as in current operations. The Chicago-St. Louis intermediate corridor—where upgrades are in progress to allow 110-mile-per-hour passenger trains and five-hour downtown-to-downtown travel times between the two cities—is an example of such an incremental process. Those trains will run on the same, albeit upgraded, track and right-of-way used by the freight railroads and will continue to be operated by the existing freight railroad, pursuant to existing or amended agreements between the freight railroad and Amtrak.

Freight railroads have, in their existing collective bargaining agreements, provisions for employees working in passenger service separate from those in lower speed freight service and, in their agreements with Amtrak, provisions for the operation of passenger trains on shared rights-of-way with freight traffic. So, in virtually all instances, anachronisms such as the payment of engineers on a mileage basis —where a trip of no more than 125

miles (barely more than an hour's work in high speed service) earned an engineer a day's pay—have already been superseded. The essential framework for HSR operations is already built into freight rail contracts.

Recall, with these points in mind, that collective bargaining agreements in the railroad industry never expire—they simply become amendable[7]—and that those parts that are not amended simply continue in effect, with the agreements negotiated by carriers and organizations superseded by merger or reorganization simply layered over. So, somewhere under the collective bargaining agreements that will cover high speed rail lines reside the terms and conditions of employment under which Casey Jones worked. This layering, which has extended over generations of operations, equipment, and work rules, with occasionally problematic results, will be extended still more. And yet the enormous progress in rail operations and technology in recent decades has resulted in the elimination of most provisions that would obstruct use of high speed rail. Agreements will need to continue to evolve, to be sure, to accommodate new systems, technology, rolling stock, and schedules to the extent that such evolution has not already been accomplished. Fortunately, the enormous increases in employee productivity resulting from improved operations and increasing speeds make those changes more doable.

There are several caveats to this evolutionary vision of how high speed rail will impact railroad industry labor relations and dispute resolution. Some are larger than HSR. As indicated, the House of Representatives of the present Congress has been hostile to both collective bargaining and government infrastructure programs. Changes in these larger issues, such as the structure of the RLA itself or the continuation of federal funding for Section 3 disputes would, of course, impact on HSR labor relations. Such changes are beyond the scope of this presentation.

Amtrak has embraced HSR and hopes to play a leading role in its development and operations.[8] It is well-positioned to do so. If Amtrak continues to own and operate the Northeast Corridor and to operate and manage new intermediate and HSR corridors, existing agreements with labor organizations, freight railroads, and commuter authorities are likely to continue, with changes

[7]Railway Labor Act (RLA) §6, 129 U.S.C. §152, sixth.

[8]See, in this regard, the presentation made by Jonathan Hutchinson, Amtrak's Senior Director, Corridor Development, for this panel: "HSR: Amtrak's Ready; Is America?" This presentation is also available at the NAA website, www.naarb.org.

in the relationship and substantive provisions taking place in an orderly way.

As has been the case for years, legislative changes have recently been proposed that may impact Amtrak's status and funding. There are periodic calls to eliminate Amtrak—the sole provider of intercity passenger rail service in the United States—entirely. There have been calls for Amtrak to sell the Northeast Corridor to a private entity. Some proposals would zero out federal funding, effectively dismantling the national passenger rail network. Some proposals to replace Amtrak would "privatize" passenger rail service, including some that would separate from train operations the responsibilities for track, signaling, and maintenance, thereby allowing competing companies to operate trains on the same tracks on which Amtrak operates. This would yield a system that more closely resembles both that of Great Britain and the separation of electrical generation from distribution in the domestic deregulated utility industry. Such changes are not a direct function of high speed rail, but the attractiveness of passenger rail assets will increase significantly if HSR technology and schedules are in place or on the horizon.

Effectuation of any of these changes in ownership and/or structure would create enormous uncertainty in the labor-management relationships and dispute resolution mechanisms governing high speed rail. There will be protests from labor organizations, carriers, and the public that will make such changes difficult. But we live in uncertain political and economic times, so no outcome can be ruled out.

Even less certain will be the impact on labor relations in circumstances where HSR is constructed on new, dedicated rights-of-way for which no carrier has been providing service and/or where responsibility for the operation of a particular corridor rests with state, regional, or local authorities. The entity constructing and operating the new route might or might not be covered by the RLA and, whether or not covered, might opt to have its operations overseen by a management company such as Veolia, which operates Tri-Rail in Florida, or Virginia Railway Express. After lengthy litigation, Veolia's employees, who are represented by labor organizations, have been determined to be covered by the National Labor Relations Act (NLRA), whose statutory bargaining and dispute resolution procedures are significantly different from those provided for in the RLA. I note that Amtrak's relationships with commuter rail authorities have sometimes been difficult and that

some authorities have severed their operating and/or management relationships with Amtrak, thereby creating the potential for Tri-Rail type management arrangements or other changes.

The possibilities of change in the basic bargaining and dispute resolution structure in the circumstances described would be compounded if legislative changes were to be imposed on the new operations. It is possible to envision a situation whereby some employees working in HSR remain covered by the RLA, while others are covered by the NLRA or some other statute, as might ensue if privatization is enacted or if particular HSR projects are undertaken by public sector entities. Such changes would add complications and uncertainty to HSR labor relations and dispute resolution.

Depending on the resolution of the budget stalemates and the outcome of upcoming elections, new substantive legislation, as well as the appropriations process, may reshape the entire structure of HSR, including the statutory coverage of employees, the scope of collective bargaining, employee protective conditions, and the availability of—and funding for—arbitration. Will Amtrak continue to exist without change to its statutory coverages and rights? If competition is allowed, will the employees be covered by RLA? Will Section 3 of the RLA be preserved and, if preserved, will it be funded? Will public enthusiasm for high speed rail increase to the level held by many transportation planners? Will HSR development in other countries continue to serve as positive examples for what can be done in the United States? And will there be federal support and funding for HSR, without which these huge, expensive projects are unlikely to develop any time soon? Watch this space.

Even assuming that carriers and employees remain covered by the RLA and existing arbitration procedures, true HSR will create new substantive issues in arbitration. Those issues will differ from craft to craft. I turn to examine them.

The most immediate impacts of HSR will likely occur in the maintenance of way and signal crafts and will be triggered by the extensive construction required to upgrade facilities, track, and signaling to accommodate the higher speeds. I previously noted the impact on safety and operations of the elimination of grade crossings. Their elimination will also reduce maintenance and signal work. HSR will require upgrades in the skills and equipment needed, resulting in disputes on bidding and training. It is likely that the entities that will operate HSR will seek to use outside

contractors, either instead of or in addition to, existing employees, and the contracting-out of construction and other work will likely result in claims of violation of the crafts' scope (work jurisdiction) rules.

The use of the new equipment and new technologies required by HSR may also impact on the shop crafts—the mechanics and other workers who maintain and repair equipment. Carrier-employed, union-represented craft employees have proved themselves capable of working in a new-technology environment. Carriers and employees have stepped up the pace of technological innovation; for example, Amtrak now maintains most of its equipment on the HSR Northeast Corridor, using its own employees, shops, and equipment. The nature and extent of carrier obligations and employee rights with respect to this new, more complex work will certainly create both major and minor disputes.

However, in recent years, that has developed a pattern in the railroad industry of including lengthy builder warranties to cover new equipment and to use "factory" technical support for high-tech components. Thus, builders and contractors are likely to play major roles in maintaining the new generations of locomotives and rolling stock to equip HSR lines. The dividing line between these broadened and extended coverages, on the one hand, and craft jurisdiction on the other, are likely to be issues in bargaining and in disputes brought to arbitration.

Finally, the wages and working conditions for train-service and onboard employees are likely to evolve, given the complexities and high speeds involved in HSR. For example, on the Northeast Corridor, an engineer can make four runs—two round trips—between Washington and New York before running afoul of the federal hours-of-service law,[9] which requires that railroad operating employees work no longer than 12 hours without rest. Engineers on the Northeast Corridor have been paid on a time (rather than a mileage) basis for many years. The continuing increase in employee productivity in HSR service is likely to result in bargaining demands for increased compensation. The safety risks of high speed rail are likely to draw continued scrutiny of training, certification, and regulatory oversight. Some of those issues will be addressed by the regulatory bodies (primarily the Federal Railroad Administration) and some in bargaining and arbitration.

[9] 49 U.S.C. §§61 et seq.

Collective bargaining is a flexible process. It can be expected that sufficient lead time will be available to have contracts in place to accommodate the technological and operational changes necessary for HSR. The dispute resolution system under the RLA can be enormously time-consuming, but the likelihood of resolution without strikes is high, so parties who have experience under that statute are likely to prefer remaining under the RLA over a dispute resolution system with which they are less familiar. The RLA is likely to continue to serve the parties well. The development of dedicated corridors and the change attendant to such development may open the door to new statutory systems of operation and to new participants, representation, and bargaining. However, even if such changes occur, the pace of change is likely to be gradual and the processes adopted should continue to be workable.