RAILWAY LABOR ACT PUBLIC BOARD PROCEEDINGS
DECISION AND AWARD

In The Dispute Between:	*	
	*	
THE CUYAHOGA VALLEY RAILWAY COMPANY	*	
	*	Public Law Board No. 3944
-and-	*	Case No. 8
	*	
UNITED TRANSPORTATION UNION (E)	*	

APPEARANCES

REPRESENTING THE CARRIER

J. D. Heath — Supervisor, Industrial Relations

REPRESENTING THE UNION

L. T. Moore — General Chairman

ISSUES: Whether detour agreement granting Cuyahoga Valley locomotives access over Newburgh and South Shore Railway tracks to deliver cars of molten steel at a newly designated interchange with River Terminal Railway caused Cuyahoga Valley employees to intrude on work jurisdiction of Newburgh and South Shore employees. If violation occurred, what if any remedy should be awarded?

PUBLIC LAW BOARD

G. T. Creedon
Director, Industrial Relations
Carrier Member

Clifford Bryant
Vice President
Organization Member

Jonathan Dworkin, Neutral Member
16828 Chagrin Boulevard
Shaker Heights, Ohio 44120

SUMMARY OF CLAIM

The Carrier is a switching railroad, owning approximately fourteen miles of track in the Cuyahoga River Valley, Cleveland, Ohio. It services the Cleveland plant of what was formerly the Jones & Laughlin Steel Company (J&L). Cuyahoga Valley is one of several railroads serving steel producers and steel fabricators in the area. Another major steel producer with facilities practically adjacent to J&L is the former Republic Steel Company (Republic). River Terminal Railway Company is the primary carrier for Republic. While the property of J&L abuts that of Republic, trackage of the two railroads -- this Carrier and River Terminal -- are not adjacent. Their tracks are separated from one another by the Cuyahoga River, the Baltimore and Ohio Railroad, the Norfolk and Western Railway, and the Newburgh and South Shore Railway.

It is well recognized that locomotives and employees of one railroad are not permitted to operate on the tracks of another except in defined circumstances. Such circumstances include operation at a recognized "interchange," and (under some agreements) over a "bridge" or "overpass." This case encompasses twenty-six claims of employees who contend that they were forced to invade work jurisdiction of Newburgh employees when they were directed to transport molten iron across foreign tracks to a newly designated interchange, where the iron was transferred to River Terminal crews. The interchange for the transfer was established between Newburgh and River Terminal, but was not formerly a recognized interchange for Cuyahoga Valley. The Claimants maintain that they are entitled to a full day's pay (eight hours) for the time spent on Newburgh tracks. This remedy, it is argued, is consistent with Article 16 of the Revised Agreement between the parties. Article 16 states simply, "Eight (8) hours or less shall constitute a day's work." The Organization contends that once Cuyahoga Valley employees left their own

work jurisdiction to perform jobs on Newburgh tracks, they were entitled to a day's pay for the out-of-seniority work assignments. The Organization presented a volume of Division and Public Board decisions supporting the remedy.

The Carrier's decision to use Newburgh track for deliveries responded to critical needs brought about by a sales agreement between Republic and J&L. In 1983, an agreement between the steel producers was drafted whereby J&L was to sell molten iron to Republic. The arrangement entailed transportation problems. The ladles or "submarines" of hot metal had to be moved quickly, before cooling, and they had to be moved over tracks adequate to carry the weight. The Carrier found it necessary to deliver the material to River Terminal locomotives without intervening transfers and their incumbent delays. To accomplish this, it negotiated a Standard Form Detour Agreement with Newburgh. The agreement permitted the Carrier to cross Newburgh tracks without interruption, and transfer filled ladles to River Terminal locomotives. The same route was used for reverse traffic. River Terminal picked up empty ladles at Republic and took them to the Newburgh-River Terminal interchange where they were picked up by the Carrier and transported across Newburgh tracks, to the Carrier's own tracks, and then to J&L. The Detour Agreement and an additional side agreement required the Carrier to use a Newburgh Pilot on Newburgh tracks and to hold Newburgh harmless for any claims resulting from alleged invasions of work jurisdiction.

In addition to the Detour Agreement, it was necessary for the Carrier to amend its Rules of Interchange. Since 1978 (and perhaps longer) the interchange for transferring hot metal between Cuyahoga Valley and Newburgh were on designated tracks south of the Clark Avenue bridge. Rule 111 of the Company's Revised Rules Governing Employees provided in part:

NEWBURGH & SOUTH SHORE INTERCHANGE

. . .

(a) Nos. 1, 2, & 3 S.O.B. [South Of Bridge] may be designated as interchange tracks for the delivery and/or receipt of hot metal ladles.

The former interchange established a point of transfer between the Carrier and Newburgh, but was useless for direct transfers between the Carrier and River Terminal. To cure this defect, Cuyahoga Valley revised its Rules of Interchange to designate the existing link between River Terminal and Newburgh as its own interchange. On March 27, 1983, the Carrier posted Transportation Department Notice No. 83-63 which stated:

To: ALL CONCERNED

Until further notice, we will be delivering J&L Hot Metal Ladles to Republic Steel via the N&SS to the River Terminal - N&SS interchange tracks. This temporary condition replaces that interchange addressed in Rule 111(a) of the Revised Rules Governing Employees of the Cuyahoga Valley Railway Company.

From the start, the Organization believed that the revision violated principles of interchange. However, it expected that the routing was temporary and that Rule 111(a) would be reinstated. When its expectations proved inaccurate, the General Chairman (Enginemen) of the United Transportation Union advised the Carrier that the Organization intended to grieve if the procedure continued. On February 4, 1985, almost two years after the "experiment" began, the Chairman sent the following letter to Cuyahoga Valley's Supervisor of Industrial Relations:

Dear Sir:

This letter will advise you that from this date forward the UTU General Committee of Adjustments representing the engineers of the Cuyahoga Valley Railway Company will consider the transfer of sub ladles to and from the Newburgh & South Shore Seneca yard (Long yard) and the Cuyahoga Valley Railway yard as a violation of the "principles of interchange", and outside the scope of our agreement. Time claims will be submitted for each violation.

According to the evidence, the Carrier ignored the Chairman's letter. Operations continued unabated. Thereafter (in the Company's words), "a veritable flood of such time claims has poured in to the Carrier's Transportation Department." As stated, this case comprises twenty-six claims, but a great many more are pending.

The case was processed at the various levels of the grievance procedure, and was denied by the Carrier. It was appealed to the Public Law Board and was heard in Cleveland, Ohio on October 29, 1986.

DISCUSSION AND OPINION

Except for the Rules designating locations of particular interchanges, the Agreement between the parties is silent concerning the Carrier's right to select and alter interchanges to meet operating needs. The absence of language on the subject is not surprising; nearly every one of the many prior decisions submitted by the parties remarked on the lack of clearly enunciated contractual standards. Nevertheless, principles of interchange do exist. They have been recognized by carriers and bargaining units for scores of years. They are deeply rooted as presumptive extentions and limitations of Management Rights throughout the industry. They

have developed definition and uniformity through thousands of decisions of Divisions and Public Law Boards. As they apply to this controversy, the principles can be summarized as follows:

1. Employees of a delivering carrier may not perform work on the tracks of a foreign carrier except at designated interchanges. Interchanges are established to exchange cars between railroads and their employees. Obviously, such exchanges necessitate a softening of seniority-district jurisdictions. It would be logistically impossible to separate switching functions at interchanges with absolute adherence to boundaries between tracks belonging to separate carriers. But interchanges do not license any greater intrusion on work jurisdiction than required for the exchange. As stated in Award 10 of Public Law Board No. 557:

> The Carrier raises an unexpectedly profound question when it points out that no "interchange rules" appear in the Schedule Agreement between the parties. Of Course, this is generally true among all such agreements, yet few things are more real in the railroad industry than the principles of interchange. All carriers, by Court and Board ruling, must designate tracks for interchange. The roots of this antedate even labor-management relations in the industry, for they reach back to the common law liability of carriers for the goods they transported. In other words, it always was necessary to be able to point to the precise moment and place where responsibility for goods in transit passed from one carrier to a connecting carrier. This was interchange.
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> In effecting such interchanges it was necessary, of course, for employees of foreign lines to operate to a limited and carefully defined extent over the lines of a carrier and an agreement with its own employees ensuring them their seniority and other rights in its available work. That is where interchange comes into labor relations . . .

2. **Interchanges cannot be established arbitrarily.** The choice of location must be founded on bona fide business necessity. The rationale for this finding stems from the observation that an interchange, by its nature, violates the jurisdictional perimeters of seniority districts. The intrusion is authorized only if necessary. Carriers will not be permitted to create unnecessary interchanges designed primarily to erode jurisdictional concepts. The point was made by the First Division in Award No. 3633:

> If [seniority] rights can be arbitrarily destroyed by unilateral action they are worthless. Seniority districts are established by agreement and may be altered only by that process.

This rule has particular application to the instant dispute. The Carrier contended that the detour and new interchange were critical for transporting filled ladles to their destinations before they cooled. It also maintained, without refutation by the Organization, that the only tracks adequate for the weight of the cargo were those designated by the detour agreement. In response, the Organization argued that "the hardship did not give the Carrier the right to violate the Labor Agreement." This argument is circular. If seniority districts are regarded as strictly defined work-jurisdiction areas, interchanges naturally violate them. The violations attributable to interchange are acceptable only in instances of business necessity, and hardship is an indication of business necessity.

3. **Interchange arrangements must be reflected by formal agreement between the affected railroads.** At least one Division decision held an interchange improper where the record lacked proof of such agreement. In Award No. 14642, Division 1 held:

> The record does not reveal how the "Brick Track" and the "House Track" were designated by the Seaboard Air Line Railroad Company and the Georgia, Southern and Florida Railway as their respective interchange tracks for cars to be interchanged at Lake City, Florida. But it is apparent that the record fails to show that the alleged change in designation by the Seaboard Railroad supervision, relied upon in this docket, was made in the same manner. And no intent of that carrier to make a continuing change of designation is there evidenced.
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> Without some showing of conference and agreement between these two carriers, and neither is revealed in this docket, the supervision of the Seaboard Railroad at Lake City had no right or authority to designate a track on the rails of the G.S.&F. Railway for interchange or any other purpose.

4. When collective bargaining agreements contain procedural provisions relative to establishing and/or changing interchanges, the provisions must be followed. Sometimes agreements require notice to and discussions with the Organization before new interchanges can be designated. Clearly, a carrier cannot escape liability if it acts in derogation of such contractual commitment. However, the principle has no application to this controversy. The Agreement between the parties does not contain procedural language, and a Division 1 decision clarifies that alterations of interchanges do not have to be posted unless required by contract. [Award No. 14516.] Moreover, the Carrier did give timely notice to the Organization by its posting of March 27, 1983.

. . .

Within the confines of the foregoing restrictions, it is well established that a carrier has the exclusive prerogative to create and alter interchanges. However, interchange is not the primary focus of this dispute, despite the fact that the parties concen-

trated on it. The central issue is whether the detour was proper. It must be remembered that these claims were commenced by Enginemen who complained about traversing Newburgh tracks to the disputed interchange. The claims state in pertinent part:

> Claim of Engineer . . . for 8 hours pay in addition to all other earnings [on] account [of] being required . . . to deliver sub ladles . . . from the Cuyahoga Valley Railway yard to track No. 22 of the Newburgh and South Shore Railroad Seneca yard. Such track is not a properly designated interchange track.
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> . . .
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> Claim of Engineer . . . for 8 hours pay in addition to all other earnings [on] account [of] being required . . . to pickup sub ladles . . . from track No. 21 a non-designated interchange track of the Newburgh and South Shore Railroad Seneca yard and return to the Cuyahoga Valley Railway yard.

Presumably, the detour agreement was subject to the same principles as those governing interchange, with one additional requirement. In order to minimize intrusions on foreign seniority districts, the Standard Form Detour Agreement requires a Pilot to be furnished by the owner of the tracks whenever the detour is used. Paragraph 2 of the Form states in part:

> The Foreign Company, if granted such permission, shall run its trains between the points designated over the tracks of the Home Company, using, unless otherwise agreed between the parties, its own engines, engine crews and train crews . . . but always with a pilot or pilots . . . to be furnished by the Home Company . . .

According to the evidence, the Carrier has complied with this and

every other requirement since the detour and interchange arrangements were established -- at least, the Organization presented no evidence to the contrary. Rather, the Organization relies on the premise that Cuyahoga Valley Enginemen cannot cross Newburgh tracks to the foreign interchange where work is performed by Cuyahoga Valley employees.

Public Law Board 3569 has already disposed of claims of the Carrier's Conductors and Brakemen arising out of the same detour and interchange. It denied the claims, holding:

> It must be noted that the Carrier entered into a valid agreement with the Newburgh to allow its crews to operate over Newburgh's trackage. However, this did not change the nature of the work performed by Carrier's train crews. The pick-up and delivery of sub ladles at the Newburgh-River Terminal interchange tracks did not constitute work outside the scope of the Claimants' employment, in the opinion of this Board.

It is noteworthy that Public Law Board 3744 (Docket 1) arrived at a contrary decision with respect to the claims of Newburgh employees. The question raised was whether Cuyahoga Valley's transportation over Newburgh's tracks constituted a valid "bridge" movement. The issue reflected a provision in Newburgh Rules of Seniority Districts which does not appear in the Cuyahoga Valley Agreement; confirming that Newburgh employees had exclusive work jurisdiction on Newburgh tracks with the following negotiated exception:

> This rule does not apply to trains in detour and bridge service over Newburgh and South Shore tracks.

Public Law Board 3744 apparently ignored the word "detour" and dealt only with the concept of a bridge. It held that a bridge is an overpass -- a movement above the tracks of a foreign carrier -- not movement on the tracks of a carrier. On that basis, the Newburgh claims were granted.

In the opinion of a majority of this Board, the Newburgh decision is not controlling. The issue in this case is whether the detour was valid, and the Board finds that it was. It follows that the interchange at the terminus of the detour was also valid. Nothing in the Agreement, supplemental Rules, or prior decisions supports the view that neighboring carriers cannot share tracks through a detour agreement and thereby create a valid, joint interchange with a third carrier at the end of the shared trackage.

AWARD

The claims are denied.

Decision Issued:
February 27, 1988

	CONCURRING	DISSENTING
Jonathan Dworkin, Neutral Member	X	
G. T. Creedon, Carrier Member	X	
Clifford Bryant, Organization Member		X Dissenting. Written dissent to follow

Public Law Board 3944
Case No. 8

Employee Members Dissent

Employees of a delivering carrier may not perform work on the tracks of a foreign carrier except at designated interchanges. In such interchanges it is necessary for employees of foreign lines to operate as defined by the agreements with its own employees to protect seniority of all concerned.

Two Railroads agreed to violate the Schedule Agreements and the principal of interchange of the Newburgh and South Shore Railway Company without consideration of the multiple effects on all three properties.

Public Law Board 3744 Award No. 1 sustained the same violation for Newburgh & South Shore employees and stated that the movement of the traffic on the N&SS was a violation of the interchange principal, and was not a bridge movement.

This Arbitrators position that "Nothing in the Ageeement, supplemental Rules, or prior decisions supports the view that neighboring Carriers cannot share tracks through a detour agreement and thereby create a valid, joint interchange with a third Carrier at the end of the shared trackage." Is very far out side the Agreements and rules of the principal of interchange.

The Award is without reason, and cannot be used as a president in this industry.

Very truly yours,

C. Bryant

C. Bryant, Vice President