

NATIONAL RAILROAD ADJUSTMENT BOARD
THIRD DIVISION

Award No. 29927
Docket No. CL-30218
93-3-91-3-701

The Third Division consisted of the regular members and in addition Referee John C. Fletcher when award was rendered.

(Transportation Communications International
(Union
PARTIES TO DISPUTE: (
(The Atchison, Topeka and Santa Fe Railway
(Company

STATEMENT OF CLAIM: "Claim of the System Committee of the
Organization (GL-10640) that:

- (a) Carrier violated the intent and provisions of the current Clerks' Agreement as well as the Carrier's imposed rules which are identified as Safety and General Rules for all Employees, Form 2629 Standard, and
- (b) Carrier shall now pay all Claimants who have had the Dress Code imposed upon them without any monetary clothing allowance, an additional thirty (30) minutes per day at the pro rata rate of the position occupied, beginning November 6, 1989, and continuing each and every work day forward until this violation is corrected, and
- (c) Carrier shall also pay the actual costs for any uniforms, coats, jackets or blazers which may be required to be worn by any Claimants beginning November 6, 1989, and
- (d) Claimants shall also be paid twelve per cent (12%) per annum interest on amounts claimed as make whole compensation until this claim is paid."

FINDINGS:

The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employe within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

Prior to moving into its new California Division Headquarters Building, Carrier issued a bulletin addressed to all employees that would occupy the Building, establishing a dress code that men working Exempt, and PAD positions were required to wear dress shirts, neckties and slacks, other men were required to wear sport shirts and dress slacks, and that denim apparel, T-Shirts, tennis shoes, thongs and sandals were prohibited. Women were to wear dresses of professional length, dress slacks, or skirts and blouses. As was the case with men, T-shirts, tennis shoes, thongs and sandals were not allowed. The Organization immediately filed this Claim, contending that the current agreement does not contain dress code requirements and that Carrier's unilateral imposition of a dress code was a change in existing working conditions without agreement.

Prior to moving into the new Division Headquarters facility Carrier did not have in place on the California Division a dress code applicable to employees working under the terms of the Agreement. What was in place was Rules H and 1103 of its Safety and General Rules. Rule H provides:

"H. Reporting for duty: Employees reporting for duty must be clean and neat in appearance."

Rule 1103 provides:

"1103. Proper Clothing/Footwear: Employees must wear suitable clothing and footwear to perform work safely."

Neither of these rules authorizes Carrier to dictate dress code standards. It can require employees to be clean and neat in appearance and it can require suitable footwear to perform work safely. When Carrier undertakes to control grooming standards unilaterally, as was done here, even though the Agreement may be silent on the matter, it is subject to some constraints. (See Fourth Division Award 4743.) First, the dress code must be clear, unambiguous and consistently enforced. Second, it must be reasonably related to a legitimate business purpose of Carrier. Finally, it must be reasonable, considering current customs and styles.

In this matter, Carrier has not established that the grooming standards announced in its October 19, 1989 bulletin were reasonably related to a legitimate business purpose. Carrier has argued that it is trying to convey to the public that it operates an enterprise encompassing a new, modern, and sophisticated transportation system. However, the evidence shows that substantially all of the business conducted by employees subject to the Agreement is done over the telephone or by computer. The vast majority of the shipping public that has any contact with Carrier's Clerical employees in the California Division Headquarters Building does not have visual contact with the employees. Additionally, arbitrarily barring denim apparel, for example, makes the dress code unreasonable, considering current customs and styles. In today's society denim appeal can be quite fashionable and is considered by many as appropriate wear for almost every occasion, except perhaps black tie events.

Accordingly, it is the conclusion of the Board that Carrier's dress code cannot be enforced.

The Organization has asked as a remedy that each employee that was required to comply with the dress code be allowed 30 minutes pay per day at straight time rates, plus 12 percent interest. It predicates this compensation demand on the notion that when Carrier imposed its dress code requirements arbitrarily it actually was requiring employees to wear a uniform. With this the Board cannot agree. Imposition of a dress code and requiring employees to wear uniforms are not one and the same. Accordingly, the Organization has not demonstrated Agreement entitlement for the monetary aspect of the Claim and the compensation sought will be denied.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Third Division

Attest: Catherine Loughrin
Catherine Loughrin - Interim Secretary to the Board

Dated at Chicago, Illinois, this 2nd day of December 1993.