CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1451

Heard at Montreal, Tuesday, January 14, 1986

Concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

Alleged violation of Article 15.1 of Wage Agreement No. 2 for failure to provide adequate pieces of uniform.

JOINT STATEMENT OF ISSUE:

Article 15.1 of Wage Agreement No. 2 states that "when uniforms are required by the Corporation they will be issued without cost to the employees. Uniforms will be maintained by the Corporation".

The Brotherhood contends that such items as shirts, blouses and shoes should be provided in specific quantities to certain On-Board Services employees by the Corporation in line with Article 15.1.

The Company has denied the grievance on the basis that such items have never been provided by the Corporation or its predecessor, as it was never the intent to do so under Article 15.1.

FOR THE BROTHERHOOD:	FOR THE CORPORATION:
(SGD.) TOM McGRATH	(SGD.) A. GAGNE
National Vice-President	Director, Labour Relations

There appeared on behalf of the Corporation:

C. 0. White	- Labour Relations Officer, VIA Rail Canada Inc. Montreal
Marcel St=Jules	- Manager, Labour Relations, VIA Rail Canada Inc., Montreal
J. R. Kish	- Officer Personnel & Labour Relations, VIA Rail Canada Inc., Montreal

And on behalf of the Brotherhood:

Gaston Cote	- Regional Vice-President, CBRT&GW, Montreal
Ivan Quinn	- Accredited Representative, CBRT&GW, Montreal
D. Tremblay	- Local Chairperson, CBRT&GW, Montreal

AWARD OF THE ARBITRATOR

The issue in this case pertains to the extent of the Corporation's obligation to provide, at its cost, the required uniform that is to be worn by its On-Board Services Employees. More particularly, despite the requirements of the dress code imposed upon its employees the Corporation insists that it is not obliged to purchase the white shirts, blouses and black shoes worn by them during the course of a shift. Rather, the Corporation suggests its obligation under Article 15.1 is exhausted when it provides its "on-Board" Services Employees with apparal that is distinctive of "VIA Rail". Accordingly, such clothing as jackets, trousers caps, badges and overcoats would fall into that category. Article 15.1 reads as follows:

> "15.1 When uniforms are required by the Corporation they will be issued without cost to the employees. Uniforms will be maintained by the Corporation."

It appears to me that the objective of the Corporation's dress code is to ensure that its employees who are employed in like On-Board Services are dressed in the same manner. The purpose of the dress code is to ensure that each employee, as such, projects a like image to all its customers or potential customers. And, in that regard what is necessary to constitute that image should prima facie form part of an employee's uniform.

And the Corporation was the first to concede that any employee deviation from the prescribed dress code would result in the imposition of an appropriate disciplinary penalty. In other words, adherence to the dress code is a condition of an employee's continued employment.

It seems to me that in such industries as the post office, the airlines and municipal police and firefighter staff the dress code imposed on those employees constitutes their uniforms. And, needless to say, the employer provides those employees at its expense all of the accoutrements, including shirts, blouses and shoes necessary to project the desired image.

The one instance that represents a departure from this principle was recited in Re Westin Hotel Case (1983) 12 L.A.C. (3d) 193 (Lederman). In that case, a distinction was made between the type of apparel that is generally required by the hotel employer in clothing the employee in an uniform that is distinctive of the service that is offered. For example, a bartender, waiter, hostess, etc., would be given at the employer's expense, clothing that was relevant to the functions that are performed. This would constitute the uniform that was the responsibility of the employee to issue. But where some discretion or flexibility was permitted in style or shape within the contours of a prescribed dress code the responsibility for purchasing the clothing would remain the employees. Accordingly, where the hotel's dress code might prescribe the colour scheme of the shirts, blouses and pants worn by its restaurant employees but some flexibility was permitted with respect to style the employer was not require to subsidize the purchase.

The Corporation argued, in a like manner, that, notwithstanding the dress code imposed on its On-Board Services employees with respect to

the requirement to purchase white shirts or blouses and black leather shoes the employees nonetheless were still given sufficient flexibility in style of the clothing to the extent it ought to be exonerated from the obligation to absorb the costs. In other words, although white shirts and blouses and black leather shoes formed part of the mandatory dress code, these pieces of clothing were not part of an employees uniform.

In resolving this dispute, I have decided to defer making a definitive ruling on the scope I am prepared to give to the term "uniform" for purposes of Article 15.1 of the collective agreement.

I do so for two reasons. Firstly, the evidence indicated that the trade union for many years has accepted the Ccrporation's interpretation of the term "uniform" and has indeed attempted to change the scope of the Corporation's obligation in previous negotiations that was without success. In other words, a past practice has arisen defining the term "uniform" as the Corporation perceives it that would render it unfair for the trade union at this juncture to rely on a different interpretation to the one that it has tacitly accepted in the past. Such a strategy clearly constitutes an unfair misrepresentation that would have lulled the corporation into a false sense of security where it might otherwise have protected itself during the course of the negotiation period. In other words, an estoppel would be warranted preventing the trade union from relying on its strict legal rights should its interpretation of Article 15.1 have prevailed.

And this brings me to a second and related point. The parties informed me that they are presently negotiating changes to the very provision that is the subject matter of this arbitration hearing. The estoppel that would have governed the period of the collective agreement has now lapsed. In other words, both parties are presently aware of the conflicting interpretations of Article 15.1 that have been advanced. Accordingly they may presently take corrective measures to clarify and define in exact terms the extent of the employer's obligation that is intended in subsidizing an employee's purchase of his or her "uniform". Or, from another perspective, failure to exercise such prudent care in drafting a new clause may be at the peril of both parties.

In short, because of my disposition to deal with this case on the basis of the parties' past practice, I am satisfied the grievance, at this juncture, is without merit.

DAVID H. KATES,
ARBITRATOR.