CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2049

Heard at Montreal, Tuesday, 11 September 1990

Concerning

VIA RAIL CANADA INC.

And

CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS

DISPUTE:

VIA's Grooming Policy for male employees.

JOINT STATEMENT OF ISSUE:

The Brotherhood submitted a grievance on behalf of Mr. G. Letellier requesting the Corporation to relax its Grooming Policy for male employees to permit the grievor the flexibility to wear his hair longer than the requirements set out in the Grooming Policy.

The Brotherhood contends that the Corporation's grooming regulations for women are broader, create double standards and are discriminatory.

The Corporation maintains that the Uniform and Grooming Policy for male employees is reasonable, and does not violate the provisions of the Collective Agreement. The Corporation has therefore denied the Brotherhood's request.

FOR THE BROTHERHOOD:	FOR THE CORPORATION:
(SGD) TOM McGRATH	(SGD) C. C. MUGGERIDGE
NATIONAL VICE-PRESIDENT	DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

C. Pollock	Senior Officer, Labour Relations, Montreal
J. R. Kish	Personnel & Labour Relations Officer, Montreal
D. Fisher	Advisor, Montreal

And on behalf of the Brotherhood:

R. Moreau	Regional Vice-President, Montreal
J. Brown	Representative, Montreal
L. P. Rousseau	Recording Secretary, Montreal
G. Letellier	Grievor

AWARD OF THE ARBITRATOR

There are two aspects to this grievance. Firstly the grievor, Mr. Letellier, asks for a declaration to the effect that his hair, as it was at the moment when a supervisor required that he have it cut, and as he wore it to the hearing, is of a style and length which is reasonable and suitable. Secondly, the Brotherhood asks for a declaration to the effect that the Corporation's grooming policy is discriminatory with respect to the relative treatment of men's and women's hair styles.

The Arbitrator will deal first with the question of Mr. Letellier. It seems evident to me that the Corporation, which operates an enterprise dedicated to service to the public, may reasonably require that the passenger service employees aboard its trains maintain a personal appearance which conforms to the standards current in the hotel and restaurant industries. The comfort of passengers encompasses an aesthetic aspect as well as a physical one, and the Corporation has a legitimate interest in assuring itself that its employees do not present themselves with a style of clothing or hair that is unduly extreme.

The regulation governing men's hair styles is as follows:

HAIR
Hair must be neat, well-groomed and cut in such a fashion so that it does not fall forward into the eyes. The colour of the hair must have a natural appearance and be regularly maintained. Only hair styles traditionally appropriate to a business milieu are permitted. The hair must not pass the collar. If an "Afro" hair style is worn, the hair cannot be longer than 2 inches.

(translation)

The Arbitrator judges that, as such, the regulation is reasonable and in line with the legitimate exercise of the Corporation's discretion in the management of its business. It is identical to comparable policies in effect for on-board employees in the aviation industry and for the service employees in the hotel industry, several examples of which were submitted in evidence.

However, it is also true that the interpretation of the Corporation's grooming policy in specific instances involves a certain degree of subjective judgement in the application of a general rule. Mr. Letellier's grievance raises the question as to the precise length of his hair and, in particular, if it extends below the collar. In the Arbitrator's view, Mr. Letellier's hair, as shown in the photographs submitted in evidence, and as it was at the hearing, did not extend below the collar in the sense of the Corporation's regulation, and he would not be susceptible to discipline for wearing it like that during his hours of on-board service. Therefore, the grievance must be allowed with respect to this aspect.

The second part of the Brotherhood's argument is less convincing. Its representative claims that the regulations are discriminatory in that they appear, at least in the French version, to allow women,

but not men, to wear a ponytail and that, in practice, women are allowed to wear their hair longer than men.

In the Arbitrator's view, the employer has the right to establish different standards with respect to the hair and dress styles of its male and female employees. It is neither discriminatory nor arbitrary, in the sense of arbitral jurisprudence, to prohibit a male employee from wearing a skirt. Equally, it is permissible for the Corporation to establish regulations specific to men and women concerning the manner of hair style, provided that these regulations are reasonably within the context of its enterprise, given general societal norms.

It is, however, important to note that the regulation which applies to the men's hair possesses an intrinsic flexibility. If, for example, the pony tail one day becomes a hair style "traditionally appropriate to a business milieu", it would obviously become acceptable. However, the line between traditional and avant-garde remains, at the moment, distinct. I must, therefore, come to the conclusion that that day has not yet arrived.

For these reasons the grievance is allowed in part. Mr. Letellier's hair style does conform to the Corporation's grooming policy, whose standards are just and reasonable. However, I reject the claim of the Union that these standards are discriminatory.

September 14, 1990

(Sgd) MICHEL G. PICHER
ARBITRATOR