

Canadian Railway Office of Arbitration
Case No. 2629
Heard in Calgary, Thursday, 11 May 1995
concerning
CanPar

and
Transportation Communications Union
ex parte
Dispute:

Winnipeg employee D. Basarowich was suspended for one day on July 29, 1994, claim for eight (8) hours wages submitted August 4, 1994.

Ex Parte Statement of Issue

D. Basarowich returned to work in early 1994 after being off work on Workers' Compensation with an ankle injury. His doctor suggested that he get a high cut boot which offered more protection for his ankle. He purchased a gray tanned boot and supervisor Bob Thompson approved them, sending in the necessary documents that allowed him to receive \$25.00 boot allowance from CanPar Transport.

In July 1994 some five months or so after he returned to work the supervisor Mark Jacobucci told him that his boots were the wrong colour, even though Jacobucci had seen him wearing during the five months. During the week of July 25, 1994, D. Basarowich explained on several occasions to Mr. Jacobucci that boots had been approved by Bob Thompson. However, Mr. Jacobucci elected ignore the explanation and suspended him without pay July 29, 1994.

The Union argues that since the Company reimbursed him for part of the cost of the shoes, that should be considered as having approved the shoes. Accordingly, they should not expect him to purchase another pair of boots to satisfy their colour code.

Further, the Union argues that the collective agreement does not allow for suspension other than the conditions that are outlined in Appendix "D".

The Union asked that D. Basarowich be compensated for the time he was suspended.

The Company refused our request.

for the Union:

(sgd.) D. E. Graham

for: Executive Vice-President, Trucking

There appeared on behalf of the Company:

P. D. MacLeod -Director, Terminals, Toronto

And on behalf of the Union:

D. E. Graham- Division Vice-President, Regina

K. Greasley - Assistant Division Vice-President, Regina

L. Grandinetti - Observer

award of the Arbitrator

Upon a review of the evidence the Arbitrator is satisfied that there is nothing unusual or special in the circumstances relating to the acquisition of his work boots by Mr. Basarowich. The evidence discloses that he obtained a higher boot to give him additional ankle protection. When he did so he purchased a gray boot rather than the black boot required by Company rules. Although it appears that he received an allowance for the footwear, this was in keeping with normal practice, regardless of

the type of shoe or boot which might be purchased. There is, on the evidence before me, no basis to conclude that the approval of the footwear allowance by Supervisor Thompson can be taken as permission for the grievor to depart from the rule requiring black footwear.

It is true, as the Union argues, that there was some degree of tolerance shown towards Mr. Basarowich by Supervisor Thompson in respect of his continuing to wear the gray boots. It does not appear disputed that on April 19, 1994, while travelling in the grievor's vehicle, Supervisor Thompson noticed that he was wearing gray boots and then gave him a period of days to comply with the rule by obtaining black footwear. In fact, the grievor did not do so and nothing further was said or done until July 18, when Relief Supervisor Mark Jacobucci noted that the grievor was wearing gray boots. Upon being told by the grievor that Mr. Thompson had approved his gray boots, the relief supervisor contacted Mr. Thompson who advised otherwise. On the strength of that information the grievor was given until July 29 to secure appropriate footwear.

The evidence discloses that he did not. When he reported on the 29th without the proper footwear he was advised that he could not work until he returned in proper attire. The next day he did so and, it appears, he has complied with the Company policy ever since. In the Arbitrator's view, the dress rule, which is well specified in a Company publication to the attention of employees, is reasonable and properly related to the Employer's legitimate business interests.

The facts are devoid of any basis to conclude that the Company can be said to have approved the gray boots purchased by Mr. Basarowich, whether by providing the normal footwear allowance at the time they were purchased, or by the actions of Mr. Thompson. At most, it might be argued that Mr. Thompson was unduly lenient in failing to follow up on his first warning to the grievor in April of 1994. That, however, should not be taken as precluding either Mr. Thompson or his relief supervisor, Mr. Jacobucci, from revisiting the issue and insisting that Mr. Basarowich comply with Company rules. Significantly, on more than one occasion, both Mr. Thompson and Mr. Jacobucci gave the grievor a fair opportunity to appear at work in proper attire. In the result, I must conclude that the grievor was the author of his own misfortune as he knew, or reasonably should have known, that he would not be allowed to work on July 29 unless he complied with the Company rule requiring black footwear. In the result, as the grievor presented himself unfit for work on July 29, 1994, the Company's decision to send home was not improper. On that basis, the grievance must be dismissed.

May 18, 1995(sgd.) MICHEL G. PICHER
ARBITRATOR