

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 1013

Heard at Montreal, Tuesday, December 14, 1982

Concerning

VIA RAIL CANADA INC.

and

**CANADIAN BROTHERHOOD OF RAILWAY,
TRANSPORT AND GENERAL WORKERS**

DISPUTE:

The assessment of fifteen (15) demerit marks plus time lost for not being properly uniformed and insubordination towards a VIA supervisor.

JOINT STATEMENT OF ISSUE:

On December 31, 1981, the grievor, Mr. C. E. Johnson, was assigned as Steward-Waiter on train 65. Before departure, between 1220-1230 hours, while going through car 2501, Supervisor L. Levesque noticed the grievor was not wearing the black regulation tie.

The Corporation contends that, on being approached by the supervisor, the grievor refused to comply with his directives and, as a result, was removed from service.

The Brotherhood denies this contention and requests that the fifteen demerit marks be removed and that the grievor be reimbursed for the eight working days lost.

The Corporation rejects the Brotherhood's request.

FOR THE BROTHERHOOD:

(SGD.) J. D. HUNTER
NATIONAL VICE-PRESIDENT

FOR THE CORPORATION:

(SGD.) ANDRÉ LEGER
FOR: DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

A. Leger	– Labour Relations Officer, Montreal
A. R. Cave	– Manager, Human Resources, Montreal
J. DeCotré	– O.B.S. - Officer, Montreal
C. O. White	– Labour Relations Assistant, Montreal
L. Levesque	– O.B.S. - Supervisor, Montreal
N. Sheir	– O.B.S. Supervisor, Montreal

And on behalf of the Brotherhood:

I. A. Quinn	– Representative, Montreal
L. G. Kiley	– Local Chairman, Montreal
P. Garneau	– Secretary of the Local, Montreal
C. E. Johnson	– Grievor

AWARD OF THE ARBITRATOR

There is no doubt that at the moment when his Supervisor spoke to him with respect to his dress, the grievor was not "properly uniformed" in that he was not then wearing the regulation tie. It is acknowledged that the uniform requirements are proper ones. At the time of the incident, however, the train was not yet ready to receive passengers, and the grievor was finishing the preparatory work. Personnel are not required to be fully uniformed while they are carrying out such work. While it is true that the grievor did not immediately put on his tie as a result of the Supervisor's remarks, he was not, I find, given a clear and explicit direction to do so on-the-spot, and all the evidence indicates that the grievor would have been in full compliance with the dress regulations by the time the train was ready to receive passengers. In the circumstances, there was really no occasion for the assessment of discipline to enforce dress regulations. I am satisfied there was no real refusal to comply with such regulations.

As to the matter of insubordination, it seems clear that the grievor was approached by the Supervisor in a rather brusque manner, and that he responded in kind. On all of the evidence, I find that what really happened was not an incident of insubordination, in which any sort of substantial challenge to or denigration of the Supervisor's authority was involved, but was rather a case of quick assumptions and hasty reactions on either side. Some minor discipline might be imposed on the grievor in this respect, but there was not just cause for any substantial penalty. The situation ought not to have been allowed to escalate so rapidly into one where the Supervisor felt it necessary to remove the grievor from service. The grievor himself bears a part of the responsibility for that.

The penalty imposed was, I find, excessive in respect of any insubordination, and not justified in respect of any violation of uniform requirements. It is my award that the discipline be reduced to an assessment of five demerits, and that the grievor be compensated for time out of service.

(signed) J. F. W. WEATHERILL
ARBITRATOR