

# CANADIAN RAILWAY OFFICE OF ARBITRATION

## CASE NO. 1374

Heard at Montreal, Tuesday, June 11, 1985

Concerning

### ONTARIO NORTHLAND TRANSPORTATION COMMISSION

AND

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

#### EX PARTE

#### **DISPUTE:**

Mr. S. Pearce, Chef, on the Northlander Train Dining Car being instructed to shave off his beard he had began to grow. While other Chefs in the past have been allowed to grow beards and/or mustaches.

#### **BROTHERHOOD'S STATEMENT OF ISSUE:**

Mr. Pearce complied with the instruction of his Supervisor and shaved his beard and as a result submitted a grievance, claiming that he felt unjustly dealt with for the following reasons:

(1.) Employees were not aware of the Company policy that "employees must be clean shaven". (2.) Other Chefs in the past were allowed to grow beards and/or mustaches. (3.) No Company rule or regulation approved under Railway Act indicating that employees must be clean shaven. (4.) Company has not shown a legitimate motive as to the reasons why they require their employees to be "clean shaven". (5.) Failing to establish that employees with neatly trimmed beards threaten its image.

It is therefore the Brotherhood's contention that Mr. S. Pearce be allowed to grow a neatly trimmed beard along with other employees.

#### **FOR THE BROTHERHOOD:**

**(SGD.) T. N. STOL**  
REPRESENTATIVE

There appeared on behalf of the Company:

A. Rotondo – Manager Labour Relations, North Bay  
J. H. Singleton – Manager, Passenger Operations, North Bay

And on behalf of the Brotherhood:

T. N. Stol – Representative, Don Mills

## **PRELIMINARY AWARD OF THE ARBITRATOR**

The grievor was employed as a chef on the Company's trains on November 22, 1984. He was instructed to shave off his beard upon his reporting to work. The Company requires its employees, particularly while employed in the grievor's position, to remain clean shaven. The grievor, accordingly, was in violation of a known Company rule with respect to his not maintaining a "neat" appearance.

The grievor complied with the Company's directive and shaved off his beard. He did so, however, under protest. Mr. Pearce requested that the Company confirm its directive in writing. On November 30, 1984, the Company acceded to the grievor's request and confirmed "the clarification" of its rule in writing. That letter remains on the grievor's personal file. The grievor has grieved the Company's "censure" under Article 25.2 of the collective agreement:

A grievance concerning the interpretation or alleged violation of this agreement or an appeal by an employee that he has been unjustly disciplined or discharged and which is not settled at Step 3 may be referred by either party to the Canadian Railway Office of Arbitration for final and binding settlement without stoppage of work in accordance with the regulations of that office.

The Company argued that this grievance is not arbitrable because the grievor has not been "unjustly disciplined" as contemplated by Article 25.2 of the collective agreement. It is submitted that the grievor was merely advised of the continued viability of the Company's appearance code and, because of the grievor's compliance with that code upon being directed to shave off his beard, was not disciplined. Accordingly, there is no disciplinary issue before me that can be made the subject matter of a grievance pursuant to Article 25.2 of the collective agreement.

In dealing with the Company's submission with respect to the issue of whether discipline has been imposed I am satisfied that Mr. Pearce was "censured" because of an alleged violation of a known Company rule. Implicit in the Company's directive that he shave off his beard the Company communicated to Mr. Pearce a reprimand or a warning that any future conduct of a like nature would result in a more severe penalty. The Company did not contest the proposition that it would indeed use the incident to the grievor's prejudice in the event of a recurrence.

While the grievor was not insubordinate in his response to the Company's directive he nonetheless felt he was being unjustly treated by reason of what he perceived to be an unfair regulation. Mr. Pearce did what the arbitral jurisprudence directs him to do. He obeyed the Employer's directive and grieved that directive at a later date pursuant to the grievance procedure. In other words, his protest was controlled without being insubordinate.

Because I am of the opinion that the Company's "censure" of the grievor in directing him to shave off his beard was a disciplinary response to an admitted violation of its appearance code I have been satisfied that his grievance is arbitrable. Moreover, I am simply dumbfounded by the Company's position that the only avenue available for the grievor to have tested the Employer's appearance code at arbitration was for him to have disobeyed the directive to remove his beard. In my view that response would have represented a deviant method of challenging the validity of the Company's regulations with respect to its employee's appearance. The grievor has reacted to the Employer's censure of a violation of a known Company rule with a view to carrying his "protest" to arbitration. I have heard nothing persuasive from the Company that would warrant denying the grievor access to "his day in court".

Accordingly the grievor's grievance is to be listed for hearing.

**(signed) DAVID H. KATES**  
**ARBITRATOR**

Heard at Montreal, Wednesday, September 11th, 1985, there appeared on behalf of the Company:

A. Rotondo – Manager Labour Relations, North Bay  
J. H. Singleton – Manager, Passenger Operations, North Bay

And on behalf of the Brotherhood:

T. N. Stol – Representative, Don Mills  
S. Clifford – Local Chairman, North Bay

## **AWARD OF THE ARBITRATOR**

This case arises out of the Employer's written censure placed in the grievor's personal file relating to the violation of the Company's "no beard" policy imposed on its male employees. It is common ground that the grievor, Mr. S. Pearce, was employed as a Chef on the Northlander Train Dining Car at the time of the incident. Upon the Company bringing its no beard policy to the grievor's attention he shaved it off "under protest".

The Employer advised that the relevant rule that the grievor is alleged to have violated reads as follows:

Male employees must be cleanly shaven and mustaches, if worn, must be neatly trimmed and not extend below the bottom lip. Sideburns are to be trimmed and not permitted to extend below the ear lobe. Hair is to be neatly cut and of a reasonable length. While it will be permitted to cover the ear if the employee wishes to wear his hair in that manner, it must be trimmed at the back to clear the collar of his jacket or uniform. "Afro" style haircuts are permitted, providing the hair is not more than 2" in length. Beards and goatees are not permitted.

The policy applied by the Company prohibiting the wearing of beards was extrapolated from VIA Rail's on-board services policy dated April 1, 1978. The policy applied by the Company in the document entitled Instructions to Employees in Parlour Cafe or in Restaurant Car Service dated June 1, 1973 indicates that "male employees should be clean shaven". That Rule reads as follows:

Cleanliness is IMPERATIVE. Male employee should be clean shaven, female employee's hair should be neatly groomed and held in place by a hair net. At no time must hair be falling in front of face or be below collar line. Be very particular about appearance of hands and fingernails. Clean uniforms and coats should be worn each day. Worn out uniforms will be replaced.

It is not clear which policy the Company is actually relying upon with respect to justifying Mr. Pearce's written censure for wearing a beard. Common to both policy statements is the prohibition against wearing beards. However in the 1973 policy the focus of concern is the imperative of employee cleanliness; in the 1978 policy the focus of concern appeared to be the Company's "image".

In either event it was my impression (and Mr. Rotondo appeared to agree) that some uncertainty was established as to whether the employees had been made aware of the appropriate policy and, if so, whether it had been uniformly and consistently applied. Moreover, it was conceded by the Employer that the prohibition against wearing beards was not directed towards any concern about cleanliness or hygiene; and the Trade Union conceded that if beards were worn by its male members then they clearly would have to be clean and neatly trimmed. It seems to me that the apparent "fuzziness" of the Employer's underlying rationale for the imposition of its "no beard policy" has resulted in some ambiguity in the application of the policy and thereby it appears to have been inconsistently enforced. This dilemma in itself would warrant the removal of the written censure against Mr. Pearce with respect to his alleged infraction of the policy.

But the principal question before me is simply whether a well trimmed, neatly groomed beard worn by a Chef on the Northlander Train Dining Car would create an image problem for the Employer. Or more succinctly, would a Chef wearing such a beard during the course of discharging his duties result in the loss of business?

The simple answer is that it would not. Firstly, the Chef is employed in the kitchen area of the Dining Car and thereby there is no reason why the travelling public would even know that he is wearing a beard. Secondly, surely if the Company is prepared to allow its male employees to wear a neatly trimmed mustache why should not the same policy be extended to a neatly trimmed beard? No answer was forthcoming from Mr. Rotondo when that question was put to him. He merely referred to some concern about the enforceability of an appropriate standard. And, finally, it is commonly accepted in contemporary society that the sporting of beards is a fashionable form of grooming. In my view, so long as the wearing of beards presents no problem with respect to hygiene and is properly trimmed then the Company's concern for its "image" should it permit its male employees to wear beards is unwarranted. As a result, its policy requiring its male employees to be "clean shaven" represents an unreasonable posture that cannot be supported on the grounds advanced by the Company's representative.

Accordingly, the letter of censure placed in the grievor's personal file is to be removed.

**(signed) DAVID H. KATES**  
**ARBITRATOR**