CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2793

Heard in Calgary, Thursday, 14 November 1996

concerning

VIA RAIL CANADA INC.

and

NATIONAL AUTOMOBILE, AEROSPACE, TRANSPORTATION AND GENERAL WORKERS UNION OF CANADA (CAW-CANADA)

DISPUTE:

Alleged violation of articles 38.1 and 38.2 of collective agreement no. 1 and articles 15.1 and 15.2 of collective agreement no. 2.

JOINT STATEMENT OF ISSUE:

The latest issue of uniforms to employees occurred on November 1, 1995. The Union contends that articles 1.6.2 governing the cost sharing of the Uniforms and Grooming Policy and Guidelines, contravenes the above articles of the collective agreement in that employees should not have to pay for the recent issue of uniforms, as they had been hired before the implementation date of the recent uniforms.

The Corporation denied the grievance and maintains that the provisions of the collective agreement governing the free issue of uniforms, applies to the introduction of the new design of uniforms program, introduced in May 1987.

FOR THE UNION:	FOR THE CORPORATION:
(SGD.) A. S. WEPRUK	(SGD.) B. E. WOODS
NATIONAL COORDINATOR	DIRECTOR, LABOUR RELATIONS

There appeared on behalf of the Corporation:

C. Pollock	– Labour Relations Officer, Montreal
D. Wolk	– Manager, Customer Services, Winnipeg

And on behalf of the Union:

A. S. Wepruk	– National Coordinator, Montreal

AWARD OF THE ARBITRATOR

In the period between November 1, 1995 and February 22, 1996, the Corporation introduced uniforms of a different colour to be worn by on-board employees covered by collective agreement no. 2, as well as some off-train employees covered by collective agreement no. 1. The Union maintains that under the terms of article 38 of collective agreement no. 1 and article 15 of collective agreement no. 2 the Corporation is obligated to pay the full cost of the uniforms for all employees. The Corporation maintains, however, that payment for uniforms is a right reserved to employees who were in service as of November 1, 1986, the date which it submits newly designed uniforms were deemed implemented, within the meaning of the two articles in dispute.

The provisions in question from collective agreement no. 1 are as follows:

> **38.1** Employees in service on the implementation date of the new uniform who are required to wear a dress uniform, will receive the new uniform and all subsequent issues and necessary replacements, free of charge. Such employees who leave the service of the Corporation will return all items of their uniform to the Corporation.
>
> **38.2** Employees who enter service following the implementation date of the new uniform will pay one-half of the cost of uniforms, replacements and reissues. Payment will be made through payroll deductions, and a maximum of $20.00 per pay period will be deducted while the employee is paying for his share of the cost of the uniform.

The pertinent provisions of collective agreement no. 2 are:

> **15.1** Effective with the implementation of the new design of uniforms, employees in service on the implementation date will receive the new uniform and all subsequent issues without cost to the employees.
>
> **15.2** Employees entering service after the implementation date will pay one-half the cost of uniforms and subsequent issues.
>
> **15.3** All employees wearing the new design uniform will receive a personal grooming allowance of $16.00 per month and in addition, a uniform cleaning and maintenance allowance of $16.00 per month. Chefs and Cooks will receive a personal grooming allowance of $16.00

The background facts to this dispute are not contested. The earliest collective agreements between the parties contained provisions whereby the Corporation was responsible for the cost of employees' uniforms. Maintenance of the uniforms was also paid for for on-board employees under collective agreement no. 2, although off-train employees under collective agreement no. 1 were responsible for their own maintenance costs.

In May of 1987 the Corporation introduced a major redesign of uniforms. This Office had occasion to deal with certain grievances which arose out of that initiative (*see, e.g.,* **CROA 1752** *and* **2236**). The parties negotiated an agreement concerning uniforms on May 1, 1986. The essence of that agreement was to continue the protection of coverage for the cost of uniforms to employees who were then in service, with the understanding that newly hired employees would pay for half the cost of their uniforms. Further, both on-board and off-train employees would be responsible for the maintenance of their uniforms, subject to the payment of grooming allowances and uniform cleaning and maintenance allowances, initially pegged at $15.00 respectively, for employees in both bargaining units. By way of example, collective agreement no. 2, effective for 1985-1986, was amended to provide as follows:

> **15.1** Effective with the implementation of the new design of uniforms, (expected on or about November 1, 1986) employees in service on the implementation date will receive the new uniform and all subsequent issues without cost to the employees.
>
> **15.2** Employees entering service after the implementation date will pay one-half the cost of uniforms and subsequent issues.
>
> **15.3** All employees wearing the new design of uniform will receive a personal grooming allowance of $15.00 per month and in addition, a uniform cleaning and maintenance allowance of $15.00 per month.

It is common ground that following the implementation of the new uniform design of 1986, no change in uniform was made prior to late 1995, at which point the uniforms were changed in colour from burgundy and gray to navy blue. The material before the Arbitrator confirms, however, that the parties did amend the language of both article 15 and article 38, in their respective collective agreements, by removing the bracketed reference to the expected date of implementation of November 1, 1986. As a result, for example, article 15 of collective agreement no. 2 came to read, in part, from 1987-1988 onwards as follows:

> **15.1** Effective with the implementation of the new design of uniforms, employees in service on the implementation date will receive the new uniform and all subsequent issues without cost to the employees.
>
> **15.2** Employees entering service after the implementation date will pay one-half the cost of uniforms and subsequent issues.

A similar amendment was made with respect to article 38 of collective agreement no. 1 at the same time. In the result, both collective agreements came forward to the present without any material change in language. It appears that during the most recent round of bargaining both parties attempted to introduce amendments to the language of articles 15 and 38, but ultimately withdrew their positions in the face of an apparent stalemate. As a result, there has been no change in the language of the collective agreement provisions which govern the entitlement of employees to payment in respect of the cost of uniforms.

The dispute which has emerged is, therefore, relatively straightforward. The Union asserts that the language of article 15 and article 38, in the two respective collective agreements, must now be interpreted to provide for the payment of the cost of the navy blue uniforms introduced in late 1995 and early 1996 for all employees who were in service at the time of the introduction of the new colour. The Corporation, on the other hand, maintains that the reference within both articles to "the new design of uniforms" has always been intended and understood to mean the uniforms introduced in or about 1987, following the agreement of May 1, 1986. It maintains, in other words, that nothing has changed, and that only those employees who were in service at the implementation of the original new design, burgundy and gray uniforms, are protected for the purposes of the cost of their uniforms.

Upon a close review of the history of the language of articles 15 and 38, the Arbitrator is compelled to accept the position advanced by the Corporation. Firstly, the reference within the articles to "the new design of uniforms" and "the new uniform" would appear, from the standpoint of normal language, to correspond more clearly to the wholesale change in uniform design, such as that which was first introduced in 1986 and 1987. While there are now some minor alterations to the uniform as it was changed in 1995, it is difficult to characterize what transpired as a wholesale change in the design of the uniform.

Secondly, when regard is had to the language of the two articles, it is clear that they make reference to a single "implementation date". While it appears there was a clear and identifiable deemed implementation date at the introduction of the newly designed uniforms in 1987, it is less than clear that there is any such identifiable date with respect to the navy blue uniforms issued more recently. It is common ground that in Atlantic Canada the new colour was brought in on or about November 1, 1995, while employees Quebec saw it phased in in late November and early December of 1995. In Ontario the change was implemented between January 10 and 29, 1996, and corresponding changes to the blue uniform were introduced in Winnipeg and Vancouver between February 6 and 22, 1996. When that rather extended timetable is examined, it is less than clear to the Arbitrator that there is an identifiable implementation date for the blue uniforms, a concept which would be of some importance as a bright line divider for the purposes of identifying the employees who can claim the benefit of the protections negotiated within articles 15 and 38. The uncertainty which would be raised in any attempt to identify an implementation date tends, in my view, to support the position of the Corporation that the reference to "**the** implementation date" found within both articles tends to support the view that reference is being made to a clearly identifiable date in the past, namely the date of November 1, 1986, which previously appeared in the collective agreements.

When reference is had to the history of the two articles, that view is also supported. It is clear that for a number of successive collective agreements, which contained the same language as now appears, there was no new design of uniforms, nor any new implementation date, apart from the uniforms and implementation date from the 1986-87 period, as originally contemplated under the agreement made by the parties on May 1, 1986. Obviously greater clarity might have been achieved had the parties not subsequently removed the original parenthetical with respect to

the implementation date "expected to be on or about November 1, 1986". However, the Arbitrator can readily understand, from a housekeeping perspective, why the parties would wish, in years subsequent to 1986-1987, remove language reflecting an expectation tied to a date which has passed. In my view they did so without changing their fundamental understanding with respect to the rights of employees as regards the cost of uniforms.

In the result, even if I should reject the submission of the Corporation, which I do not, to the effect that the navy blue uniforms cannot be characterized as "the new design of uniforms", on the whole the history of the two provisions makes it clear that what was intended and understood by the parties, up to and including the terms of the current collective agreement, is cost protection for employees who were in service at the time of the implementation of the uniform design introduced in the 1986-1987 period. The Arbitrator cannot see any basis upon which the language of the collective agreement covering the 1995-1997 period can now be interpreted to have any different meaning than existed in the prior collective agreements, dating back to 1986, when there was no question as to the design of uniform or the precise implementation date identified.

For all of the foregoing reasons the Arbitrator must conclude that the interpretation advanced by the Corporation is correct, and that no violation of either collective agreement is disclosed. The grievance is therefore dismissed.

November 16, 1996

(signed) MICHEL G. PICHER
ARBITRATOR