

CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2890

Heard in Montreal, Wednesday, 11 October 1997

concerning

CANADIAN PACIFIC RAILWAY COMPANY

and

TRANSPORTATION COMMUNICATIONS UNION

DISPUTE:

The establishment of a dress code in the Network Management Centre, Calgary, Alberta.

JOINT STATEMENT OF FACT:

On December 17, 1996, the Company issued an article 1.1(a) Notice to the Union advising of the transfer of the Montreal Crew Management Centre (CMC) to Calgary. The notice advised that the transfer would take place from May to August 1997.

The Company and the Union first met on January 13, 1997 to address various issues relating to the transfer of the CMC. On February 6, 1997, a memorandum of agreement was entered into with respect to the transfer of the CMC from Montreal to Calgary.

The Company has applied the dress code to employees in the CMC.

JOINT STATEMENT OF ISSUE:

The Union progresses a grievance stating that there is nothing in the collective agreement allowing the Company to establish a dress code and requested that the dress code not apply to crew dispatchers. Alternatively, the Union argued that, if the Company wanted the dress code to apply, then a clothing allowance should be paid or a uniform provided.

The Company has denied the Union's grievance.

FOR THE UNION:

(SGD.) N. LAPOINTE
DIVISIONAL VICE-PRESIDENT

FOR THE COMPANY:

(SGD.) C. M. GRAHAM
FOR: DIRECTOR, RTC-CMC

There appeared on behalf of the Company:

C. M. Graham	– Labour Relations Officer, Calgary
J. S. Sutherland	– Manager, Crew Management Centre, Calgary
M. J. DiMambro	– Supervisor, Office Operations, Customer and Revenue Accounts, Montreal

And on behalf of the Union:

P. J. Conlon	– Assistant Divisional Vice-President, Toronto
N. Lapointe	– Divisional Vice-President, Montreal

AWARD OF THE ARBITRATOR

The employees who are the subject of this grievance worked for many years in the Crew Management Centre (CMC) in Montreal. The evidence establishes that their location in Montreal, in a building on Notre Dame Street, was separate and apart from the main business offices of the Company. In the result, at that location, the employees were less visible to Company clients or the public in general, and were not subject any particular dress code. It does not appear disputed that casual attire was the normal way of dressing in the Montreal office.

In the summer of 1997 the employees of the CMC transferred to the Company's head offices located in the Gulf Canada Square complex in Calgary. They are now located in the Network Management Centre (NMC), which is said to employ some 470 employees, whose responsibility extends to the operation and planning of all CPR trains, including the crew calling function previously performed in the CMC. Prior to the move, the Company put the Union on notice that the employees being transferred into the Calgary headquarters would be subject to the dress code governing employees at the NMC. The dress code, said to have been in effect in the NMC since June of 1996 is as follow:

NMC DRESS CODE - PURPOSE AND SCOPE

A professional working environment enhances the operation and performance of the Network Management Centre (NMC).

Our dress code for NMC staff enables us to support and project a professional image to customers, visitors and other Railway employees.

It is recognized that, outside of regular office hours (0700 - 1700, Monday to Friday; exceptions noted below), casual attire can be appropriate for work in the NMC. The NMC dress code provides employees with direction regarding attire that is acceptable for work outside of regular office hours.

This dress code applies to all employees who report for work at the NMC in Calgary. This NMC dress code is effective June 10, 1996.

NMC DRESS CODE - DAY SHIFT

On day shift Monday to Thursday inclusive all on-duty NMC personnel will wear "business" attire (including ties, males).

On Friday day shift "business casual" attire may be worn. Business casual attire includes business attire, as well as casual slacks and a blouse or shirt with a collar (tie not required); jeans, shorts, tank/cutaway tops and running shoes are not appropriate business casual attire.

On Saturday and Sunday "business casual" attire as described above may be worn on the day shifts.

NMC DRESS CODE - NIGHT SHIFT

On night shift throughout the week "business casual" attire, as described above, may be worn by NMC staff.

NMC DRESS CODE - STAMPEDE WEEK

During Stampede Week, NMC staff are encouraged to wear jeans and western attire in keeping with the festivities held that week in Calgary.

The Union objects to the dress code, submitting that it is neither reasonable nor necessary. Relying on established jurisprudence, it argues that it is not the purview of the employer to determine the dress which employees are to wear, short of reasonable compliance with standards of hygiene, safety and reasonable good taste, as reflected in broadly held community standards. It argues that the standards established by the Company are beyond what is necessary, and moreover that they are vague and uncertain, as for example in the description of "business casual" as being attire acceptable "at better restaurants", as expressed in a letter to employees. In support of its position the Union invokes a number of awards, including **Re Lumber & Sawmill Workers' Union, Local 2537 and KVP Co. Ltd.** (1965), 16 L.A.C. 73 (Robinson); **Re International Association of Fire Fighters, Local 626, and Borough of Scarborough** (1972), 24 L.A.C. 78 (Shime), which contains the oft quoted comment: "... There is no right in an

employer to create an employee in its own image.”; **Re Air Canada and Canadian Airline Flight Attendants’ Association** (1975), 9 L.A.C. (2d) 254 (Deverell); **Re Wardair Canada Inc. and Canadian Airline Flight Attendants’ Association** (1987) 28 L.A.C. (3d) 142 (Beatty); **Re Co-op Centre Ltd. and Retail, Wholesale & Department Store Union, Local 1065** (1990), 17 L.A.C. (4th) 186 (Collier); **Re Canadian Freightways Ltd. and Office & Technical Employees’ Union** (1995), 49 L.A.C. (4th) 328 (Korbin).

Brown and Beatty, in **Canadian Labour Arbitration**, deal with the general question of an employee’s personal appearance, and the limits upon an employer’s right to issue directives in respect of clothing and personal grooming. At 7:3550 the following passage appears:

... Frequently, the collective agreement will contain specific provisions dealing with the appearance and attire of the workforce. For example, an agreement which protected employees when they were engaged in lawful activities on behalf of the union has been interpreted to permit the wearing of buttons which demonstrated support for the union. Where the collective agreement does not specifically address the issue arbitrators have generally, though not uniformly, taken the view that an employer may discipline an employee only where it can establish by cogent evidence that there is a real risk or prejudice to the health and safety of the employees, the sanitation of the work place, or its own legitimate business image or interests, by reason of her failure to conform to those regulations. Within those parameters, it has been recognized that in appropriate cases this principle may even legitimize an employer’s regulation of employee attire in off-duty hours. However, even in those instances where a rule respecting personal appearance can be said to be premised on the safety or health of its employees or the sanitation of the work environment, arbitrators have required the employer to establish that it is reasonable, consistent with the terms of the agreement, and that it was made in good faith.

In this regard, where the employer’s stated justification for initiating the rule in question is based on the prejudicial effect that certain attire, grooming, hair styles, and the like, would have on its corporate image, arbitrators have tested the reasonableness of the rule by determining whether in fact there have been complaints received from the consuming public, and whether it can be objectively demonstrated, for example by means of consumer opinion surveys, that the grievor’s appearance will or had adversely and tangibly affected the employer’s business. The burden is said to be on the employer to establish that “on the balance of probabilities the employee’s appearance threatens its image and therefore threatens a loss in business to the company.” Moreover, it has also been suggested that the employer’s legitimate concerns for its business image and operations must be balanced against the employee’s rights of personal freedom and the increasingly tolerant contemporary public standards and attitudes with respect to matters of personal grooming and attire. ...

As is evident from the foregoing, there is no hard and fast rule which can be said to apply to all employees in all workplaces. Whether a particular dress or grooming rule can be said to be reasonable, in light of the legitimate business interests of the enterprise of the employer, may depend upon a number of factors, including the location, the physical circumstances in which employees work, the visibility of employees to others, including staff, customers and the public at large, and general standards of acceptable dress, both with regard to local community standards and expectations, and societal expectations generally. Arbitrators seek to balance the interest of employees to be reasonably free in their choice of dress and grooming, against reasonable limitations justified by the employer’s legitimate business interests.

How, then, do the above factors apply in the instant case? As is evident from the material before the Arbitrator, the circumstances of the employees who are the subject of this grievance have changed substantially as a result of their move from Montreal to Calgary. As noted previously, it appears that in Montreal they worked in a location of relatively low visibility, with little or no exposure to other staff, customers or the public. The opposite is true as regards their circumstances at the NMC in Calgary. Firstly, they find themselves located in a national headquarters building, where they move through lobbies and hallways peopled by the Company’s managers, customers and the public in general. Moreover, there is evidence that there are frequent visits to the NMC by both customers and guests of the Company. Numbers tabled before the Arbitrator indicate that in the period March through August of 1997 there were in excess of 6,000 visitors to the Company’s head offices in Gulf Canada Square, a substantial number of whom are said to have visited the NMC itself. Further, it is not disputed that the Company’s Marketing and Sales

department makes a regular practice of taking customers and potential customers on tours of the NMC as part of the overall strategy to familiarize them with the extent and quality of the Company's operations and services. In evidence before me are specific names of a substantial number of major clients who have been taken on tours of the NMC by Company marketing representatives. Also, it does not appear disputed that government and elected officials also visit the NMC on occasion, as do selected conference delegates and, recently, shareholders.

When regard is had to the dress code itself, it appears to the Arbitrator that it is neither unduly restrictive nor uncertain with respect to the general guidelines provided. To that extent, the instant case is not, in my view, comparable to certain of the cases cited by the Union, dealing with more controversial matters such as facial hair or the wearing of earrings by male employees. What is at issue in the instant case is whether it is appropriate for the Company, in the setting of its national headquarters building in Calgary, to require a reasonable standard of business attire for employees who are now required to work in a professional office setting where they have a reasonably high level of visibility to other staff, the Company's customers and the public at large. In my view the Company is reasonably justified in demanding an acceptable level of business attire, in the terms outlined within its dress code policy for the Calgary based NMC employees. While I accept, for the reasons related in the jurisprudence, that the onus is upon the Company to establish that the dress code is reasonably justified in all of the circumstances, the objective evidence before me amply satisfies the standard of proof. Nor am I of the view that the Company cannot be in a position to satisfy that standard unless and until it has amassed a dossier of complaints either from its clients or members of the public in general. In a high-profile and competitive business context, it is legitimate and appropriate for an employer to avoid such complaints and problems by proactively implementing a reasonable dress code. That, in my view, is what has happened in the case at hand.

For all of the foregoing reasons the Arbitrator finds and declares that the dress code implemented by the Company in respect of the employees of the NMC in Calgary is reasonable, and does not violate any provision of the collective agreement. The grievance is therefore dismissed.

October 30, 1997

(signed) MICHEL G. PICHER
ARBITRATOR