CANADIAN RAILWAY OFFICE OF ARBITRATION

CASE NO. 2236

Heard at Montreal, Tuesday, 10 March 1992

concerning

VIA RAIL CANADA INC.

and

CANADIAN BROTHERHOOD OF RAILWAY, TRANSPORT AND GENERAL WORKERS

EX PARTE

DISPUTE:

The entitlement of Chefs and Cooks to a personal grooming allowance and a uniform cleaning and maintenance allowance under Article 15.3 of Collective Agreement No. 2.

BROTHERHOOD'S STATEMENT OF ISSUE:

The Brotherhood contends that the personal grooming allowance and the uniform cleaning and maintenance allowance specified in Article 15.3 should apply to kitchen personnel. The Brotherhood argues that the white uniform these employees wear is a "new design" uniform. The Brotherhood contends that it is in the interests of the Corporation to have these employees looking as well groomed as possible.

The Corporation does not believe Article 15.3 applies to Chefs and Cooks. The Corporation states that the garments worn by these employees are not "new design uniforms". The Corporation does not believe that these employees are entitled to the grooming allowance and has not paid it to them from the time the new design uniforms were introduced in November 1986, to the present. The Corporation rejected the grievance at all steps of the grievance procedure.

FOR THE BROTHERHOOD:

(SGD.) T. N. STOL
NATIONAL VICE-PRESIDENT

There appeared on behalf of the Corporation:

C. Pollock	– Senior Officer, Labour Relations Montreal
M. St-Jules	– Senior Negotiator & Advisor, Labour Relations, Montreal
D. S. Fisher	– Senior Officer, Labour Relations, Montreal
J. R. Kish	– Senior Advisor, Labour Relations, Montreal

And on behalf of the Brotherhood:

G. T. Murray	– Regional Vice-President, Moncton

AWARD OF THE ARBITRATOR

The Brotherhood's claim must succeed or fail on the basis of the language of Article 15.3 of the collective agreement, which provides as follows:

> **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.

As is obvious from the foregoing provision, the grooming allowance, as well as the uniform cleaning and maintenance allowance, were not intended to apply to all employees. The parties designated the beneficiaries of these allowances as all employees who wear the new design of uniform. It is also clear, by inference, that they intended to benefit employees who are required to be responsible for cleaning their own uniforms.

The new design of uniform, introduced by the Company in 1986, has been the subject of previous consideration by this Office (*see* ***CROA 1752***). The material before the Arbitrator in the instant case establishes that prior to 1986 Chefs and Cooks wore a uniform virtually identical to that which they continued to wear after 1986, save that a bright yellow Corporate logo was placed on the breast of their white jacket. From that time to the present, they were not paid a personal grooming allowance, and it is common ground that they are not entitled to a cleaning and maintenance allowance, since the Corporation has always been responsible for the laundering and cleaning of the white uniforms worn by Cooks and Chefs.

In the circumstances the Arbitrator is compelled to prefer the interpretation of Article 15.3 advanced by the Corporation. Both the language of the provision, and the objective evidence with respect to the nature of the uniform support the conclusion, on the balance of probabilities, that the continued wearing of whites by Cooks and Chefs was not contemplated as " the new design of uniform ..." within the meaning of Article 15.3 of the collective agreement. Moreover, the fact that they are not responsible for cleaning their uniforms suggests that they were not intended to be covered by Article 15.3, which gives both grooming allowance and cleaning allowance to employees covered by its terms. It appears, on balance, that the article was intended to cover "up front" service employees who are in direct contact with the public.

That conclusion is further supported by the fact that no protest against the failure of the Corporation to pay personal grooming allowance to chefs and cooks was ever made prior to the filing of this grievance. While the Arbitrator is satisfied that that is evidence which can be looked to for the purposes of understanding the original intention of the parties, it would, in the alternative, be further evidence to establish the Brotherhood's waiver of any contrary position, apparently over the span of several renewals of the collective agreement.

For the foregoing reason the grievance must be dismissed.

March 13, 1992

(Sgd.) MICHEL G. PICHER
ARBITRATOR