4-29-1981

Re Pacific Western Airlines Ltd and Canadian Airline Employees' Association

Innis Christie

RE PACIFIC WESTERN AIRLINES LTD. AND CANADIAN AIRLINE EMPLOYEES' ASSOCIATION

I. Christie. (Canada) April 29, 1981.

EMPLOYEE GRIEVANCES alleging unjust discipline.

D. Pidgeon and *G. Werk*, for the union.
Peter Csiszar and *B. Merryweather*, for the employer.

AWARD

In issue here is the requirement in the company's deportment and grooming rules that its male traffic agents and ramp service agents I wear only black belts and that its traffic agents, both male and female, wear only black shoes. Specifically, the relevant provisions of the company's "Passenger Services Manual" provide for all relevant categories of employee: "Belt — black, individual's choice of supplier"; for male traffic agents: "Shoes — black, leather, conservative styling. Individual's choice of supplier. No platform. Heel must not exceed 5 cms. with a preferred sole of 1 cm.", and for female traffic agents: "Shoes — black pump, moderate heel, black, plain wedges with slacks, platforms less than ½''. Shoes to be plain dress in styling with a closed heel and toe. Individual's choice of supplier." These requirements appear under the heading "Deportment and Grooming" in the manual along with a number of other related requirements which are not in issue here. The shoe and belt requirements are distinguished from the others in that they relate to major items of clothing not part of the uniform for which all or part of the cost is borne by the employer. Both the Easton grievance and the Sanderson grievance were lodged by employees at the Edmonton Municipal Airport shortly after Mr. Larry Filipek, manager, customer services at that station, issued a memorandum to the effect that

the black belt and shoe requirements would be insisted upon. His memorandum provided as follows:

> Ramp Service Agents, YXD
> Customer Service Agents, YXD
>
> Manager, Customer Services, YXD
>
> Uniforms & Deportment
>
> July 04, 1980
>
> During the past couple of months it has been noticeable that a number of employees are not following the uniform dress codes as defined in the Passenger Services Manual Section 100 Bulletin 102.
>
> I do understand that prior approval had been given to the wearing of brown belts and shoes while wearing the burgundy components. However, we are now noticing variations of this, i.e. black belts and brown shoes.
>
> The reasoning behind the dress code is to standardize, system wide, the public's image and recognition of our employee group.
>
> In this vane I feel it necessary to ensure that each of you refer to the Passenger Service Manual and have the necessary desired effect in place by Friday, July 11, 1980.
>
> This will give each of you sufficient time to purchase belts, shoes, etc. if required.
>
> I know that problems have been encountered through Material Services, in receiving various components within a reasonable amount of time and steps are being taken to remedy this.
>
> Your assistance is greatly appreciated.
>
> Larry Filipek
>
> LF/hp

It was agreed by counsel that the Easton grievance constitutes, in effect, a grievance against the company's right to put these rules into effect and in respect of that grievance the union seeks a declaration that the "black belt and shoe" parts of the grooming and deportment rules are invalid or, alternatively, a ruling that belts and shoes are part of the uniform of the employees affected and must be paid for as such by the company. These issues were fully aired through evidence and argument. The Sanderson grievance alleges that the employee was improperly disciplined to the extent that he lost one and one-half hour's pay. On his behalf the union seeks compensation. Except for the following letter no evidence was introduced with regard to the Sanderson grievance, except that counsel agreed that he was wearing brown shoes on the day in question (ex. 13):

9th Floor, Edmonton Inn Tower,
119th Street & Kingsway Avenue,
Edmonton, Alberta, T5G 0X5

July 29, 1980

Ray Sanderson,
Traffic Agent,
Edmonton Municipal Airport,
EDMONTON, Alberta

Dear Ray:

On July 28, 1980, you reported for work at 10:00 a.m. wearing brown shoes, which violates the Company's uniform policy as outlined in the Passenger Services Manual.

As a result you were sent home, by myself, and advised to return to work, wearing the required black shoes.

The time lost, between 10:10 and 11:40 a.m., will be deducted from your salary, as you were not prepared to complete your assigned duties.

It is expected that this disregard for the uniform policy will not occur in the future.

Yours very truly
PACIFIC WESTERN AIRLINES LTD.,

Kym Camarta,
Duty Manager, Customer Services,
Edmonton Municipal Airport

KC/hp

The background to all of this is that in 1976 it was decided that the company's ticket and reservation agents, who are the subject of this collective agreement, should have a new uniform. The collective agreement then provided, as it does now:

Article 18.06 *uniforms*

18.06.01 The Company and the Union shall each appoint three (3) members, or their alternates, to a joint uniform committee which shall have the sole authority in determining the style, colour, material of uniforms and work clothes and regulations governing the wearing thereof, including changes. In the event the Joint Uniform Committee cannot agree for any reason, the matter will be submitted to the Director, System Services, who shall decide the issue.

18.06.02 Employees shall pay fifty percent (50%) of the cost of each uniform item and the Company shall pay fifty percent (50%); however, the Company shall pay one hundred percent (100%) of the cost of uniform items when changes are introduced. Uniform items shall be those specified in the Company's manuals. All monies owing to the Company for purchase of uniforms and accessories shall be deducted in accordance with Article 5.03.05.

18.06.03 Employees required to wear a uniform shall be provided with a uniform maintenance allowance as provided for in Article 18.13.05.

In accordance with para. 18.06.01 a joint uniform committee was appointed and by April of 1977 the new uniform was settled. Its details are spelled out in the "UNIFORM POLICY" part of the Passenger Services Manual. It suffices to say that for both men and women the uniform consists of a number of co-ordinated items of grey and burgundy ranging, for men, from a three-piece suit in grey to a combination of grey safari jacket and burgundy slacks.

The evidence of Lloyd Glibery, chairman of the union group on the joint uniform committee, and of Gloria Bachand, supervisor of purchasing, who was one of the company's representatives on the committee, do not conflict on any relevant point. They agreed that the matter of belts and shoes had been discussed by the committee. The union representatives took the position that if as part of its "uniform policy" the company was going to dictate the colour and style of shoes and belts it should include them as part of the uniform and accept the payment obligations arising under art. 18.06 of the collective agreement. Unless that were so the union members of the committee refused to deal with those items. The company representatives took the position that shoes and belts were not part of the uniform. According to the testimony of Ms. Bachand this issue was determined by the director, systems services in accordance with art. 18.06.01. The union, apparently, does not acknowledge even that that determination was made in accordance with the collective agreement.

Mr. Glibery, and Mr. Easton, who gave brief testimony in respect of his grievance, agreed that the union took no objection to the opening statement in the "UNIFORM POLICY" in the company's Passenger Services Manual. It provides:

> Customer Service personnel are the first Pacific Western Employees met by the public. A smart, neat and properly uniformed employee provides the first all important public impression. Well dressed, self confident employees convey the idea of an efficient and proud Company.

Ms. Bachand also testified to the importance of the appearance of these uniformed employees to the company's image. Mr. Filipek, manager, customer services at the Edmonton Municipal Airport, and Mr. David Cask, manager, passenger services in the Vancouver Airport supported this testimony with details of where these employees work and with their impressions of the importance of image in a highly competitive business. No one disputed this evidence.

In this context, Ms. Bachand testified that black had been selected as the only acceptable colour for belts and shoes because it had been recommended by the manufacturers of the uniform and because "black is black". In other words there are no shades of black which might or might not match the uniforms, as would

be the case with other colours. Black was also selected because many employees would already have owned black belts and shoes, because grey and burgundy shoes were not fashionable in 1977 and were therefore not generally available to the female traffic agents and because she herself did not like brown with the grey and burgundy uniforms. With regard to shoes, Ms. Bachand testified that uniformity and the correct image could be achieved only by insisting on conservative leather shoes. She suggested that there were safety reasons for insisting that the female traffic agents' shoes have platforms of less than one-half inch and that they have a closed heel and toe. She testified that any "platform" would be inconsistent with the desired conservatism in men's shoes and presumably the same reasons justified a heel of less than five centimetres and a "preferred sole" of one centimetre. Apparently it was assumed that the requirement of "conservative style" would preclude open toes or heels for men.

The evidence called on behalf of the union consisted to some extent of a demonstration of the various styles of uniform and their appearance with men's and women's shoes of different colours and styles. Mr. Glibery testified that in his view certain colours or styles of shoes would be bizarre, particularly when worn with the P.W.A. uniform and expressed confidence that none of his fellow employees would thus act contrary to the preamble of the company's "UNIFORM POLICY". Mr. Easton testified that the only black shoes that he really cared to wear with his uniform would be black cowboy boots but he had been told that they were inappropriate. As a result he had bought a new pair of black shoes, although he already owned some black shoes.

Ms. Shirley Hawkins modelled a pair of burgundy shoes such as she had worn to work on occasion for several years. No one, including Ms. Bachand and Mr. Cask, could deny that they complimented her uniform as well, if not better, than black shoes. Ms. Karin Rodzinski modelled a pair of grey heeled sandals which she had worn for some months and found more comfortable than any other shoes she had worn on the job. She testified that close-toed shoes, pumps such as those required by the "UNIFORM POLICY" had caused her a problem with her big toe-nail. She did appear to acknowledge, however, that open-toed shoes involved something of a safety hazard because she did say that without having been warned by management she had tried to avoid wearing open-toed shoes when dealing with passengers' luggage because of the danger of dropping something.

Ms. Bachand particularly emphasized the danger of minor injury

in working with luggage and moving around the airport in open-toed shoes. She emphasized the danger of twisted ankles with shoes of a higher platform height than that specified. No contradictory evidence was called on that point.

The issues:

On behalf of the union Mr. Pidgeon submitted, first, that since the joint uniform committee had been unable to agree that belt and shoes were part of the uniform under art. 18.06 of the collective agreement the company had no power to make rules with regard to belts and shoes. Alternatively, he submitted that if I concluded that the company did have that power the rules had to be "reasonable", and that the requirements with regard to style and colour of belts and shoes which the company had adopted were not in fact reasonable. In the further alternative, Mr. Pidgeon submitted that if the company was entitled to specify black shoes and belts in so doing it was imposing a uniform for which it must pay in accordance with art. 18.06. On behalf of the company Mr. Csiszar submitted that the company had the right under the collective agreement to make rules affecting grooming and deportment, including rules with regard to the colour and style of belts and shoes for its uniformed employees and that the rules in question were within the company's power.

In my view the real issue here is whether the company's requirements with regard to the wearing of black belts and shoes quoted at the outset of this award are "reasonable". Before elaborating on that I must point out that with respect to the Sanderson grievance there are some additional issues. The company takes the position that Mr. Sanderson was not disciplined. The union takes the position that he was, that the rule on the basis of which he was disciplined is invalid and that in so far as the company might attempt to justify his discipline on the basis of the "obey now, grieve later" rule this case falls within the recognized exception for "personal appearance" cases. I will deal first with the larger issue, raised primarily by the Easton grievance, relating to the validity of the "black belt and shoes" rule and then with the Sanderson grievance.

Decision, the validity of the "black belt and shoes" rule

I am unable to accept the submission on behalf of the union that the company was precluded by art. 18.06 of the collective agreement, dealing with uniforms, from making any rules with regard to belts and shoes. Whether or not the joint uniform committee would have had the authority to decide on belts and shoes in the

exercise of their "sole authority in determining the style, colour, material of uniforms and work clothes and regulations governing the wearing thereof" to quote art. 18.06.01, the fact is that they did not so decide. If the correct interpretation of art. 18.06.01 is that the committee had the authority to decide those matters then, it seems to me, when they could not agree the matter was properly decided by the director, systems service under the concluding words of that provision. If the wording of that article is not sufficiently broad to grant such authority to the joint uniform committee or, if they failed to make a decision, to the director, systems services then management would be entitled under art. 3.01, the management's rights clause, to make rules in respect of those matters and would be free to act through the director, systems services. Therefore, whichever is the correct interpretation of the scope of the authority of the joint uniform committee, there can be no doubt of management's general power to make rules relating to deportment and grooming, including belts and shoes.

I must say, however, that in my view the authority to determine "the style, colour, material of uniforms and work clothes" on any reasonable interpretation includes the authority to make such determinations about belts and shoes. In other words, belts and shoes certainly can be part of a uniform, although equally on any reasonable interpretation, in my view, a uniform need not include those items. On the facts here, the company denies that the director, systems services, included belts and shoes in the uniform and the text of the "UNIFORM POLICY" part of the Passenger Services Manual of the company bears that out by including the rules with respect to belts and shoes under "deportment and grooming" rather than as part of the extensive rules relating to the uniform itself. Thus, on the face of it, the company has exercised its management rights in making grooming and deportment rules rather than the director, systems services having made a decision about a part of the uniform upon which the committee could not agree. This distinction is significant, of course, because art. 18.06.02 requires the company to pay, in part at least, for uniforms.

It would be an abuse of art. 18.06.02 if the company were to exercise its management rights to make rules respecting grooming and deportment in such a way that it achieved a clothing arrangement which was a uniform in all but name and avoided the process under art. 18.06.01. Having undertaken to bear part of the cost of uniforms the company cannot escape some aspects of

that obligation by uniforming its employees, in part, through the back door. The third submission of counsel for the union was, in effect, that that is what the company has done with respect to belts and shoes, and therefore that they should be required to pay for them. To so hold would raise very difficult problems of enforcement and remedy in the arbitration process. I am scarcely in a position to write a code for shoes and belts or to order the sort of supplying facility necessary to make a company-provided uniform arrangement work. With these considerations in mind, I do not find that the company has in fact imposed a uniform requirement through the back door. Rather, I simply stress the company's obligation to pay for uniforms and recognize the necessity of avoiding abuse of that obligation. This operates as a constraint on the company's power to make rules with regard to what employees may and may not wear when it comes to articles of clothing that the company has chosen not to designate as constituting the "uniform".

The real issue, then, is whether, within this constraint, the company's rules with respect to belts and shoes are reasonable under this collective agreement. There is no doubt that in the exercise of its management rights the company may unilaterally impose rules for the breach of which it may discipline its employees. As stated in the oft-quoted *Re Lumber & Sawmill Workers' Union, Local 2537, and KVP Co. Ltd.* (1965), 16 L.A.C. 73 (Robinson) at p. 85, to be valid any such rule must satisfy six requisites:

1. It must not be inconsistent with the collective agreement.
2. It must not be unreasonable.
3. It must be clear and unequivocal.
4. It must be brought to the attention of the employee affected before the company can act on it.
5. The employee concerned must have been notified that a breach of such rule could result in his discharge if the rule is used as a foundation for discharge.
6. Such rule should have been consistently enforced by the company from the time it was introduced.

I have already given my reasons for concluding that the employer's "black belt and shoes" rules are not inconsistent with the collective agreement *per se*. The issue here then is whether they are "unreasonable". The arbitration decisions in both Canada and the United States dealing with personal appearance (deportment and grooming in other words) proceed on the basis that to be reasonable a rule must relate to a legitimate business

interest of the employer and must be ". . . sufficiently well drawn to meet the purpose for which it is issued without including other situations where it serves no useful purpose": *Re District of North Vancouver and Int'l Assoc. of Fire Fighters* (1974), 6 L.A.C. (2d) 203 (MacIntyre) at p. 212; cited with approval in *Re Air Canada and Canadian Airline Flight Attendants' Assoc.* (1975), 9 L.A.C. (2d) 254 (Deverell), and *Re Borough of Etobicoke and Int'l Assoc. of Fire Fighters, Local 1137* (1974), 6 L.A.C. (2d) 251 (Rayner) at p. 256.

In the "hair" cases the company's legitimate business interests justifying rules respecting personal appearance have been alleged to lie in furthering its commercial image, health and sanitation or safety: see *District of North Vancouver, ibid.*, at p. 210, and *Re Canadian Food & Allied Workers and William Neilson Ltd.* (1972), 24 L.A.C. 206 (Simmons). Safety was put forward here as justifying the prohibition of open-toed or high platform shoes for women. Otherwise the company's "black belt and shoes" rules were justified as a matter of furthering its commercial image.

Before proceeding to consider the "reasonable" limits and the company's right to make rules about such matters in furtherance of its image I should stress that any employer is, of course, free to bargain collectively for the right to impose any dress regulations it thinks desirable. Under this collective agreement had the company seen fit to make a black belt and shoes part of its uniform, and to pay accordingly, it clearly would have had the right to preclude the wearing of any other type or style of belt and shoes. The issue here, however, is how far the company may go within the limits of "reasonableness" under its management rights power to make grooming rules, bearing in mind that under this collective agreement the company should not be allowed to achieve a "uniform" belt and shoes by the back door without paying for it.

In this collective agreement the approach to the reasonableness of appearance rules taken by O.B. Shime, Q.C., as arbitrator in *Re Dominion Stores Ltd. and U.S.W.* (1976), 11 L.A.C. (2d) 401, is, in my view, the correct one. He stated, at pp. 403-4:

> First, all the cases are in agreement that a company may promulgate rules concerning the dress and appearance of employees provided the rules are reasonable. Secondly, arbitrators recognize that there is an ingredient of personal freedom involved in this type of issue and since the rules concerning "hair" are such that they also affect the employees' off-duty hours, arbitrators have been careful to balance the employees' personal rights against the legitimate interests of the employer. Although the personal freedom of an employee is a concern it is not absolute. Thirdly, the legitimate concerns of the employer involve both image and actual loss of business and those two

> concepts are obviously interrelated. Permeating all the cases is the suggestion that an employer must demonstrate that the grievor's appearance has resulted in a threat to its image and consequent financial loss or at the very least that on the balance of probabilities the employee's appearance threatens its image and therefore threatens a loss in business to the company . . . Fourthly . . . it is appropriate for me to take official notice that in the community there is an evolving standard of dress and hair styles . . . Fifthly, the cases have distinguished industries where the employees come in contact with the public and those where there is no public contact apart from issues of health and safety . . .

Arising from this analysis two critical distinctions between the case before me and the "hair" cases must be recognized. In the first place, for all practical purposes an employer's rules with regard to hair length and beards dictate the employee's off-duty appearance as well as his working image. Belts and shoes on the other hand, can be changed after work. The employee who picks a public contact job with a company obviously dependent upon and concerned with its image, particularly a "uniformed" company, can hardly be heard to say that he has a right to dictate his own attire while on the job that is worthy of any very great protection. The real concern, surely, is the impact of the employer's rules on the employee's off-duty life. Here, it seems to me, that impact would be twofold. It could cost the employee money in that he would have to buy black shoes of a type that he might not care to wear in his off-duty hours and it might oblige him to wear shoes which did not feel as comfortable while he was at work. This latter consideration becomes more serious where, as Ms. Rodzinski alleged, the shoes required cause medical problems. In those circumstances, it seems to me, reasonableness would clearly require that the employer be flexible. Short of that, I simply have two employee concerns to balance against the employer's concern with his image.

That brings me to the second distinction of degree between this case and the "hair" cases. In those cases arbitrators have imposed a stringent standard of proof on companies who allege that any effects on the employee's personal interests are over-balanced by harm to the corporate image. Brown and Beatty, *Canadian Labour Arbitration* (1977), state at para. 7:3550, p. 339:

> . . . where the employer's stated justification and rationale 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 that the grievor's appearance had adversely affected the employer's business.

The company here relied on an award which presents a marked

contrast to this position, that of R. N. Monroe in *Re National Assoc. of Broadcast Employees & Technicians and British Columbia Television Broadcasting System Ltd.* (1971), 24 L.A.C. 68 at p. 72. That arbitrator stated:

> The company aptly pointed out that it is in a better position to know what is necessary to deal with the competition and maintain its reputation and/or "image" . . . [and to] permit two members of the employee group to stand in complete defiance or even partial rejection or refusal to acknowledge such a rule is tantamount to having the tail wag the dog.

Commenting on this passage Palmer, in *Collective Agreement Arbitration in Canada* (1978), states at p. 292: "In a sense, such a statement seems to suggest the *ipse dixit* of the employer is sufficient in this regard. This is incorrect; some tangible evidence of such loss of image is required."

While it must be acknowledged that the *B.C. Television* award, *supra*, is the only Canadian personal appearance case cited to me, or which I have read, that deals specifically with attire rather than "hair", I agree with Professor Palmer that it overstates the employer's position to a point where "reasonableness" has disappeared. On the other hand, where attire is the issue I see no reason why the employer should be required to await specific complaints or a demonstrable falling off of business before establishing rules that can be held to be reasonable. In this context I much prefer the statement of arbitrator Shime in the *Dominion Stores* award, *supra*, at p. 404, which I have already quoted. It seems to me to be the most sensible and realistic, where the arbitrator says:

> Permeating all the cases is the suggestion that an employer must demonstrate that the grievor's appearance has resulted in a threat to its image and consequent financial loss *or at the very least that on the balance of probabilities the employee's appearance threatens its image and therefore threatens a loss in business to the company* . . .

(Emphasis added.)

It was arbitrator Shime in that same case who stressed the fact that "arbitrators have been careful to balance the employees' personal rights against the legitimate interests of the employer" (at p. 404). Where the adverse impact of the company rule in question on the employees' personal life is as limited as it is here (and is likely to be in any "attire" case) I think the arbitrator should be concerned with the "balance of probabilities", not only with demonstrated financial loss, and he should be concerned to give the employers' judgment considerable weight on the question of the effect of appearance on the corporate image. In short, because acquiring the stipulated black belt and shoes would

impinge, although relatively slightly, on the employees' off-duty life employer rules with regard to attire must be reasonable, but in determining what is "reasonable" considerable respect should be paid to the company's judgment about the importance of its image to its business.

Even in this context, however, the basic proposition, that a rule which includes situations in which it serves no useful purpose is not in those respects reasonable (see *District of North Vancouver, supra* (MacIntyre), quoted above), still applies. Here even the company's own witnesses admitted, in effect, that by this definition the "black belt and shoe" rule was not "reasonable" in so far as it precluded employees from wearing perfectly matching burgundy shoes or grey shoes or mens' black shoes with a sole somewhat thicker than one centimetre. The company is not aiming to achieve an image of uniformity. The very fact that the uniform provided has so many components which may be mixed at the will of the employee suggests that a co-ordinated appearance within the limits of a prescribed range of colours and relative conservatism is the purpose. In so far as the company's rules reach beyond that purpose and constrain employees for, in effect, no reason they are unreasonable.

Further support for the conclusion that the company's purpose is to achieve an image of co-ordination and relative conservatism rather than real uniformity in its employees' dress may be derived from the fact that new employees, new transferees and temporaries work in these "uniformed" positions in other than the grey and burgundy uniform components.

It is not my function to draft rules for the company that would be acceptable but it is perhaps not inappropriate for me to suggest that the addition of words such as "or in other colours or styles that co-ordinate equally well with the company's uniform" after the specification that belts and shoes are to be black would appear to me to meet the requirement of reasonableness. Under such a rule an employee who bought shoes or a belt of another colour would run the risk of his attire being adjudged unacceptable by his supervisor and, if the matter were grieved, by an arbitrator. As I have already said, in my opinion an arbitrator should give considerable weight to the judgment of management in such circumstances.

The real problem here has been with brown shoes, not grey or burgundy ones. As suggested by witnesses for the union, brown is a colour which may verge on burgundy, as in the case of the shoe colour known as "ox-blood". On the other hand, it can be of a

shade that to no one's eye co-ordinates well with grey and burgundy. I see no easy way out of the dilemma posed by brown shoes. Employees will simply have to bear these considerations in mind if they insist on buying brown shoes and each "brown" will have to be judged on its merits. It is perhaps worth noting that while matters of degree pose problems avoided by hard and fast rules they are the daily grist of employment relations. For example, the very grooming and deportment rules here in issue require not only that shoes be "conservative" but also that they be "shined".

In concluding that a hard and fast "black belt and shoe" rule would be unreasonable in this case I have been influenced not only by the fact that having to buy conservative black shoes impinges to some limited extent on the employee's personal life but also by the fact that the "uniform" provisions of this collective agreement put a constraint on the company's right to dictate such matters, in that it cannot achieve an unpaid for "uniform" through the back door.

In so far as the company's rules prohibit open-toed shoes or those with platforms of more than one-half inch on the limited evidence before me I find the rules to be reasonable on the basis of safety considerations.

Grievance of Ray Sanderson

This matter was left for my consideration with very little evidence or argument. Counsel for the company took the position that in sending Mr. Sanderson home to put on black shoes the duty manager, customer services, was not disciplining him but simply requiring that he be properly equipped for the job. However, Mr. Sanderson did, in fact, miss one and one-half hours of regular pay so he was in fact suspended. As Palmer states in *Collective Agreement Arbitration in Canada* (1978), p. 195 "Clearly, suspensions from work, however slight, can be considered arbitrable." Thus, it seems to me that the question is whether the company had cause to suspend the grievor as required by art. 3.01 of the collective agreement. There is no evidence before me with respect to whether or not the procedural requirements of art. 16 were respected. Presumably, since the company characterizes this as a non-disciplinary matter it would have refused to follow that procedure, but the union has not relied on any company failure in that regard. On the other hand, the company cannot rely on its own failure to follow that procedure as demonstrating that this is not a disciplinary matter. In short, I

will dispose of this grievance as a grievance against a short suspension which raises the issue of whether there was "cause".

Counsel for the union suggested that the personal appearance cases have been regarded as an exception to the "work now, grieve later" rule: see Brown and Beatty, *Canadian Labour Arbitration* (1977), para. 7:3624, p. 351. In my view the justification for that exception lies in the difficulty of quantifying and giving an employee redress for the damage he has suffered by an invasion of his personal life where he has been required, for instance, to shave his beard before it has been determined that the employer's rule is reasonable. Those considerations do not apply where all the employee has had to do is buy certain pieces of clothing for which he can be adequately compensated. More to the point here, however, is the doctrinal consideration that the "work now, grieve later" rule itself is simply an aspect of the company's right to discipline for insubordination, and the evidence before me did not establish that there was any insubordination in this case. It was not suggested that Mr. Sanderson was told by Mr. Camarta, the duty manager, customer services at the Edmonton Municipal Airport, that he had to change his brown shoes for black ones and refused to. Nor was it established, or even suggested, that in wearing brown shoes he was deliberately flouting Mr. Filipek's memorandum of July 4, 1980, which is quoted earlier in this award. Indeed, in maintaining that this was not a disciplinary matter the company has certainly precluded any suggestion on their part that there was insubordination.

What is involved here, then, is simply discipline for failure to follow a company rule. I have already held in connection with the Easton grievance that the rule, in so far as it required black shoes, was unreasonable. I have also suggested that in so far as the rule precluded the wearing of brown shoes whether or not it was unreasonable would depend on the particular shade of brown, whether it was one which co-ordinated reasonably with the burgundy and grey uniform. It seems to me that if an employee wore a particular pair of brown shoes which he had been told by his supervisor were inappropriate he would be guilty of insubordination and, for the reasons I have stated above, not entitled to rely on any exception to the "work now, grieve later" rule. Even in the absence of such specific instructions I would think that an employee who wore shoes of a shade of brown, or any other colour, that obviously did not co-ordinate with his uniform would be in breach of a rule that called for black shoes or shoes that co-ordinate equally well. Even if there were no rule an employee who

wore eccentric shoes would, I should think, bear the onus of showing that he was not deliberately acting against the best interests of his employer. There is no evidence, however, that Mr. Sanderson's shoes obviously did not co-ordinate; just that they were brown.

Because of the lack of evidence with regard to the shade of brown of Mr. Sanderson's shoes or that there was any element of insubordination in his decision to wear them, having held the "black belt and shoe" rule to be unreasonable in its pure form, I must uphold Mr. Sanderson's grievance. I therefore direct that he be compensated by the employer for the loss of one and one-half hours' wages on July 28, 1980.