

AWARD NO. 125
NMB CASE NO. 125
UNION CASE 20051
COMPANY CASE 233657D

PUBLIC LAW BOARD NO. 4450

PARTIES TO THE DISPUTE:

UNION PACIFIC RAILROAD COMPANY
(Western Region)

- and -

BROTHERHOOD OF LOCOMOTIVE ENGINEERS

STATEMENT OF CLAIM:

Appealing the Upgrade Level 5 Discipline assessed to Engineer KD Gustafson and request the expungement of discipline assessed and pay for any and all time lost with all seniority and vacation rights restored unimpaired. Action taken as a result of formal investigation held on May 30, June 14, and July 21, 2000.

OPINION OF BOARD: On May 13, 2000, Engineer K D Gustafson ("Claimant"), a Western Region locomotive engineer assigned to Carrier's Portland Service Unit, was assigned train IGNAP-1 3. At approximately 1:35 p.m., in the vicinity of MP 7.0 (Penn Junction) on the Portland Sub Division, he was observed by Manager-Operating Practices (MOP) Patterson, in the company of Director-Road Operations (DRO) Nua, to be not wearing eye protection, allegedly with the windows of his locomotive open. On that basis, he was charged with violating General Code of Operating Rules reading in pertinent part as follows:

Rule 71.5 Eye Protection - Wear Company-approved eye protection in all designated areas or when specified by the appropriate department heads. It is not required in:

- Office areas and lunch rooms;
- Enclosed vehicles (including locomotives).

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Rule 71.5.1 Areas that Require Eye Protection - Safety Glasses. Wear spectacle-type, 100-percent safety glasses with side shields when on duty at locomotive or car repair, servicing facilities, maintenance of way work sites, shops and facilities. Employees requiring corrective lenses must wear either company-approved prescription safety glasses or coverall-type safety glasses. . . .

Following a three-day hearing and investigation, Carrier found Claimant guilty as charged and assessed a Level 2 penalty which, given Claimant's then-current Upgrade status at Level 4, yielded a level 5 termination of employment. At the joint request of the Parties, by letter dated march 25, 2001, the Chairman issued an expedited decision in this case and two companion cases involving Engineer Gustafson, as follows:

Case Nos. 123 (Claim denied); 124 (Claim denied); and 125 (Claim sustained): The Level 5 Upgrade discharge of Claimant K D Gustafson must be adjusted to a Level 3 Upgrade discipline (30-day suspension without pay), with attendant reinstatement to service.

Careful examination of the record led this Board to modify the penalty in this case. As the charging party in a disciplinary matter, the Employer bears the burden of proving, by at least a preponderance of the record evidence, all the necessary material facts to demonstrate that the Employee committed the transgressions cited in the charge letter. In this case Carrier persuasively demonstrated that Claimant did not have his safety glasses on when he was observed but failed to establish that the windows of the locomotive were open.

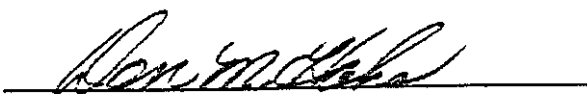
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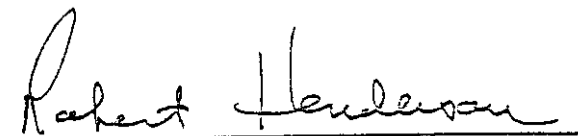
Claim sustained to the extent indicated in the bench decision rendered March 25, 2001.



Dana Edward Eischen, Chairman
Dated at Spencer, New York on September 8, 2001



Union Member



Company Member