BEFORE
PUBLIC LAW BOARD NO. 5263

IN THE MATTER OF THE ARBITRATION BETWEEN:

THE UNION PACIFIC RAILROAD COMPANY (Formerly CNW)	)	AWARD NO. 116
	)	
	)	CASE NO. 124
AND	)	Suspension of Engineer E. C. Smith
THE UNITED TRANSPORTATION UNION	)	AC686-528-41-E CNWT: 02-95-686

CLAIM:

Claim of Engineer E. C. Smith, for the removal of ten (10) days actual suspension from his personal record, and that he be compensated for any and all lost time, including any deferred suspension served, plus time spent attending an investigation held on February 22, 1995, when charged with an alleged responsibility in connection with his failure to properly perform his duties, when observed not wearing eye protection at approximately 0510, February 18, 1995, at Janesville, while employed as Engineer, Job 11 on duty 2300, February 17, 1995, at Janesville, WI.

FINDINGS:

This Board, upon the whole record and all of the evidence, finds that the parties herein are the Carrier and the Employees within the meaning of the Railway Labor Act, as amended; that this Board is duly constituted by Agreement dated May 6, 1991, and has jurisdiction over the parties and the subject matter.

On February 17, 1995, Grievant was employed as an Engineer at the Carrier's Janesville Yard. He was observed by the Terminal Superintendent to be working without his safety glasses, and was assessed a ten day suspension as a result.

PLB NO. 5263
AWD NO. 116

The record establishes that Grievant was working without his safety glasses. Thus, discipline was appropriate. The record also establishes that another employee, Foreman Burnette, also was not wearing his safety glasses at that time. Foreman Burnette did not receive a formal investigation or a suspension. Instead, according to testimony from the Superintendent:

> Mr. Burnette was issued a verbal reprimand and a computerized T3 Efficiency Test was entered for his failure to wear safety glasses.

There is no showing in the record to justify the disparate treatment between Grievant and Foreman Burnette. Both were guilty of the same offense at the same time, but received significantly different discipline. If Grievant had received prior warnings or discipline for failing to wear safety glasses, that discrepancy would be appropriate. However, there is no such showing in the record.

Accordingly, we will reduce Grievant's discipline to that assessed to the amount of discipline assessed to Foreman Burnette

AWARD:

The discipline is reduced as described above, and the Grievant is to be reimbursed for wages lost, less any outside earnings.

James R. Johnson
Neutral Member

C. R. Wise
Carrier Member

David R. Haack
Employee Member

Dated: Sept 10, 1996