

PUBLIC LAW BOARD NO. 5604

Case No. 25

Award No. 25

Parties To Dispute: BROTHERHOOD OF LOCOMOTIVE ENGINEERS

-AND-

UNION PACIFIC RAILROAD COMPANY

Statement of Claim:

Claim of Third District (North Platte) Engineer C.T. Lusk for removal of UPGRADE Level 2 discipline from his personal record and pay for all time lost.

Findings:

This Board, upon the whole record and all the evidence, finds as follows:

That the parties were given due notice of the hearing;

That the Carrier and Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act as approved June 21, 1934;

That this Board has jurisdiction over the dispute involved herein.

On February 23, 1995, the Claimant was working as an ID pool Engineer between North Platte and South Morrill, Nebraska. At approximately 6:16 a.m. the Claimant's train stopped at CPW009 in the Jordon siding. Manager of Train Operations (MTO) R.J. Rairigh was conducting efficiency tests in this vicinity at the time and approached the train in the siding.

MTO Rairigh observed the Claimant exit the trailing unit of the engine consist and walk toward the lead unit. He was not wearing his safety glasses. When Mr. Rairigh asked the Claimant where his safety glasses were he got them out of his grip and put them on.

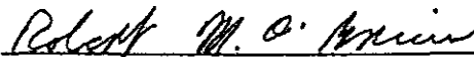
The Claimant was notified to attend a formal investigation on March 10, 1995, to determine his responsibility, if any, for not wearing eye protection while walking from the trailing unit to the lead unit of his engine consist at CPW009. Following that hearing, the Claimant was assessed UPGRADE Level 2 discipline

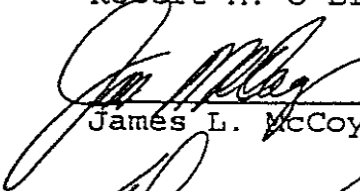
(up to one day or round trip with pay and development of a Corrective Action Plan).

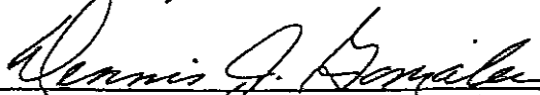
In the opinion of this Board, the Level 2 discipline assessed the Claimant was entirely unjustified under the facts of this particular case. The Claimant went to the trailing unit of the consist to use the facilities there. When he left the trailing unit he forgot to put his safety glasses back on. When MTO Rairigh inquired about his eye protection the Claimant retrieved his safety glasses from his grip and put them on. In the light of these facts the Claimant should not have been assessed formal discipline. Rather, Mr. Rairigh should have given him a verbal reminder to keep his eye protection on at all times. The claim will be sustained as a result.

Award: Claim sustained.

The Carrier is ordered to make the within Award effective on or before thirty (30) days from the date hereof.


Robert M. O'Brien, Neutral Member


James L. McCoy, Employee Member


Dennis J. Gonzales, Carrier Member

Dated: 12-2-98