

C&NWT FILE NO: D-1-7-132
D-2-7-196
D-2-7-197
UTU CASE NO: 1528-393-83
1529-393-83
1530-393-83

SPECIAL BOARD OF ADJUSTMENT NO. 235

AWARD NO: 2843
DOCKET NO: 168-D
169-D
170-D

PARTIES TO DISPUTE:

UNITED TRANSPORTATION UNION
CHICAGO AND NORTH WESTERN TRANSPORTATION COMPANY

Statement of Claim:

"request and claim of Conductor H. O. Miller, Sioux City District, for the removal of a twenty (20) day actual suspension from his record, and that he be compensated for any and all lost time, including time spent attending an investigation held on February 28, 1979."

"Request and claim of Brakeman F. N. Blair, Sioux City District, for the removal of a twenty (20) days actual suspension from his record, and that he be compensated for any and all lost time, including time spent attending an investigation held on February 28, 1979."

"Request and claim of Brakeman C. E. Winegardner, Sioux City District, for the removal of a twenty (20) day actual suspension from his record, and that he be compensated for any and all lost time, including time spent attending an investigation held on February 28, 1979."

FINDINGS: This Board upon the whole record and all the evidence, finds that:

The parties herein are Carrier and employee within the meaning of the Railway Labor Act, as amended, and this Board has jurisdiction of the parties and the subject matter.

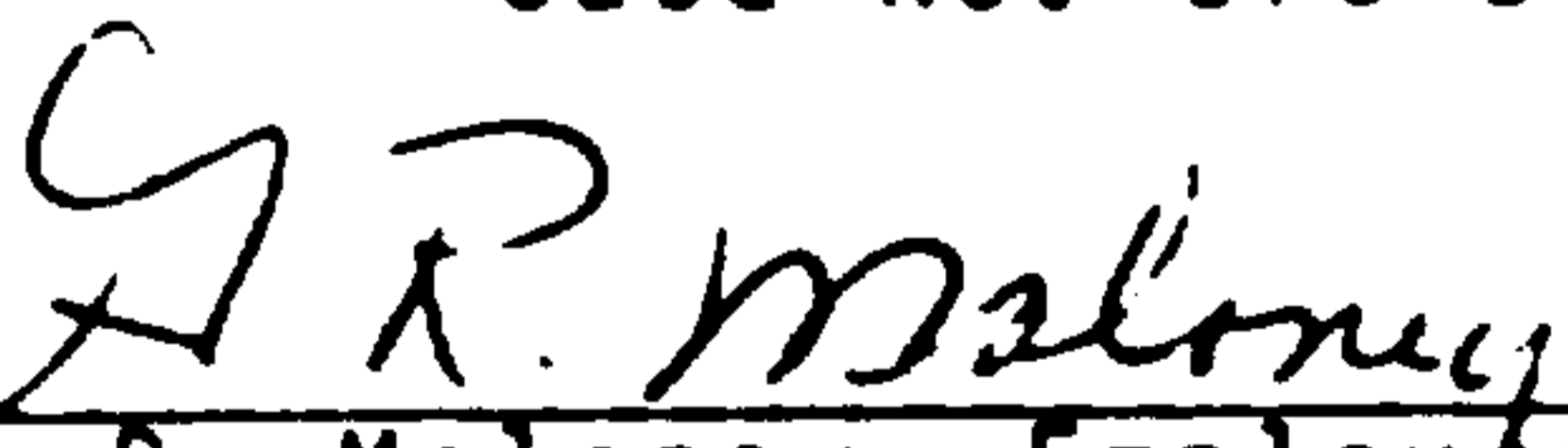
These are three claims arising from the same incident, dealt with in one award as a matter of convenience. All three claimants were disciplined by twenty-day suspensions for allegedly failing to stop at a stop board in the vicinity of 3rd Street, Sioux City, on January 26, 1979.


On that date, a Carrier trainmaster and special agent conducted a "Code M" efficiency test on Claimants' train as it approached a Burlington Northern crossing in Sioux City, to determine if the train would come to a full stop at the stop board in advance of the BN crossing, as required by Operating Rule 98(a). At the investigation in this matter, the two Carrier officials testified that the train did not come to a stop until approximately eighteen car lengths beyond the board. The members of the crew and the members of the BN crew which crossed in front of them all testified that the train did stop in advance of the board. Carrier credited the testimony of its officials that the train did not stop and imposed twenty-day suspensions on the claimants as well as the fireman and engineer.


The Organization here contends first, that the evidence establishes that the train did in fact stop; second, even if the Board should find that the train did not stop, there was no basis for disciplining Claimants Miller and Winegardner, the conductor and rear brakeman, who were in the caboose at the time and had no control over or responsibility for the train's failure to stop.

While the evidence is conflicting as to whether or not the train stopped, Public Law Board 2793 in Case No. 22 and Public Law Board 1459 in Case No. 363, on the same investigative record presented here, found substantial evidence to support Carrier's conclusion that the train did not stop, and denied the claims of the engineer and fireman. We are not inclined to vary that finding and consequently will deny the claim of the head brakeman, Blair, in Case 169-D, since he shared equal responsibility with the fireman and engineer. As to the other two claimants, who were in the caboose, we agree that the record does not support a conclusion that they had any responsibility for the violation, and will therefore sustain their claims.

Award: Case No. 169-D: Claim denied.
Case No. 168-D: Claim sustained.
Case No. 170-D: Claim sustained.


G. R. Maloney, Employee Member


J. D. Crawford, Carrier Member


H. Raymond Cluster
Neutral Member and Chairman

CHICAGO, ILLINOIS

DATE: 5/21/84