

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Award Number 25200  
Docket **Number** NW-25417

James Robert Cox, Referee

(Brotherhood of Maintenance of Way **Employees**

PARTIES TO DISPUTE: (

(Metro-North Commuter Railroad

(Consolidated Rail **Corporation** (former New York, New **Haven**  
and Hartford Railroad Company))

STATEMENT OF CLAIM: Claim of the System Committee of the Brotherhood that:

(1) The dismissal of **Trackman** D. Barrett for excessive absenteeism was without just and sufficient cause (System **Docket** NH-101).

(2) The claimant shall be reinstated with seniority and all other rights unimpaired and he shall be compensated for all wage loss suffered.

OPINION OF BOARD: Claimant has a service date of June 15, 1972. According to the Carrier's witness, he was absent without explanation October 28, 1981 and then again November **3rd, 5th, 6th**, and 9th because of problems associated with his daughter's schooling. Additional absences November 16th. **17th, 18th, 19th, 20th, 23rd**, 30th and December **1st, 2nd**, 3rd and 4th were without notice or reason. Barrett also missed **December** 7 and 9, 1981, or a total of eighteen days from November 28th through December **8th**, and 155 days throughout 1981.

Although the record shows that notice was received at Mr. Barrett's home December 31, 1981, he did not appear at his January 5th Bearing. Notice had been mailed December 28th. At the onset of the January 5th Hearing the Organization representative asked for a postponement because of Barrett's absence.

Claimant had previously been suspended for ten days for absenteeism of twenty days during April, May and June, 1981, had **received a warning** for a single day's absence in February, 1980 followed by another written warning for being absent without **permission** on six days during August, 1980. This warning had been preceded by a September, 1979 warning for four days of absence in August, 1979 and Barrett had also received warnings for absenteeism dated July 3, 1979 and June 6, 1979.

A close analysis of the facts does not establish that Claimant received notice of the Bearing. The return receipt for the certified letter was signed by a **Bernice** Barrett and there was no showing what relationship the signer had to Claimant. While Claimant had an abysmal attendance record and while discipline for poor attendance may be assessed irrespective of the reason when there **are a sufficient** number of absence **occurrences**, we find that the trial should have been postponed in order that Claimant could have had a chance to appear and explain the reasons for his absences.

Claimant is to be reinstated with full seniority but, in view of his attendance record, without back pay.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the **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 Division of the Adjustment Board has jurisdiction over the 'dispute involved herein; and

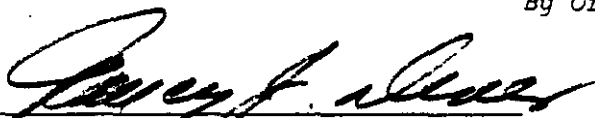
That the discipline was excessive.

A W A R D

Claim sustained in accordance with the Opinion.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

Attest:

  
Nancy J. Dover - Executive Secretary

Dated at Chicago, Illinois, this 11th day of January 1985.

