

Award No. 5060

Docket No. DC-4989

**NATIONAL RAILROAD ADJUSTMENT BOARD**

**THIRD DIVISION**

Peter M. Kelliher, Referee

**PARTIES TO DISPUTE:**

**BROTHERHOOD OF RAILROAD TRAINMEN**

**LEHIGH VALLEY RAILROAD COMPANY**

**STATEMENT OF CLAIM:** Request for the reinstatement of John S. Turner, Dining Car Steward, to the service of the Lehigh Valley Railroad Company, with seniority unimpaired, who was dismissed from the service on February 17, 1949 due to accumulation of demerit marks in excess of the 90 maximum. (Case No. T-49-41).

**OPINION OF BOARD:** The principal facts are simple and are not in dispute. The claimant had been warned many times to correct his actions in making improper deposits of collections. The claimant committed this same offense on October 21, 1948, and during the subsequent investigation on November 4, 1948 he was told that "by better checking your accounts and separating your personal funds" these failures can be avoided. Sixty demerit marks were then assessed against his record. Under the Company's method of discipline the accumulation of a maximum of ninety demerits results in dismissal.

Less than three months after this warning, the claimant again, on January 20, 1949, failed to make proper deposits of his collections. He deposited \$100.00 less than the correct total. He admitted that it struck him as unusual that in serving one hundred sixteen meals he should have collections for food of only \$105.05. He stated that he "knew he had the money" but did not know where his mistake had been made. He made no effort to deposit the \$100.00 shortage until eight days later, when the Carrier called it to his attention.

Without considering the question of intent, it is evident that the claimant failed to heed the warnings and to correct his actions, even though he knew sixty demerits then stood against his record for the same offense. He must have known that a repetition of this same offense three months later would probably result in the assessment of another sixty demerits, which would result in dismissal. The claimant knew that he should have contacted the Carrier immediately when he found out he was over in his money balance, instead of waiting for the Carrier to call it to his attention eight days later. The employee was not disciplined previously and is not being discharged now for a simple mistake in arithmetic. He knew he was over in his money balance. If he had separated his personal funds from the Carrier's funds, as he was warned to do, he should have deposited that amount immediately.

The Awards cited by the Employees cover factual situations where the claimants had not been previously disciplined. In this case the claimant's record shows a history of frequent violations of the same nature, and the

Carrier previously took every action short of discharge in an effort to have the claimant correct his failures. Upon a careful review of the record the Board must uphold the Carrier's action in discharging the claimant.

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

That both parties to this dispute waived oral hearing thereon;

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;

That the Agreement was not violated.

#### AWARD

Claim denied.

NATIONAL RAILROAD ADJUSTMENT BOARD  
By Order of Third Division

ATTEST: A. I. Tummon  
Acting Secretary

Dated at Chicago, Illinois, this 17th day of October, 1950.