

suspended the Claimant for forty-five (45) days for violating Rules 252 and 351B of the Rules for the Maintenance of Way and Structures, which, in part, state as follows:

Rule 252, Paragraph 7

Track permit limits must be cleared and reported clear to control operator before time expires. If track permit is to be released before time expires, all equipment must be clear of limits and fact reported to designated control operator. . .

Rule 351(B), Paragraph 2

The employee granted track and time limits must notify control operator when machines, track cars or employees are clear of the limits. . .

The evidence supports a finding that Mr. Cornejo released the track to the dispatcher on April 28, 1986 before the motor car was off the track. Although the Claimant indicated he released the track early because he feared radio communication would not be adequate at a later time, there is insufficient evidence to support his concern. Because the track was not clear when it was supposed to be, an accident occurred. Fortunately, there were no injuries. Mr. Cornejo violated Rule 252 and Rule 351(B).

Mr. Cornejo's record reveals he has been disciplined in the past for various rule infractions. However, considering his thirty (30) years of service to the Carrier, his record has been a relatively good one. There is little to show he has been issued progressive discipline. There are no demerits, no indication of written warnings, and no previous suspensions. Beyond that, Mr.

Cornejo was extremely honest and cooperative in assisting the Carrier in its investigation. Although these facts do not negate disciplinary action in this case, they do support a modification of the penalty.

AWARD

The Claim is sustained in part. The penalty issued to the Claimant was excessive under the circumstances. The forty-five (45) day suspension is to be reduced to a Twenty-five (25) day suspension. The Claimant is to be reimbursed for any loss of wages in excess of a twenty-five (25) day suspension.

ORDER

The Carrier is to comply with this order within thirty (30) days from the date it is submitted.



Carol J. Zamperini, Neutral

Submitted:

September 10, 1986
Denver, Colorado