

Opinion No. 42-4097

June 3, 1942

BY: EDWARD P. CHASE, Attorney General

TO: Mr. Quincy D. Adams Acting District Attorney Office of the District Attorney Second Floor Court House Albuquerque, New Mexico

{*204} This is to acknowledge receipt of your letter of May 26, relative to Section 6, Chapter 148, Laws of 1933, and its applicability to female messengers employed in the Telegraph Department of the Atchison, Topeka and Santa Fe Railway Company.

It appears that these employees are engaged in the duties of messengers carrying telegrams to the Solicitor's Office and other places, including uptown Albuquerque. The telegrams pertain in one way or another to transportation matters of the Atchinson, Topeka and Santa Fe Railway Company, or to the interstate movement of passenger trains.

Section 6, Chapter 148, Laws of 1933, provides in part as follows:

"No female shall be so employed in any telephone or telegraph office, except telephone and telegraph offices where five or less are employed, more than eight hours in any one day of twenty-four hours, nor more than forty-eight hours in any one week of seven days, * * *"

Section 4, Chapter 148, Laws of 1933, provides in part as follows:

"Nothing in Section 1, shall be construed to apply to those * * * * engaged in interstate commerce, where the hours of labor are governed by any act of Congress of the United States * * * .

In 15 C. J. S. Page 316, Section 31, it is stated:

"The transmission of a telegram is an indivisible movement from the receipt of the telegram from the original sender to the final delivery to the addressee * * *"

See also 168 So. 321; 203 S. W. 586; and 93 S. E. 465.

By Section 61 and 62 of 45 U. S. C. A. Congress regulates the house of service of certain employes. The term "employee" is defined by the above sections as "persons actually engaged in or connected with the movement of any train". You will note that Section 62 also includes an employee who by the use of telephone or telegram dispatches, reports, receives or delivers orders pertaining to or effecting train movements.

I am of the opinion that Section 6, Chapter 148, Laws of 1933 is not applicable to female employees in the Telegraph Departments of the Atchison, Topeka and Santa Fe Railway Company, for the reason that those employees are engaged in interstate commerce, and the Congress of the United States has enacted legislation which I believe covers these employees with respect to hours of service.

By WILLIAM R. FEDERICI

Asst. Atty. General