LABOR: State statute regulating the hours of employment for women is superseded by the Railway Labor Act wherein it limits to interstate commerce.

March 16, 1943.

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Mr. Orville S. Traylor
Commissioner of Labor
Jefferson City, Missouri

Dear Mr. Traylor:

The Attorney-General wishes to acknow ledge receipt of your letter of March 15th in which you request an opinion of this Department. Your letter, omitting caption and signature, is as follows:

> "You will find enclosed a letter, with enclosures, from Mr. Thos. T. Railey, Assistant to Counsel for Trustee of the Missouri Pacific Lines.
>
> "In order to reply to this letter, we would appreciate your opinion as to whether state laws limiting hours of service of female employees are superseded by the Railway Labor Act and its regulations or not."

In order that we reach a decision in this matter we will first cite you to Section 10171, R. S. Mo. 1939, which provides in part as follows:

> "No female shall be employed, permitted, or suffered to work, manual or physical, in any manufacturing, mechanical, or mercantile establishment, or factory, workshop, laundry, bakery, restaurant, or any place of amusement, or to do any stenographic or clerical work of any character in any of the divers kinds of

> establishments and places of industry, hereinabove described, or by any person, firm or corporation engaged in any express or transportation or public utility business, or by any common carrier, or by any public institution, incorporated or unincorporated, in this state, more than nine hours during any one day, or more than fifty-four hours during any one week: * * * * * * * * * *"

As can be seen from a study of this section, female employees working for an employer such as a railroad company, are not permitted to work more than nine hours during one day or more than fifty-four hours during any one week.

For the purposes of this opinion it will be assumed, and we feel that it is a fact, that the female employees in question are employees which are engaged in interstate commerce.

This question relative to female employees has arisen in several states and it has been ruled on by several jurisdictions. It seems from reading the Railway Labor Act of May 20, 1926, as amended by 45 U. S. C. A., Sections 151 to 163, that Congress has acted in the field of regulation of hours, conditions of labor and the wages of the employees of interstate carriers by giving the authority to interstate carriers and labor unions to enter into agreements relative to hours, wages and conditions of labor, subject to control by the National Mediation Board and the National Railroad Adjustment Board. In entering into such field Congress manifested its intention to exercise its constitutional authority to regulate the conditions of labor, wages and hours of such interstate carriers.

In the case of Erie Railroad Co. v. The People of the State of New York, 233 U. S. 671, 58 L. Ed. 1149, 34 Supreme Court 756, the Supreme Court of the United States said:

> "The relative supremacy of the state and national power of interstate commerce need not be commented on. Where

> there is conflict, the state legislation must give way. Indeed, when Congress acts in such a way as to manifest its purpose to exercise its constitutional authority, the regulating power of the State ceases to exist."

Again in Long Island Railroad Co. v. the Department of Labor of the State of New York, 177 N. E. 17, 256 N. Y. 498, it was held that regulation by Congressional action of hours of labor of employees engaged both in interstate and intrastate commerce, prevents the state from exercising power of regulation in the same field.

Again it was held in Ex parte Truelock, 140 S. W. (2d) 167 (Texas Criminal Appeal), that the power of Congress to regulate interstate commerce is supreme and when any state statute is in conflict with enactments of Congress or whenever it seriously hampers the movement of interstate commerce, even over state public highways, such a state statute must yield and be superseded by the Congressional enactments.

We further find that in Award No. 707, Docket No. TE-629, the National Railroad Adjustment Board, Third Division, the board in its ruling made the following statements:

> "The question, therefore, which must be decided by this Division in the disposition of this controversy is whether Congress in the enactment of the Railway Labor Act of 1926 as amended in 1934 has manifested its purpose to exercise to the exclusion of state control its constitutional authority over wages, hours, and basic working conditions of railway employes brought under the jurisdiction of the federal government by the Railway Labor Act. It is the conclusion of the Division that Congress has so manifested its purpose, and that the collective agreement involved in this dispute takes precedence over an inconsistent state law."

> "Certain features of the Railway Labor Act clearly indicate that Congress in its enactment has manifested its purpose to exercise its constitutional authority to regulate the wages, hours, and basic working conditions of all employees of interstate carriers, and that it has established a unified scheme to that end."

We will not quote the Railway Labor Act as cited in Title 45 U. S. C. A., Section 151, at page 257, due to the fact that such Railway Labor Act is very lengthy. However, after reading such act we have come to the same conclusion that the National Railroad Adjustment Board did, in that the Congress of the United States clearly manifests its intention to exercise its constitutional authority to regulate the wages, hours and basic working conditions of all employees of interstate carriers. However, we wish to call attention specifically to Section 151a of said Act, which reads as follows (p. 267):

> "The purposes of the chapter are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization to carry out the purposes of this chapter; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

And also we wish to call attention to paragraph one of Section 152 of said Act, which provides as follows:

> "It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

In Missouri there is a case somewhat similar in principle to the case involved in our instant request, said case being State ex rel. O'Rear v. Wabash Railroad Co., 141 S. W. 646, 238 Mo. 21, in which it was held that the Act of March 25, 1905, regulating the hours of service of trainmen, not being restricted to intrastate commerce and therefore embracing interstate commerce, was nullified by an Act of Congress of March 4, 1907, covering the same subjects or classes of legislation, though limited to interstate commerce.

Conclusion.

Under the provisions of the Railway Labor Act we feel that Congress has clearly manifested its intention to exercise its constitutional authority over the wages, hours and working conditions of all employees involved in interstate commerce. In the decisions which we have cited, the statute of a state, where it contradicts an Act of Congress, is held to be a nullity, and we feel that Section 10171, supra, relative to the employment of female employes and their hours of employment, clearly violates the provisions and intention of the Railway Labor Act of the United States and in

view of that fact we feel that such statute has been superseded by the Railway Labor Act and its regulations.

Respectfully submitted

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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