Chapter 764

1965 REPLACEMENT PART

Railroad Employes

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WORKING HOURS FOR RAILROAD EMPLOYES

764.010 Definitions for ORS 764.010 to 764.050. As used in ORS 764.010 to 764.050:

(1) "Employe" means any person actually engaged in or connected with the movement of any train.

(2) "Railroad" includes all bridges and ferries used or operated in connection with any railroad, and also all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement or lease.

764.020 Maximum working hours. (1) No common carrier, its officers or agents, subject to ORS 764.010 to 764.050, shall require or permit any employe to be or remain on duty for a longer period than 14 consecutive hours. Whenever any employe of such common carrier has been continuously on duty for 14 hours, he shall be relieved and not required or permitted again to go on duty until he has had at least 10 consecutive hours off duty. No employe who has been on duty 14 hours in the aggregate in any 24-hour period, shall be required or permitted to continue or again go on duty without having had at least eight consecutive hours off duty.

(2) However, no operator, train dispatcher or other employe who by the use of the telegraph or telephone dispatches, reports, transmits, receives or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in any 24-hour period in any towers, offices, places and stations operated only during the daytime, except in case of emergency, when the employes named in this subsection may be permitted to be and remain on duty for four additional hours in a 24-hour period on not exceeding three days in any week.

764.030 Enforcement and complaint. (1) The Public Utility Commissioner shall execute and enforce ORS 764.010 to 764.050, and all powers granted to the Public Utility Commissioner are extended to him in the execution of said statutes.

(2) The Public Utility Commissioner shall lodge with the Attorney General or proper district attorneys information of any violation of ORS 764.020 which comes to his knowledge.

764.040 Penalty for violation; action to collect. (1) Any common carrier, or its officer or agent, requiring or permitting any employe to go, be or remain on duty in violation of ORS 764.020, shall be liable to a penalty of not more than $500 for each offense, to be recovered in a suit by the Attorney General or the district attorney in the district where the violation was committed.

(2) The Attorney General or district attorney shall bring such suit upon satisfactory information being lodged with him; but no such suit shall be brought after the expiration of one year from the date of the violation.

(3) In all prosecutions under this section, the common carrier shall be deemed to have had knowledge of all acts of all its officers and agents.

764.050 Application of ORS 764.010 to 764.040. (1) ORS 764.010 to 764.040 apply to any common carrier engaged in the transportation of passengers or property by railroad wholly within this state and to the officers, agents and employes of such carrier.

(2) ORS 764.010 to 764.040 do not apply:

(a) In case of casualty or unavoidable accident or the act of God.

(b) Where the delay was the result of a cause not known to the carrier or its officer or agent in charge of the employe at the time the employe left a terminal, and which could not have been foreseen.

(c) To the crews of wrecking or relief trains.

764.060 to 764.100 [Reserved for expansion]

EMPLOYMENT SAFETY REGULATIONS

764.110 Required crews on passenger and mail trains. No person or officer of court operating any railroad or railway in this state engaged as a common carrier in the transportation of freight or passengers shall operate over its road, or any part thereof, in excess of 15 continuous miles, or suffer or permit to be run over the same, outside of yard switching limits, any passenger, mail or express train propelled by any form of motive power and consisting of four or more cars with less than a full passenger crew consisting of one engineer, one fireman, one conductor, one brakeman and one flagman. None of said crew shall be required or permitted to perform the duties of

train baggageman or express messenger while on such road.
[Amended by 1963 c.172 §1]

Note: ORS 764.120 is repealed effective January 1, 1967. See 1965 c.462 §3. The text of ORS 764.120 is set out below:

764.120 Required crews for freight trains. (1) No person or officer of court operating any railroad or railway in this state engaged as a common carrier in the transportation of freight or passengers shall operate over its road or any part thereof in excess of 15 continuous miles, or suffer or permit to be run over the same outside of yard switching limits, any freight train propelled by any form of motive power and consisting of 40 or more cars, exclusive of locomotive and caboose, with less than a full train crew consisting of one engineer, one fireman, one conductor, two brakemen and one flagman.

(2) All main line local freight trains propelled by any form of motive power shall have a full crew consisting of one engineer, one fireman, one conductor, two brakemen and one flagman.

(3) Light engines operated outside of yard limits shall be provided with a full crew consisting of one engineer, one fireman and one pilot, but this provision does not apply to helper engines within helper districts.
[Amended by 1963 c.172 §2; repealed by 1965 c.462 §1]

764.130 Qualifications of flagman. (1) The flagman in the crews required under ORS 764.110 or 764.120 shall have had at least six months' experience in train service.

(2) No person owning or operating a railroad within this state shall employ or use as a flagman on or in connection with the operation of any passenger train any person who cannot read and write and speak the English language or any person who is less than 21 years of age. Any person owning or operating a railroad in this state is liable for any damage caused from a failure to comply with this subsection.

764.140 Guarding frogs, switches and guardrails. (1) Every person owning or operating a railroad in this state, shall so adjust, fill, block and securely guard the frogs, switches and guardrails of their roads as to protect and prevent the feet of employes and other persons from being caught therein.

(2) Any person owning or operating a railroad in this state shall be liable for any damage caused from a failure to comply with this section.

764.150 Shelter of car repairers. (1) No person owning, controlling or operating any line of railroad in this state shall build, construct, reconstruct or repair railroad car equipment or motive power in the state without first erecting and maintaining at every division terminal, or other point where five employes or more are regularly employed on such work, a shed over a sufficient portion of the tracks used for such work, so as to provide that all men regularly employed in such work are sheltered and protected from rain and other inclement weather.

(2) This section does not apply at points where less than five men are regularly employed in such work, nor at points where it is necessary to make light repairs only on equipment or motive power, nor to equipment loaded with time or perishable freight, nor to equipment when trains are being held for the movement of equipment. As used in this subsection, "light repairs" does not include repairs usually made in roundhouse, shop or shed upon well-equipped railroads.

764.160 Conductors and engineers have power of sheriff. Every conductor and engineer of any railroad train, while actually engaged as conductor or engineer of any such train, shall have the power of sheriff in each county through or into which the train upon which he is employed passes, for the purpose of protecting the public peace and arresting violators thereof on or near such train, and may command the assistance of any person present in performing such duties.

764.170 to 764.200 [Reserved for expansion]

LIABILITY OF RAILROAD EMPLOYERS FOR INJURY TO EMPLOYES

764.210 Employer's liability for injury to employe. Every corporation operating a railroad in this state, whether created under the laws of this state or otherwise, is liable in damages for any injury sustained by its employe when such injury results from the wrongful act, neglect or default of:

(1) An agent or officer of such corporation, superior to the employe injured, or of a person employed by such corporation having the right to control or direct the services of the employe injured, or the services of the employe by whom he is injured.

(2) A co-employe engaged in another department of labor from that of the employe injured, or of a co-employe on another train of cars, or of a co-employe who has charge of any switch, signal point or locomotive engine, or who is charged with dispatching trains or transmitting telegraphic or telephonic orders.

764.220 Effect of contributory negligence. (1) The rules and principles of law as to contributory negligence which apply to other cases shall apply to cases arising under ORS 764.210, subject to the modifications of those rules in ORS 764.210 and in subsection (2) of this section.

(2) Knowledge by an employe injured of the defective or unsafe character or condition of any machinery, ways, appliances or structures of a corporation shall not of itself be a bar to recovery for any injury or death caused thereby.

764.230 Who has right of action; waiver of statute void; construction. (1) When death, whether instantaneous or otherwise, results from an injury to an employe under circumstances described in ORS 764.210, the personal representative of the employe has a right of action therefor against the corporation and may recover damages in respect thereof.

(2) Any contract or agreement, express or implied, made by the employe to waive the benefit of ORS 764.210 to 764.230 is void.

(3) ORS 764.210 to 764.230 shall not be construed to deprive any employe or his personal representative of any right or remedy to which he is entitled under the laws of this state.

764.240 to 764.300 [Reserved for expansion]

PROCEDURE FOR CONTESTED DISCHARGE OF BONDED EMPLOYES

764.310 Definitions for ORS 764.320 to 764.360. As used in ORS 764.320 to 764.360:

(1) "Commissioner" means the Public Utility Commissioner.

(2) "Railroad" means a railroad as defined in ORS 760.005.

764.320 Railroad to furnish bonded employe with statement of discharge. (1) In case of any dispute or disagreement between any bonded employe of any railroad resulting in the discharge or termination of the services of the bonded employe, the railroad shall furnish to the bonded employe so discharged, upon request, a copy of the charges filed against the employe, as a result of which the services of the employe were discontinued.

(2) If no written charges have been filed against the employe, as a result of which his services were terminated, the railroad shall furnish the employe so discharged with a written statement of the reasons for his discharge within five days from the date of the termination of his services.

764.330 Complaint on failure to comply with ORS 764.320; procedure for hearing and investigation; findings. (1) In case of failure by the railroad to comply with ORS 764.320, the employe may complain thereof to the commissioner for the purpose of determining the reasons for discharge.

(2) In case the bonded employe is charged with any offense involving moral turpitude, upon complaint being made by the employe alleging the cause of discharge to be untrue, the commissioner shall notify the railroad concerned that complaint has been made.

(3) Ten days after such complaint has been made, the commissioner shall proceed to investigate it. However, before proceeding to make the investigation, the commissioner shall give the railroad and the complainant 10 days' notice of the time and place when and where such complaint will be considered and determined.

(4) At the hearing, the parties are entitled to be heard, to have process to enforce attendance of witnesses and to compel the railroad to present before the commissioner all the documentary evidence in the possession of the railroad bearing upon the complaint filed against it.

(5) If upon such investigation and hearing it appears to the commissioner that the charge against the employe was untrue, the commissioner shall make a finding of fact to that effect recommending the reinstatement of the employe and furnish a copy thereof to the complainant.

764.340 Quasi-judicial powers of commissioner. For the purpose of ORS 764.330, the commissioner may:

(1) Administer oaths.

(2) Certify to official acts.

(3) Issue subpenas to compel the attendance of witnesses.

(4) Provide for the production of papers, contracts, books, accounts, documents and testimony.

(5) Provide for the disobedience on the part of any person to comply with the orders of the commissioner in respect thereto, or any refusal of any witness to testify to any matter regarding which he may be lawfully interrogated.

(6) Provide for the fees and mileage of witnesses.

(7) Punish witnesses for the disobedience of any subpena issued by the commissioner.

(8) Generally provide for the taking of testimony and for the recording of the proceedings held before him in accordance with ORS 764.330.

764.350 Compliance with subpena required. No person shall neglect or refuse to attend before the commissioner in accordance with ORS 764.330 and 764.340, and testify or answer any legal inquiry, or to produce books, papers, contracts, accounts or documents within his power to do so, in obedience to the subpena or lawful requirements of the commissioner under ORS 764.340.

764.360 Proceedings in case of disobedience of subpena or refusal to testify. The circuit court of any county of the state, or the judge thereof, on application of the commissioner, shall compel the attendance of witnesses before the commissioner in hearings under ORS 764.330 by attachment proceedings, or contempt, as in the case of the disobedience of the requirements of a subpena issued from said court, or a refusal to testify therein.

764.370 to 764.980 [Reserved for expansion]

PENALTIES

764.990 Penalties. (1) Violation of ORS 764.110, 764.120 or subsection (1) of ORS 764.130 is punishable, upon conviction, by a fine of not less than $20 nor more than $100 for each offense.

(2) Violation of ORS 764.140 is punishable, upon conviction, by a fine of not less than $500 nor more than $2,000.

(3) Violation of ORS 764.150 by any railroad company or officer or agent thereof, or any other person is punishable, upon conviction, by a fine of not less than $50 nor more than $100. Each day's violation is a separate offense.

(4) Violation of ORS 764.350 is punishable, upon conviction, by a fine of not less than $100 nor more than $1,000, or by imprisonment in the county jail for not more than one year, or both.

CERTIFICATE OF LEGISLATIVE COUNSEL

Pursuant to ORS 173.170, I, Sam R. Haley, Legislative Counsel, do hereby certify that I have compared each section printed in this chapter with the original section in the enrolled bill, and that the sections in this chapter are correct copies of the enrolled sections, with the exception of the changes in form permitted by ORS 173.160 and other changes specifically authorized by law.

Done at Salem, Oregon,
on November 15, 1965.

Sam R. Haley
Legislative Counsel

CHAPTERS 765 AND 766

[Reserved for expansion]