

**OPINION  
50-144**

July 31, 1950           (OPINION)

RAILROADS

RE: Full Train Crew

Your letters of June 8, 1950, and July 17, 1950, addressed to Mr. P. O. Sathre of this office, have been turned over to the undersigned. In your letters you request an interpretation of section 49-1311, NDRC, 1943, as applied to a set of facts outlined in your letter of June 8, 1950. These facts are set out in the third paragraph of your letter as follows:

"It seems that a week or ten days ago, the exact date not being known at this time, train No. 219 left Minot with E. J. Pratt as its conductor and it had only one brakeman and one engineer. This train had cars as follows: Goose or power plant which was divided into three compartments, being an engine, a mail compartment, and a baggage and express compartment; one passenger coach, and two freight or merchandise cars."

Section 49-1311, NDRC, 1943, provides:

"PASSENGER TRAINS OF MORE THAN FOUR CARS; HOW MANNED. No railroad corporation doing business in this state which operates more than four trains in any twenty-four consecutive hours shall operate over any of its lines or any part thereof outside of the yard limits any passenger train consisting of more than four passenger or other cars with less than a full train crew consisting of five persons:

1. One conductor;
2. One engineer;
3. One fireman;
4. One brakeman; and
5. One flagman, such flagman to have at least one year's experience in train service.

Said conductor, flagman, or brakeman shall not be required to perform any of the duties of train baggagemaster, express messenger, porter, or electrician."

Section 49-1310, NDRC, 1943, provides:

"FREIGHT TRAINS OF UNDER FORTY CARS; LIGHT ENGINE; HOW MANNED. No railroad corporation doing business in this state which operates more than four trains in any twenty-four consecutive hours shall operate over any of its lines or any part thereof outside of the yard limits any freight or mixed trains

consisting of less than forty freight or other cars, exclusive of caboose and engine, with less than a full train crew consisting of five persons:

1. One conductor;
2. One engineer;
3. One fireman;
4. One brakeman; and
5. One flagman, such flagman to have at least one year's experience in train service.

If a light engine is used, it may be manned by a crew consisting of not less than one conductor, one engineer, and one foreman."

The addition of merchandise cars, for the purpose of delivering way-freight, to a train carrying a passenger coach or coaches constitutes a mixed train. Inasmuch as the limitation as to the number of cars contained in section 49-1310, supra, provides only that the number be under forty "freight or other cars" it seems clear that a train consisting of a "Goose or power plant," one coach and two merchandise cars, comes within section 49-1310, above quoted.

It is, therefore, the opinion of this office that the facts quoted show a violation of section 49-1310, supra, rather than of 49-1311, supra. The violation consists of operating a mixed train under forty cars with only one engineer, one brakeman, and one conductor, whereas the statute requires two additional men—a fireman and a flagman.

WALLACE E. WARNER

Attorney General