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chartered buses or of farm trucks who have many duties unrelated to driving or safety of operation of their vehicles in interstate transportation on the highways; and so-called ''driver-salesmen'' who devote much of their time to selling goods rather than to activities affecting such safety of operation. (*Levinson* v. *Spector Motor Service*, 300 U.S. 649; *Morris* v. *McComb*, 332 U.S. 422; *Richardson* v. *James Gibbons Co.*, 132 F. (2d) 627 (C.A. 4), affirmed 319 U.S. 44; *Gavril* v. *Kraft Cheese Co.*, 42 F. Supp. 702 (N.D. Ill.); *Walling* v. *Craig*, 53 F. Supp. 479 (D. Minn.); *Vannoy* v. *Swift & Co.* (Mo. S. Ct.), 201 S.W. (2d) 350; Ex parte No. MC–2, 3 M.C.C. 665; Ex parte No. MC–3, 23 M.C.C. 1; Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125; Ex parte No. MC–4, 1 M.C.C. 1. Cf. *Colbeck* v. *Dairyland Creamery Co.* (S.D. Supp. Ct.), 17 N.W. (2d) 262, in which the court held that the exemption did not apply to a refrigeration mechanic by reason solely of the fact that he crossed State lines in a truck in which he transported himself to and from the various places at which he serviced equipment belonging to his employer.)

(b) The work of an employee who is a full-duty or partial-duty ''driver,'' as the term ''driver'' is above defined, directly affects ''safety of operation'' within the meaning of section 204 of the Motor Carrier Act whenever he drives a motor vehicle in interstate or foreign commerce within the meaning of that act. (*Levinson* v. *Spector Motor Service*, 330 U.S. 649, citing *Richardson* v. *James Gibbons Co.*, 132 F. (2d) 627 (C.A. 4), affirmed 319 U.S. 44; *Morris* v. *McComb*, 332 U.S. 422; Ex parte No. MC–28, 13 M.C.C. 481, 482, 488; Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125, 139 (Conclusion of Law No. 2). See also Ex parte No. MC–2, 3 M.C.C. 665; Ex parte No. MC–3, 23 M.C.C. 1; Ex parte No. MC–4, 1 M.C.C. 1.) The Secretary has power to establish, and has established, qualifications and maximum hours of service for such drivers employed by common and contract carriers or passengers or property and by private carriers of property pursuant to section 204, of the Motor Carrier Act. (See Ex parte No. MC–4, 1 M.C.C. 1; Ex parte No. MC–2, 3 M.C.C. 665; Ex parte No. MC–3, 23 M.C.C. 1; Ex parte No. MC–28, 13 M.C.C. 481; *Levinson* v. *Spector Motor Service*, 330 U.S. 649; *Southland Gasoline Co.* v. *Bayley*, 319 U.S. 44; *Morris* v. *McComb*, 332 U.S. 422; Safety Regulations (Carriers by Motor Vehicle), 49 CFR parts 390, 391, 395) In accordance with principles previously stated (see § 782.2), such drivers to whom this regulatory power extends are, accordingly, employees exempted from the overtime requirements of the Fair Labor Standards Act by section 13(b)(1). (*Southland Gasoline Co.* v. *Bayley*, 319 U.S. 44; *Levinson* v. *Spector Motor Service*, 330 U.S. 649; *Morris* v. *McComb*, 332 U.S. 422; *Rogers Cartage Co.* v. *Reynolds*, 166 F. (2d) 317 (C.A. 6). This does not mean that an employee of a carrier who drives a motor vehicle is exempted as a ''driver'' by virtue of that fact alone. He is not exempt if his job never involves transportation in interstate or foreign commerce within the meaning of the Motor Carrier Act (see §§ 782.2 (d) and (e), 782.7, and 782.8, or if he is employed by a private carrier and the only such transportation called for by his job is not transportation of property. (See § 782.2. See also Ex parte No. MC–28, 13 M.C.C. 481, Cf. *Colbeck* v. *Dairyland Creamery Co.* (S. Ct. S.D.), 17 N.W. (2d) 262 (driver of truck used only to transport himself to jobsites, as an incident of his work in servicing his employer's refrigeration equipment, held non exempt).) It has been held that so-called ''hostlers'' who ''spot'' trucks and trailers at a terminal dock for loading and unloading are not exempt as drivers merely because as an incident of such duties they drive the trucks and tractors in and about the premises of the trucking terminal. (*Keegan* v. *Ruppert* (S.D. N.Y.), 7 Labor Cases, par. 61,726 6 Wage Hour Rept. 676, cf. *Walling* v. *Silver Fleet Motor Express*, 67 F. Supp. 846)

§ 782.4 Drivers' helpers.

(a) A Driver's ''helper,'' as defined for Motor Carrier Act jurisdiction (Ex Parte Nos. MC–2 and MC–3, 28 M.C.C. 125, 135, 136, 138, 139), is an employee other than a driver, who is required to ride on a motor vehicle when it is being operated in interstate or foreign commerce within the meaning of the Motor Carrier Act. (The term does not include employees who ride on the vehicle and act as assistants or relief drivers. Ex

parte Nos. MC–2 and MC–3, supra. See § 782.3.) This definition has classified all such employees, including armed guards on armored trucks and conductorettes on buses, as ''helpers'' with respect to whom he has power to establish qualifications and maximum hours of service because of their engagement in some or all of the following activities which, in his opinion, directly affect the safety of operation of such motor vehicles in interstate or foreign commerce (Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125, 135–136): Assist in loading the vehicles (they may also assist in unloading (Ex parte Nos. MC–2 and MC–3, supra), an activity which has been held not to affect ''safety of operation,'' see § 782.5(c); as to what it meant by ''loading'' which directly affects ''safety of operation,'' see § 782.5(a)); dismount when the vehicle approaches a railroad crossing and flag the driver across the tracks, and perform a similar duty when the vehicle is being turned around on a busy highway or when it is entering or emerging from a driveway; in case of a breakdown: (1) Place the flags, flares, and fuses as required by the safety regulations. (2) go for assistance while the driver protects the vehicle on the highway, or vice versa, or (3) assist the driver in changing tires or making minor repairs; and assist in putting on or removing chains.

(b) An employee may be a ''helper'' under the official definition even though such safety-affecting activities constitute but a minor part of his job. Thus, although the primary duty of armed guards on armored trucks is to protect the valuables in the case of attempted robberies, they are classified as ''helpers'' where they ride on such trucks being operated in interstate or foreign commerce, because, in the case of an accident or other emergency and in other respects, they act in a capacity somewhat similar to that of the helpers described in the text. Similarly, conductorettes on buses whose primary duties are to see to the comfort of the passengers are classified as ''helpers'' whose such buses are being operated in interstate or foreign commerce, because in instances when accidents occur, they help the driver in obtaining aid and protect the vehicle from oncoming traffic.

(c) In accordance with principles previously stated (see § 782.2), the section 13(b)(1) exemption applies to employees who are, under the Secretary of Transporation's definitions, engaged in such activities as full- or partial-duty ''helpers'' on motor vehicles being operated in transporation in interstate or foreign commerce within the meaning of the Motor Carrier Act. (*Ispass* v. *Pyramid Motor Freight Corp.*, 152 F. (2d) 619 (C.A. 2); *Walling* v. *McGinley Co.* (E.D. Tenn.), 12 Labor Cases, par. 63,731, 6 W.H. Cases 916. See also *Levinson* v. *Spector Motor Service*, 330 U.S. 649; *Pyramid Motor Freight Corp.* v. *Ispass*, 330 U.S. 695; *Dallum* v. *Farmers, Coop Trucking Assn.* 46 F. Supp. 785 (D. Minn.).) The exemption has been held inapplicable to so-called helpers who ride on motor vehicles but do not engage in any of the activities of ''helpers'' which have been found to affect directly the safety of operation of such vehicles in interstate or foreign commerce. (*Walling* v. *Gordon's Transports* (W.D. Tenn.) 10 Labor Cases par. 62,934, 6 W.H. Cases 831, affirmed 162 F. (2d) 203 (C.A. 6), certiorari denied, 332 U.S. 774 (helpers on city ''pickup and delivery trucks'' where it was not shown that the loading in any manner affected safety of operation and the helper's activities were ''in no manner similar'' to those of a driver's helper in over-the-road operation).) It should be noted also that an employee, to be exempted as a driver's ''helper'' under the Secretary's definitions, must be ''required'' as part of his job to ride on a motor vehicle when it is being operated in interstate or foreign commerce; an employee of a motor carrier is not exempted as a ''helper'' when he rides on such a vehicle, not as a matter of fixed duty, but merely as a convenient means of getting himself to, from, or between places where he performs his assigned work. (See *Pyramid Motor Freight Corp.* v. *Ispass*, 330 U.S. 695, modifying, on other grounds, 152 F. (2d) 619 (C.A. 2).)

§ 782.5 Loaders.

(a) A ''loader,'' as defined for Motor Carrier Act jurisdiction (Ex parte Nos. MC–2 and MC–3, 28 M.C.C. 125, 133, 134,