

U. S. DEPARTMENT OF LABOR
WAGE AND HOUR DIVISION
Washington, D. C.

ANDREWS AMENDS RECORD KEEPING REGULATIONS AFTER RED CAP HEARING

An early court test of an "accounting and guarantee arrangement" now generally used in the employment of Red Caps and station porters throughout the United States will be sought by the Wage and Hour Division, Administrator Elmer F. Andrews announced today in a statement made in connection with the issuance of an amendment of the record-keeping regulations under the Fair Labor Standards Act. The court test will be for the purpose of obtaining a determination as to the validity of the "accounting and guarantee arrangement".

In issuing the revised record keeping regulation, Mr. Andrews announced that he had adopted the recommendations made by Gustav Peck, Assistant Chief of the Hearings and Exemptions Section of the Division, who conducted the hearing on the record-keeping practices used by railroads and terminals in the employment of Red Caps, hand baggage porters and other similar employees.

The Administrator commended the practices followed by certain railroads under which, as a result of collective bargaining or otherwise, they pay Red Caps wages aside from such tips as may be received.

The regulations governing record keeping by employers were amended by the Administrator to require, "that with respect to employees employed in occupations in the performance of which the employee receives tips or gratuities from third persons which are accounted for or turned over by the employee to the employer, additional records containing the following information with respect to each such employee shall be made and preserved by the employer:

"(a) Total hours worked each workweek in occupations in the performance of which the employee receives tips or gratuities from third persons.

"(b) Total hours worked each workweek in any other occupation.

"(c) Wages paid each workweek for hours worked under (a) above; provided, however, that if the employer claims as 'wages paid' the amount of any gratuities or tips voluntarily paid to the employee by third persons and accounted for or turned over by the employee to the employer, such amounts must be recorded in a separate column from that in which any other compensation is recorded.

"(d) Wages paid each workweek for hours worked under (b) above; provided, however, that if the employer claims as 'wages paid' the amount of any gratuities or tips voluntarily paid to the employee by third persons and accounted for or turned over by the employee to the employer, such amounts must be recorded in a separate column from that in which any other compensation is recorded."

The hearings before Dr. Peck in Washington on June 27 and 28 were on the application of the International Brotherhood of Red Caps and other parties and full opportunity was given both to representatives of the Red Caps and the Association of American Railroads to participate both through the testimony of their witnesses and the submission of briefs.

Mr. Andrews' statement in announcing his decision to adopt the recommendation of Dr. Peck follows:

"The Fair Labor Standards Act requires employers to pay their employees engaged in interstate commerce wages at a rate not less than 25 cents an hour and 30 cents after October 24th. Since 'tips' are not paid to employees by their employer but are received from third parties as gratuities, they are not wages. However, in order to avail themselves of the tips received by the Red Caps, the majority of the railroads of the country, just before the Act went into effect in October, 1938, instituted 'an accounting and guarantee arrangement' with the Red Caps whereby the latter are required to account to the railroad for their tips in order that the railroad might then use the amount of such tips to make a showing that, with 'make-up pay', it is paying wages to the Red Caps as required by the Act. In effect, the railroads have attempted to use the tips paid to railroad employees by the traveling public as a means of paying off the debt due from employer to employee under a federal statute - payment of wages by the employer at the rate of 25 cents an hour.

"The Red Caps have been caught between two forces. Many people, believing that the railroads were paying all their employees wages aside from tips equal to or in excess of the 25 cent minimum, have refused to tip. But the typical Red Cap of most companies has not received any such wages from his employer.

"Payment of the 25 cent minimum by the railroads would, it has been estimated, increase the total annual payroll of the railroads as a group by approximately one-tenth of one percent, and would increase total operating expenses by an even smaller percentage. Nevertheless, the railroads seek to avoid this payment by agreements with the Red Caps which clearly violate the spirit of the Fair Labor Standards Act. Whether they violate the letter of the law is up to the courts to determine. Such a determination will be sought at any early date.

"I want to take this opportunity to commend the practices followed by certain railroads under which, as a result of collective bargaining or otherwise, Red Caps are paid a salary aside from such tips as may be received. In my opinion, however, such instances are all too few. A substantial number of the railroads and terminal companies employing Red Caps have refused to make any effort to comply with the spirit of the Fair Labor Standards Act.

"We have received many complaints from Red Caps that the agreements are being used in a fraudulent manner in that the Red Caps are required to report 25 cents an hour in tips regardless of the amount they actually receive. We have also received complaints that these contracts were made and operate under duress.

"These and other charges were repeated by the Red Caps at an investigatory hearing held for the purpose of determining whether the records regulations should be amended to cope with this situation. I am today issuing an amendment to the records regulations requiring that employers, whose employees are required to account for or turn over tips received from third persons, must keep certain additional records with respect to such employees.

"Without rendering any opinion on the validity under the Fair Labor Standards Act of any such arrangement, a question which the courts must ultimately decide, this amendment is designed to effect a break-down of the 'wages paid' into the amount of such tips as are claimed by the employer to be wages, under the Act, and any amount otherwise paid by the employer. It is believed that these additional records are necessary to protect the interests of all concerned pending an authoritative decision by the courts as to the validity of the contract."