

U.S. DEPARTMENT OF LABOR  
WAGE AND HOUR DIVISION  
Washington

SUIT FILED TO COMPEL RAILROAD TERMINAL TO PAY "RED CAPS" MINIMUM WAGE

A suit to compel the Cincinnati Union Terminal to pay its 96 red caps, or hand-baggage porters, a minimum wage of 30 cents per hour, as provided under the Fair Labor Standards Act, was filed today in the U. S. District Court for the Southern District of Ohio (Cincinnati).

The complaint, filed by Joseph Rauh and John E. Skilling in behalf of the Wage and Hour Division of the U. S. Department of Labor, Washington, alleges that the terminal company has compelled the red caps to maintain records of tips received and arbitrarily instructed them to list not less than the legal minimum prior to Oct. 24. Those who failed to report as much as the legal minimum, it is alleged, were threatened with dismissal by agents of the terminal company.

The Cincinnati Union Terminal is reputed to be owned jointly by the Baltimore and Ohio, Pennsylvania, Chesapeake and Ohio, Norfolk and Western, Southern, Louisville and Nashville, and the Cincinnati, New Orleans and Texas Railroads.

"During the workweeks beginning October 24, 1938, and continuing to the date hereof," the complaint alleges, "the defendant at the said terminal, with intent to evade the provisions of the Act, has employed and is employing said employees in interstate commerce under purported contracts by which the defendant pretends to agree to pay wages to such employees as required by the Act. Under the so-called contract the defendant pretends to require the employee to report daily to the defendant the amounts actually received by him as tips or other remuneration.

"In fact, however, the defendant has not made any real attempt to discharge its purported guarantee of the minimum wage, but instead informed each of the said employees that defendant would not pay him money on account of said guarantee, and the defendant has intimidated said employees with threats of discharge and has

knowingly caused them to falsely report the receipt of tips or other remuneration in sums equal to or greater than, the minimum wages prescribed by the Act, when, in fact, said employee received tips in amounts less than the minimum wages prescribed by the Act."

The complaint further alleges that the terminal company has violated regulations concerning the keeping of records of employees promulgated by the Wage and Hour Division on October 24, 1938 and amended on October 13, 1939, and that it has "failed to make complete and precise records of the wages and other conditions and practices of employment of many of said employees as required in the regulations."

"In records which employees have been required to keep since October 24, 1938," according to the complaint, "said employees have been or are being coerced to make false entries of tips received by them from the public and the defendant knows that many of such entries are false in material respects."

According to the complaint, the terminal company, prior to October 24, 1938, when the Fair Labor Standards Act became effective, sent to each of the 96 red caps employed in the terminal two copies of the contract, one of which the employees were instructed to sign and return to the company.

This contract provided:

1. That each of the red caps must report to the company all tips received daily from the traveling public.
2. The company guaranteed that each employee would receive the minimum wage provided by the Wage-Hour law, including tips.
3. That each employee was authorized to retain all tips received except deductions made for the Railroad Retirement tax.

The suit filed today was an outgrowth of an investigation conducted several months ago. Subsequently a hearing was held in Washington (last June 27 and 28) before Gustav Peck, Assistant Chief of the Hearings and Exemptions Section of the

Wage and Hour Division, U. S. Department of Labor, to determine whether or not additional regulations should be issued concerning records to be kept of the wages paid red caps or hand-baggage porters. During the two days of the hearing numerous witnesses appeared representing both the employees and the railroads.

In his findings Mr. Peck declared that "the Association of American Railroads, which appeared on behalf of substantially all the employers of red caps in the United States, opposed any changes in the existing regulations; contended that amendments proposed were attempts under the guise of a records regulation, to determine a matter of substance which only the courts can decide; namely, whether or not "the present arrangement, by which red caps record the tips and gratuities received and the Railroad Terminal Companies agree to guarantee that each and every red cap will receive at least the minimum wage, is in conformity with the provisions of the Act."

"When the Fair Labor Standards Act was enacted," Mr. Peck's findings declared, "the carriers, according to their testimony, gave serious consideration to the problems raised by the Act to determine 'whether they could devise any way to avoid having saddled upon them an additional cost of operation of upwards of \$2,000,000 a year!'"

Testimony offered at the hearing shows convincingly that the "records kept by the carriers as tips reported as received by the red caps do not accurately represent the tips received by these men. Numerous red caps testified that they padded their reports when they made less than 25 cents an hour in tips. The reason for this false reporting of tips was said to be the fear of discipline or discharge by the carriers for failing to report the minimum. It appears to have become well-nigh the universal practice to report \$2 (the minimum wage prior to Oct. 24) each and every day, even in cases where the men have always received considerably more than \$2 in the past."



In his findings and recommendations, Mr. Peck declared that "there is grave legal doubt as to the validity under the Fair Labor Standards Act of the accounting and guarantee arrangement which the carriers have used." He recommended that the Wage and Hour Division take immediate steps through court action to determine the validity of the contract in force in the Cincinnati Terminal, the terms of which it is alleged are in general practice in railroad terminals throughout the country. He also recommended that employers be required to keep records showing separately from other amounts paid as wages, the amount of tips which are claimed by the employer to be wages paid.

These recommendations were incorporated in amendments to regulations which became effective October 13. In the complaint filed today the defendant terminal company is charged with failing to pay the minimum wage; failure to keep adequate records; and falsification of records.

The suit asks the court to enjoin and restrain the terminal company from continuance of these unlawful practices.

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