

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

WAGE AND HOUR DIVISION PRESSES RED CAP SUIT

Cessation of practices alleged to constitute violations of the Fair Labor Standards Act, after a court action had been filed by the Wage and Hour Division of the U. S. Department of Labor, Washington, does not render a Federal court powerless to enforce the law as to the defendant company, attorneys for the Division contended today in a brief filed in the Federal court at Cincinnati. The Division on next Monday (March 18) will resist the efforts of the Cincinnati Union Terminal Company to have declared moot the suit to compel the terminal company to pay red caps the minimum wage of 30 cents an hour.

A complaint filed in the U. S. District Court for the Southern District of Ohio on November 6, 1939 alleged that the terminal company had compelled red caps to maintain records of tips received and arbitrarily instructed them to list not less than the legal minimum. Those who failed to report as much as the legal minimum, it was alleged, were threatened with dismissal by agents of the terminal company.

The "new plan" which the terminal company contends renders the Division's case moot, was inaugurated February 1. Red caps will be carried on the terminal company's payroll at a wage of 30 cents an hour, under the new plan, and for each bag or parcel carried by each red cap, passengers will be charged 10 cents. This fixed charge, according to instructions alleged to have been given to the red caps when the new plan was inaugurated, was to be turned over by him to the terminal company, and from the sums collected by these fixed charges the wages of red caps were to be paid.

To the company's contention that the new plan is legal and that the Court is powerless to enforce the law in this case, the Division answered; in its brief filed today:

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"It would seem that it would not lie in the mouth of a person charged with a violation of law to assert that by his own act he can escape the judgment and relief sought by the Government by changing his ways after the Government catches up with him."

In its brief and in supporting affidavits, the Division points out the red caps were forced, under threat of dismissal, to report an average of 25 cents or more an hour received in tips. If the report was "short," the red cap was summoned to the stationmaster's office and told the report would have to be changed. Red caps informed the Division they either made the changes in the presence of the stationmaster, or that the stationmaster did it for them. The company's records, the Division told the court, revealed that there were many alterations, not only in the red caps' handwriting but that of others.

Red caps informed the Division they were repeatedly told by the "captains" that "if you can't make 25 cents an hour any other way, make it with your pencil." In its attack on the terminal company's reputed "guarantee" of the minimum wage to red caps under the system whereby the red caps reported daily the amount of tips received, the records of the company revealed that from October 24, 1939 to November 6, 1939, when the suit was filed, the grand total of payments by the company to red caps was \$3.49.

Numerous Supreme Court decisions are cited by the Division in its contention that the "new plan" of the terminal company does not render the case moot, and the Division's answer to the company's motion for summary judgment says: "It is thus apparent that if the suit at bar were no more than an action between private parties under the common law, this Court would be bound, under the above decisions of the Supreme Court, to grant the injunction prayed for. But this is not an action between private litigants. On the contrary, it is a suit by the Federal Government to enforce the provisions of an Act of Congress in the manner expressly provided for in that Act."

On its contention that an injunction should be issued against the terminal company, the Division says: "No circumstances have occurred, since the action at bar was instituted which renders impossible further violations of the Fair Labor Standards Act by defendant or the granting of effective relief against such violations. On the contrary, it is now no less possible for defendant to renew the practices complained on than it was for it to inaugurate those practices in the beginning, and defendant is still free to renew them. The alleged 'mootness' is thus unreal and only serves to confuse the issues properly before the Court for adjudication."

The red caps are subject to the same alleged abuses under the "new plan" as they were under the old plan, the Division tells the Court.

"Many red caps report that under the new plan they do not collect sufficient charges to equal the minimum wage for a day's work, and that, upon turning such collections over to the company's agent, they are subject to the same intimidation as they were under the old plan," the Division said. "In other words, the red caps have been made to feel that it is still a condition of their employment that they 'pay their way,' and if their collections are insufficient for this purpose, it is not unreasonable to suppose, in view of defendant's past conduct, that red caps will be forced to make up the differences out of their pockets in order to keep their jobs."

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