

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

REHEARING ASKED IN CLEVELAND RED CAP WAGE-HOUR SUIT

Faced with an order to furnish a list of all tips received by every red cap in the Cleveland Union Terminal for more than a year, the Wage and Hour Division today moved in the Federal Court in Cleveland to have this order rescinded. The motion was filed in the Federal Court for the Northern District of Ohio, Eastern Division, and seeks to rescind an order entered on August 6 which would have required the Division, among other things, to furnish the list of all tips received by the red caps on each of approximately 500 days, covered in a previous complaint filed by the Division against the Cleveland Union Terminal Company.

The motion for a rehearing on the Terminals Company's motion for an order to make the Division's petition more definite, was filed by Arthur E. Reyman, regional attorney for the Division, on behalf of Philip B. Fleming, Administrator of the Wage and Hour Division.

In support of one of the grounds of the motion, the Division contended that if the particulars demanded of the Administrator were required to be furnished it would greatly hinder the enforcement of the Fair Labor Standards Act through civil proceedings. It was pointed out that the remedy of injunction provided in the statute is "prospective and preventive" as distinguished from criminal proceedings which, it is averred, are "retrospective and punitive."

It was also pointed out that the Government's case did not contemplate the recovery of back wages, as a suit by employees would, and therefore, the requirement to allege all hours worked and all tips received would be "at variance with the true character of plaintiff's (Division's) action."

"If a complaint filed by the Administrator, charged with the expeditious enforcement of the statute, must set forth with the specificity of an indictment every detail of every underpayment to every employee, notwithstanding that many

employers subject to the provisions of the Act employ thousands of employees, it is difficult to see how the remedy by injunction can remain any more efficient or expeditious than any other type of remedies," argument in support of the Division's motion declares.

The Division, according to Regional Attorney Reyman, filed a suit for injunction against the Terminals Company, alleging the company was counting tips received by red caps from the traveling public as wages, although the Division contends that whether or not tips are considered wages, the Company violated the Fair Labor Standards Act, which requires payment of at least 30 cents an hour to all employees engaged in interstate commerce.

In addition to asking the Court for a rehearing on the Terminals Company's motion, Regional Attorney Reyman asked the Court to grant an oral hearing on the issue, and to extend the time for the Division to further plead or otherwise act for a period of 10 days after the court's ruling on the motion filed today.

#####