

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

WAGE-HOUR DIVISION FILES APPEAL BRIEF SUPPORTING RED CAPS

A brief supporting the Red Caps of the Union Terminal Company, Dallas, Texas, in their legal fight to sustain a judgment of \$77,253.98 in an employee's suit under the Fair Labor Standards Act was filed today by the Wage and Hour Division, United States Department of Labor, with the Fifth Circuit Court of Appeals, at Fort Worth, Texas.

The Division's brief, filed in conjunction with a recent motion asking permission to appear in the case as a friend of the court, declares that tips are gratuities and that "an employer cannot discharge his duty to pay the minimum wage prescribed by the Act simply by serving a notice that tips received by employees shall be applied to that end."

The brief states that the so-called guarantee system, whereby the employer pays the difference between the tips collected and the legal minimum wage under the Act, is subject to "serious abuse," saying: "The red cap can report without effective check by the Administrator or the employer the receipt of any sum whatsoever. If he feels it necessary to report the receipt of tips equal to or nearly equal to the minimum wage because of the fear that he may otherwise lose his job as an 'inefficient' employee, he can do so even though he received much less. This scheme therefore permits of easy evasion of the minimum wage provisions of the Act and the provisions requiring that true and accurate wage records be made and kept."

The Union Terminal Company has appealed from a decision by Federal District Judge William H. Atwell granting the Red Caps \$38,626.99 in back wages and an equal amount of liquidated damages under Section 16(b) of the Act in the case of A. J. Pickett, vs. Union Terminal Company. Judge Atwell ruled that tips collected by the Red Caps could not be treated as wages. The appeal is scheduled to be heard at Fort Worth, Texas. November 14, 1940.

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