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

U. S. COURT HOLDS OVERTIME MUST BE
COMPUTED ON "REGULAR RATE"

The overtime provisions of the Wage and Hour law and the increased employment resulting have been strengthened by a decision of Judge Matthew A. Joyce in the United States District Court for Minnesota, General Philip B. Fleming, Administrator of the Wage and Hour Division, said today.

The decision enjoined the Carleton Screw Products Company of Minneapolis, despite its answer in the proceedings, against computation of overtime on a rate less than the "regular rate" of pay of their employees.

"This opinion," said General Fleming, "is at direct variance with the opinion of Judge Roy Atwell in the Dallas News case, which the Division is appealing before the United States Court of Appeals for the Fifth Circuit at New Orleans. In the Dallas News case, the judge relieved the newspaper of the necessity of computing overtime on the employees' 'regular rate.'

"The Minnesota decision definitely sustains our position with respect to the payment of overtime compensation, and effectively checks the many fictitious devices designed to defeat the purposes of the Act. If employers are permitted to resort to such methods to escape the payment of overtime compensation, the great benefits intended by Congress when the Fair Labor Standards Act was passed, would be denied to the workers of the nation."

In his opinion enjoining the Carleton Screw Products Company Judge Joyce stated:

"It is clear that the purpose of the plan, which was put into effect on September 1, 1938, was to keep within the provisions of the new wage and hour law and at the same time to maintain the employees' wages at the same level as theretofore existed. In general the plan works out in this way: If an employee had been receiving sixty cents an hour previous to September 1, 1938, a rate of fifty cents was set up on defendant's books and on that rate overtime compensation is computed. To this amount is added a 'bonus' in an amount sufficient to bring the employee's total wage for the pay period to an amount equalling the total hours worked during such pay period multiplied by sixty cents - the hourly rate he received prior to

September 1, 1938. Thus (using a forty-four hour basic week), if this man works fifty hours a week his pay is computed by multiplying 44 (hours) by 50 cents (the rate set up on the books), which equals $22.00; multiplying 6 (overtime hours) by 75¢ (time and one-half) equals $4.50, which added to the $22.00 makes a total of $26.50. At straight time of sixty cents per hour he would have received for fifty hours $30.00. And so in order to bring his pay up to this figure an amount of $3.50, called a bonus, is added to the $26.50 and the man receives a check for $30.00. In cases where this same employee works only forty-four hours a week there is of course no overtime to compute but the bonus is added in the same manner as in the other case. So that so far as the employee was concerned there was no difference in the way he computed his earnings before and after September 1, 1938. To quote the testimony of one of the men, 'I always computed weekly earnings on basis of total number of hours times the old rate.' There was nothing on the check or otherwise showing how much the bonus was. The Witness Kretlow testified: 'We really did not get a cut; it was only on the books that we got the cut.'

"A somewhat different situation exists with respect to employees who entered defendant's employ after September 1, 1938, but in principle the procedure is the same, the employee signing an agreement based on an 'agreed' hourly rate and receiving a 'guaranteed' earning based on a different rate. . . . .

"It seems to me that the construction contended for by defendant to the effect that employer and employee may agree on a regular rate of pay regardless of what compensation the employee actually receives, will permit employers to avoid the obligations imposed by Section 7 and will completely nullify the overtime provisions therein contained. If an employer is permitted to establish an 'agreed' rate of pay ten cents below that which it in fact is, as plaintiff points out in his brief there is no reason why the regular rate could not be 'stipulated' for purposes of overtime compensation at twenty or thirty cents below what it actually is and remove the penalty of Section 7 entirely. The fact that employer and employee 'agree' to a rate of pay which does not represent that at which the employee is really employed cannot preclude the operation of Section 7, for private agreements which are inconsistent with wage and hour statutes must yield to the broader public policy declared in those acts. . . .

"Moreover, the evidence in this case clearly indicates that the employees signed the agreements only after it was made clear that they would receive the same earnings as theretofore and because they felt there was no other recourse as they had been told that otherwise the plan would be dropped and they would remain on the old scale for a forty-four week and no overtime. Such assurance as to their earnings being given, I am of the view they received a continuing guarantee of their previous earnings and therefore that their actual and real rate of pay remained unchanged, and that this 'agreed rate' of pay of defendant was devised, as was said by the court in Gregory v. Helvering, 293 U. S. 465, to 'exalt artifice above reality,' as these rates had no other function in defendant's business."

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