

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

WAGE-HOUR COVERAGE OF SAND AND GRAVEL DREDGE  
EMPLOYEES CLARIFIED

Employees on sand and gravel dredges, including those of the Smoot Sand and Gravel Company of Washington, D. C., will not be regarded as seamen and therefore exempt from the benefits of the Wage and Hour Law, General Philip B. Fleming, Administrator of the Wage and Hour Division, U. S. Department of Labor, announced today.

The Division's stand was announced in commenting on the recent decision of the U. S. Circuit Court of Appeals for the Fifth Circuit regarding the application of the Fair Labor Standards Act to men employed as seamen. Certiorari was denied by the Supreme Court. In the case of Gale et al vs. Union Bag and Paper Corporation, the Court's decision indicated that to be exempt as "seamen" the employees duties must be concerned with the navigation of the vessel. In July, 1940, when a strike of Smoot workers tied up building construction in the District, General Fleming in a letter to the Smoot Corporation stated that he had reached the conclusion on the basis of the facts submitted to him that the dredge workers involved were "seamen" and therefore exempt from the benefits of the Act.

"You understand, of course, that the Administrator's interpretation of the statute is subject to review by the courts, but I propose to adhere to this view unless at some future date my administrative construction is deemed erroneous by a court of competent jurisdiction," General Fleming wrote at that time.

In the case of Gale et al vs. Union Bag and Paper Company, the court, while holding that certain bargetenders were seamen and therefore exempt, emphasized the fact that those bargetenders performed only services which related to the welfare, operation and safety of the barges which were operated on navigable waters as means of transportation in commerce, General Fleming pointed out.

Therefore the decision is not regarded as controlling in the case of workers on barges who perform other duties--for example, workers who because of their loading and unloading functions are correctly to be regarded as stevedores. In such cases the exemption is not deemed applicable.

Because the decision in this case indicates that to be exempt as a seaman, the work of the employee in question must be directed to the navigation of a vessel as a means of transportation upon navigable waters, it is also regarded as implying that employees on dredges whose duties relate to the operation of the dredging mechanism are not properly to be considered seamen.

The decision in this case indicates that the decision taken by General Fleming with respect to the dredging employees of the Smoot Sand and Gravel Company on July 12, 1940, was probably erroneous. Therefore the Administrator on reconsideration no longer feels that his previous administrative decision was correct and today announced its abandonment.

On October 9, 1940, the Division had announced that the Administrator's letter of the previous July 12 applied only to the particular circumstances of the operations of the Smoot Sand and Gravel Company. Employers of dredging employees who are engaged in interstate commerce or in the production of goods for interstate commerce are advised to comply with the provisions of the Act as to such employees.

# # #