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Wage and Hour and Public Contracts Divisions

For the first time, in a civil contempt proceeding brought for violation of an injunction under the Fair Labor Standards Act, a United States District Judge has ordered a defendant company, in addition to payment of a fine, not only to make simple restitution of back wages to its employees, but to pay an additional equal amount as liquidated damages, it was announced today by L. Metcalfe Walling, Administrator of the Wage and Hour and Public Contracts Divisions of the United States Department of Labor.

The order of the Judge, William F. Smith, was made on October 21 in a civil contempt proceeding filed in the United States District Court for New Jersey on behalf of the Administrator by the New York regional office of the Divisions for the violation of the terms of a consent judgment entered against Jersey Footwear Inc., in 1941. The Administrator charged that the defendant had failed to pay wages in accordance with the provisions of the Fair Labor Standards Act pursuant to that judgment.

In order to purge itself of contempt to which the defendant pleaded guilty, Judge Smith permitted the defendant company to make restitution to 42 employees of \$2000 in unpaid wages under the Act. In addition, however, he read into the record section 16(b) of the Act, which provides for liability to employees not only for simple restitution but also for an additional equal amount as liquidated damages, and required the defendant to pay the added equal amount on the ground that the violations of the Act automatically created the liability which it provided. In view of the decisions of the Supreme Court of the United States in Brooklyn Savings Bank v. O'Neil and D.A. Schultz Inc. v. Gangi, holding that an employee cannot waive his rights under Section 16(b) of the Act by accepting his unpaid statutory minimum wage and overtime compensation and executing a release to the employer releasing him from liquidated damages, it was the judge's opinion that what the employee cannot compromise for himself the court in the enforcement of a federal statute should not compromise for him in his behalf. Judge Smith also imposed a nominal fine of only \$100 on the grounds that the corporate management had changed after the violations took place.

In commenting on Judge Smith's action, Mr. Walling pointed out that this decision in a proceeding by the Administrator represents a novel application of the holdings of the courts in employees' suits that the liability of an employer for liquidated damages attaches immediately upon the failure of the employer to pay the minimum wage and overtime compensation under the Act at the end of the regular pay period.
