

Summary Judgment Review

Case Name: *Amanda Duren v. International Follies, Inc., d/b/a Cheeta, and Jack Braglia*

Nature of the Order: Order on Motion for Summary Judgment

Magistrate Judge: N/A

District Judge: Eleanor L. Ross

Claims & Outcomes:

1. **Claim:** Minimum Wage (FLSA)
 - a. **Outcome:** Summary Judgment Granted in Part, Denied in Part
2. **Claim:** Overtime Wage (FLSA)
 - a. **Outcome:** Summary Judgment Granted
3. **Claim:** Unlawful Taking of Tips (FLSA)
 - a. **Outcome:** Summary Judgment Granted

Whether R&R Followed: N/A

For Race/Gender Discrimination Cases:

Race of Plaintiff: N/A

Gender of Plaintiff: N/A

Summary

The Defendants operate an adult entertainment club known as The Cheetah. The Plaintiff, Amanda Duren (“Duren”) worked at The Cheetah as an adult entertainer/dancer. Per Defendants’ written policy, The Cheetah pays its entertainers a cash wage of \$2.13 per hour and applies a tip credit of \$5.12 per hour. Additionally, entertainers contribute 10% of their total tips to floormen and disc jockeys as part of a tip-pooling arrangement. Duren disputes this policy. First, Duren argues that she was required to participate in an invalid tip pool in which she was required to share her tips with staff beyond those included in the written tip policy, such as managers and “house moms.” Second, Duren contends that she paid additional uncompensated fees which caused her wages to drop below minimum wage, such as paying for a mandatory work permit, parking fees, and the expense of maintaining her appearance per Defendants’ appearance policy. Third, Plaintiff argues that Defendants’ “waiting policy,” which required entertainers to engage in check-out procedures and remain on the job until all customers had departed, typically resulting in her working at least 30 minutes beyond the end of her shift, for which she was not compensated.

Defendants’ Motion for Summary Judgment asserts that (1) Duren’s minimum wage and overtime wage claims are not recoverable because she seeks compensation for non-compensable postliminary activities; (2) that The Cheetah’s tip policy is valid because no employers or

managers participated in the tip pool; and (3) that none of Duren's claims for other payment are recoverable under the FLSA because they were voluntarily made by Duren or she failed to articulate how the payments benefited the Cheetah.

The Court analyzed Defendants' arguments about the tip policy in three stages. First, the Court found that floormen and disc jockeys were "regularly and customarily tipped" employees because they earned more than \$30 a month in tips. Therefore, they were valid members of the tip pool. Next, the Court considered tips given to the purported day shift manager and other house moms. The Court found that Duren failed to show that these individuals were included in the mandatory tip pool. Duren also argued that Bob Johnson served as a manager/employer and was improperly part of the tip pool. The Court found that there was a genuine issue of material fact on this issue. Accordingly, the Court granted Defendants' motion as to the floormen, disc jockeys, and house moms, and denied Defendants' motion as to Johnson.

The Court then turned to Duren's overtime wage claims regarding her post-shift activities. Duren did not oppose this portion of Defendants' motion. The Court held that Duren was not entitled to receive compensation for her post-shift activities because they were not integral and indispensable to the principal activity she was employed to perform.

Lastly, the Court considered Duren's claim for Defendants' alleged unlawful taking of tips. The Court rejected Duren's allegations regarding unlawful direction claims because she raised them for the first time in her response to Defendants' motion. Duren's only remaining claim was that she was required to make payments to the house moms. The Court found that Duren could not demonstrate that these payments were mandatory or required by Defendants or for the employer's benefit.

The Court therefore granted Defendants' Motion for Summary Judgment in all regards, except for Duren's minimum wage claims that Bob Johnson was unlawfully part of the tip pool.