

Yankees Servers Score Class Cert. In Wage Dispute

Law360, New York (July 26, 2013, 2:48 PM ET) -- A New York federal judge on Thursday granted conditional certification in a collective action accusing the New York Yankees Partnership and a catering company co-owned by the Yankees of failing to pay the caterer's waitstaff minimum wage, tips and other compensation.

U.S. District Judge Katherine Forrest said the servers, who worked for Legends Hospitality LLC at Yankee Stadium, had made the required "modest factual showing" that they had all been victims of the team and Legends' allegedly unlawful policies, including their failure to pay overtime and gratuities and to accurately record employees' hours.

"Here, the plaintiffs have satisfied the light burden they bear at the first stage of certification," Judge Forrest said.

Annette Pollock, Victor Viera Jr. and Misael Fernandez filed the proposed class action against their employer and the Yankees in mid-November, accusing them of violating the Fair Labor Standards Act and New York's labor laws.

The waitstaff of Legends — a catering company founded jointly by the Yankees and the Dallas Cowboys when the new Yankee Stadium opened in 2009 — were paid \$7 an hour, 25 cents below the federal minimum wage, while they were also unable to keep all the tips they had earned, according to the suit.

The company required event organizers to pay a set 20 percent service charge, 13 percent of which was to go directly to the service staff while the remainder was to cover administrative costs, but the employees allegedly never saw the entire amount that was supposed to be set aside for them.

The employees say Newark, N.J.-based Legends also failed to pay them time and a half for all the hours they worked in excess of 40 per week. The suit was filed on behalf of all current and former Legends employees who were allegedly unlawfully stiffed out of compensation since January 2009.

Legends asked the court to toss the case in February, contending that the servers were in fact paid in excess of the federal minimum wage because the service charge imposed on

customers that went to the waitstaff was part of the servers' regular pay rate under the Fair Labor Standards Act and counted toward the company's minimum wage obligation.

"Thus, when evaluating plaintiffs' earnings under federal law, the court must consider not only the standard hourly wage paid to each employee, but the service charge paid to the employee as well," driving the worker's hourly rates "well in excess of \$7.25," the motion said.

The lowest pay rate for any of the named plaintiffs during the time period under review was \$23 an hour, Legends said.

The caterer also argued that the workers were exempt from the FLSA's overtime requirements because they were commissioned employees, since their regular pay rate was more than 1.5 times the minimum wage and at least half of their earnings consisted of commissions on services they had rendered.

But Judge Forrest ruled June 27 that neither of the arguments provided a basis for derailing the suit and she denied the motion to dismiss, without elaborating.

The judge on Thursday approved the plaintiffs' January motion to certify the case as a collective action, saying "the pleadings and declarations, taken together, suggest a common policy of failing to pay required minimum wages, overtime premiums, and tips."

The ruling enabled the named plaintiffs to send out court-authorized notices to current and former Legends servers, enabling them to opt in to the suit. The Yankees told the court on July 12 that the club did not oppose the distribution of the notices, according to the order.

Representatives for the parties could not be immediately reached for comment on Friday.

The servers are represented by Joseph A. Fitapelli, Brian S. Schaffer and Eric J. Gitig of Fitapelli & Schaffer LLP.

The defendants are represented by Richard J. Rabin, Kelly L. Brown, and Lawrence D. Levien of [Akin Gump Strauss Hauer & Feld LLP](#) and Harlan J. Silverstein, Shelby A. Silverman and Erica E. Frank of [Kauff McGuire & Margolis LLP](#).

The case is Pollock et al. v. Legends Hospitality LLC et al., case number [1:12-cv-08334](#), in the U.S. District Court for the Southern District of New York.

--Editing by Andrew Park.