

## Skycaps win Wage Act appeal over tips

**Published:** August 10, 2009

The Supreme Judicial Court has found that an airline's imposition of a charge on customers choosing curbside luggage check-in could be challenged by skycaps under the Wage Act.

The airline, held liable by a jury in the amount of \$325,000, argued that skycaps not directly employed by the airline did not fall within the protection of the act.

But the SJC disagreed.

"Here, we do not think that the Legislature intended to permit restaurants and airlines to avoid the mandates of the statute by outsourcing the services of waitstaff and service employees, and contractually requiring the outsource employer to remit to the restaurant or airline all or part of the service charges," Justice Ralph D. Gants wrote for a unanimous court.

"To allow such an 'end run' around the Act would contravene the express purpose of the Act, namely to protect gratuity payments given to, or intended for, service employees such as skycaps, and would nullify [G.L.c. 149,] §152A(g) of the Act, which specifically forbids this type of a maneuver 'by special contract ... [or] any other means,'" he said.

In the decision, which quoted from various grammar guides, the SJC found that U.S. District Court Judge William G. Young's interpretation of the Wage Act gave undue weight to the placement of a single comma.

"We do not adopt a statutory interpretation derived from an analysis of punctuation that conflicts with principles of statutory construction," Gants wrote. "In other words, to paraphrase a statement attributed to Sigmund Freud, sometimes a comma is 'just' a comma."

The lawyer for the skycaps, Shannon Liss-Riordan of Lichten & Liss-Riordan in Boston, said the case revolved around an increasingly prevalent issue "in which employers attempt to evade their obligations under the wage laws by employing their workers through contractor companies or intermediary companies of some sort. This ruling rejects such a means of evading this provision of the wage law."

Philip J. Gordon of the Gordon Law Group in Boston, who wrote an amicus brief on behalf of employment and labor law groups, said the decision uses "terrifically strong language to get at the heart of who gets the financial benefit of the services."

He added that the unusually lively language of the decision is a bonus. "I have no recollection of seeing Sigmund Freud quoted in any Wage Act case ever, anywhere," he said.

The 18-page decision is *DiFiore, et al. v. American Airlines, Inc.*, Lawyers Weekly No. 10-137-09. The full text of the ruling can be found at [masslawyersweekly.com](http://masslawyersweekly.com).

Amy Cashore Mariani and Michael A. Fitzhugh, of Fitzhugh & Mariani in Boston, represented the airline.

- Thomas E. Egan and Julia Reischel