

The Orange County Register

Waiters lose court ruling on credit card tips

August 13, 1999

Byline: BERNARD J. WOLFSON

Food servers, cocktail waitresses and other service workers could lose millions of dollars in tips if employers take their cue from an Orange County court decision handed down Thursday.

Superior Court Judge Frederick P. Horn ruled that Specialty Restaurants Corp., an Anaheim company with 60 restaurants nationwide, was not breaking the law by withholding a portion of employee credit card tips to pay for corresponding service charges on the cards.

Credit card companies typically charge retailers fees ranging from 2 to 4 percent of sales. A 2 percent fee, for example, would work out to 20 cents on a \$10 tip.

"I wouldn't be in favor of their taking the credit card charge out of my tip, because that's how I make my livelihood, and they're already taxing me on my tips," said Sean McMahon, a waiter at Bobby McGee's restaurant in Brea.

California's Division of Labor Standards Enforcement, which brought the suit against Specialty Restaurants, argued that the practice violates a state law forbidding employers from taking any part of a tip.

Miles Locker, the division's chief lawyer, said his agency has won numerous similar cases in the past, and it is "very, very likely" the state will appeal Horn's decision.

Paying credit card fees is "just the cost of doing business," Locker said. "The decision whether or not to accept credit cards is made by the employer."

Ashley A. Baron, Specialty Restaurant's in-house lawyer, said her company never sees a penny of the fees it withholds from employee tips.

She said it's only fair that employees pay their share of credit card fees because restaurants attract more patrons by accepting the cards and that means more tips.

Richard Simmons, a lawyer for the California Restaurant Association, said most restaurants pay 100 percent of credit card service fees. But collecting a percentage from employees would be "worth millions," he said.

Gross sales by full-service restaurants in California totaled about \$9 billion last year, according to Michael Pro시오, a lobbyist for the California Restaurant Association. Tips usually range from 15 to 20 percent, though many are in cash.