



WHD-OL-1961

September 12, 1961

Name*

This is in further reference to your letter of July 31, 1961, concerning the application of the amended Fair Labor Standards Act to your interstate freight and passenger ship transportation service. The *** operates an interstate freight and transportation service between *** and ***. In connection with this service it provides sleeping accommodations and food for its patrons. You feel that the company is conducting, in effect, a restaurant and hotel business as an adjunct to its primary transportation function.

Section 13(a)(2)(ii) does provide a complete exemption from the monetary requirements of the Act (copy enclosed) for employees of a hotel or a restaurant. However, every place that provides sleeping accommodations is not a hotel nor is every place that serves food a restaurant. Ships clearly falls outside the ordinary meaning the terms "hotel" and "restaurant". Furthermore your letter concedes that the food and sleeping accommodations are provided as an adjunct to the primary function of transportation. Therefore, the exemption in section 13(a)(2)(ii) will not be applicable to your company.

The amended Act extends the minimum wage requirements to seamen aboard American vessels, but the overtime exemption for seamen is retained. As employees will ordinarily be regarded as employed as a seamen if he performs, as master or subject to the authority, control, and direction of the master aboard a vessel, service which is rendered primarily as an aid in the operation of a vessel as a means of transportation. In our opinion the services rendered by the employees mentioned in your letter would be essential to the operation of ship as a means of a ship as a means of passenger transportation, provided they perform no substantial amount of work of a different character.

We are also for the view that the section 13(a)(20) exemption has no application on the facts you present. This section provides a complete exemption from the monetary provisions of the Act to any employee of a retail or service establishment who is employed primarily in connection with the preparation or offering of food or beverage for human consumption, either on the premises or by such services as catering, banquet, box lunch or curb or counter service to the public, to employees primarily engaged in the preparation or offering of food or beverages such as dishwashers, cashiers, busboys etc. we would no regard a ship as a retail or service establishment for purposes of this exemption.

These employees will be entitled to the minimum wage of at least \$1.00 an hour beginning September 3, 1961, as set forth in section 6(b)(2) of the Act, but they will be exempt from overtime compensation under section 13(b)(6).

Very truly yours,

Administrator

*Note: The actual name(s) was removed to protect privacy in accordance with 5 U.S.C. § 552(b)(7).