

Starbucks may owe millions

by Greg Moran

When exactly the tip jar became a staple of the decor in coffeehouses, restaurants, bars, or dry cleaners isn't really known. Not even Wikipedia has an entry for the term.

But the humble tip jar is at the center of a potentially multimillion-dollar case in San Diego Superior Court involving coffee giant Starbucks and an estimated 120,000 of its baristas, the workers who grind the beans and froth the milk for lattes and cappuccinos.

The class-action lawsuit filed almost four years ago centers on the practice of pooling tips among workers. The suit contends the company's policy of sharing tips between baristas and shift supervisors violates state labor laws.

Those laws say managers or supervisors can't share in tips. In the first part of the non-jury trial in front of Superior Court Judge Patricia Yim Cowett, Starbucks argued that the shift supervisors were not managers, but performed many of the same tasks as baristas.

But Cowett disagreed.

In a ruling Feb. 28, she found the company liable, saying the evidence was clear that shift supervisors "both supervise and direct the acts of the baristas" at the 1,400 California stores the company operates.

That ruling ended the first part of the trial and set the stage for the damages portion, which begins today (March 12).

Terry Chapko, a lawyer for the baristas, said the final amount could be in the "tens of millions" of dollars.

The class action covers anyone who worked as a barista at Starbucks in California since October 2000 - a population that Chapko said is about 120,000 workers.

A spokeswoman for Starbucks said that because the case is pending, the company did not have much to say.

"We disagree with the judge's ruling," said Tara Darrow. "We are also evaluating our options for appeal and will do so after the next judgment."

Lawyers for the coffee giant did not respond to a request for comment.

The case is being closely watched by employment lawyers. Several cases dealing with the practice of tip pooling at casinos and restaurants are making their way through appeals courts now, said Timothy Kolesnikow, an El Segundo, Calif., used to work as an attorney for the state Labor Commissioner.

"There is a lot of controversy surrounding the abuse of so-called tip pools," he said. Employers like the practice because it lowers their labor costs and means they do not have to pay managers a higher wage, he said.

"The public thinks a tip is going to one person, but it's going to all kinds of people who had nothing to do with the intent behind the tip," he said.

Starbucks has fought the case vigorously, asking an appellate court to throw out the class action status of the case and reverse a ruling by Cowett that did not dismiss the suit. The appellate court declined to do so.

The suit was filed in 2004 by Jou Chou, a former Starbucks barista in stores in the La Jolla area of San Diego and in Hemet, Calif., who complained that shift supervisors - also called "shift leads" by the company - were sharing in tips.

State labor laws allow tip pooling among some workers, but employers, supervisors, managers or "agents" of the employers are precluded from sharing in the tips.

This phase of the trial could last as long as a week, and will include testimony from baristas as well as shift supervisors.

Heather Simental, a former barista who is a plaintiff in the case, worked at stores in San Diego's Clairemont area in 2004 and 2005. Simental said that at the end of each week, the money in the tip jar was divided among baristas and shift supervisors based on the hours each person worked that week.

Simental, 24, said no one questioned the practice. She also said the shift supervisors went to training classes, had store keys and performed other management functions.

"There was never any question the shift supervisors were managers," said Simental, who estimated her average weekly share of the tips was between \$20 and \$40.

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