

## Supreme Judicial Court Holds That Skycaps Were Entitled To Baggage Fees Charged By Airline

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Earlier this week, the Massachusetts Supreme Judicial Court held in *Difiore v. American Airlines* that a service fee charged by American Airlines for curbside check-in should have been paid to the skycaps. Although the skycaps were not employed by American Airlines, the Court held that the Massachusetts statute governing gratuities nonetheless applied to the service fee.

American contracted with a company called G2 Secure Staff to provide curbside baggage check-in at Boston's Logan Airport. G2 employed eight skycaps under this contract, and American directly employed one additional skycap. Prior to 2005, American did not charge for curbside check-in, but customers were encouraged to tip the skycaps. In 2005, American imposed a charge of two dollars per bag for this service. The skycaps retained no portion of this fee and instead were required to remit the fee to their respective employers.

The nine skycaps, along with a skycap in Missouri, sued American, contending that the airline's collection of the charge violated Massachusetts General Laws Ch. 149, § 152A, the so-called Tips Statute. That statute prohibits an employer from retaining a tip or service charge. After a trial before the United States District Court for the District of Massachusetts, the jury found in favor of the nine Logan Airport skycaps and awarded them a total of \$325,000. However, after the trial, the judge granted American's motion for a new trial as to the claims brought by the eight skycaps employed by G2, concluding that he incorrectly instructed the jury on how the service charge applies to employees of a contractor rather than the airline.

However, the court also asked the Massachusetts Supreme Judicial Court ("SJC") to determine what constitutes a service charge under the statute. The Tips Statute defines a service charge as either (1) a fee charged in lieu of or in addition to a tip or (2) a fee that a customer reasonably would expect to be given to the employee. The federal court believed that the first category was limited to only those situations where the fee is imposed by the entity that employs the service worker.

The SJC rejected the federal court's interpretation and ruled that the statute applies to service fees charged by entities other than the workers' employer. It concluded that the Legislature did not intend to permit businesses to avoid the statute's requirements by outsourcing workers' services and then keeping the fees paid by customers as service charges. In the Court's view, this would contravene the purpose of the statute: to protect gratuity payments given to or intended for service workers.

Although the case itself involved a unique set of facts, *Diffiore* instructs the lower courts to interpret the Tips Statute broadly in order to protect service workers' earnings. Over the past few years, there has been a noticeable increase in the number of lawsuits filed under this statute, and we anticipate that this decision will encourage even more litigation. We recommend that employers of service employees review the manner in which gratuities are paid.