

This would certainly be so in the case of cab-drivers, waiters in Pullman cars and dining-cars, and others whose tips form a large part of their emoluments. (1)

There are decisions to the contrary, based on the view that such tips are too uncertain to be reckoned upon. (2)

But the better opinion appears to be, that, when such tips are a normal and expected thing, it is fair to take account of them. (3)

In regard to special gratuities by the employer himself similar considerations apply.

If they are quite casual and spontaneous, as when the employer gives the workman a tip for doing some bit of work of exceptional difficulty, they cannot be reckoned.

But if there is anything fixed or periodical about them they are part of the remuneration allowed. (4)

Such would be extra pay for overtime, bonuses for saving fuel or other meritorious conduct if such bonuses are part of the system, periodical presents, etc. (5)

The English Act applies to domestic servants, which ours does not, and in England it is held that where the employment is of such a nature that the habitual giving and receiving of tips is open and notorious, and sanctioned by the employer, the money thus received with his knowledge and approval, must be brought into account, in estimating the "average weekly earnings" in respect of which compensation has to be awarded. (6)

The principle has been applied in England to the case of a waiter on a dining-car, whose employer must be presumed to know what is notorious, that the waiter's remuneration consists largely of tips. (7)

(1) Paris, 12 janv., 1901, D., 1901. 2. 253.

(2) Limoges, 17 mai, 1901, D., 1902. 2. 207.

(3) *Ib.*, note by M. P. Dupuich; Sachet, v. 1, n. 826.

(4) Cass., 1 juill., 1908, D., 1909. 1. 192; Toulouse, 5 août, 1901, D., 1902. 2. 481; Rouen, 28 févr., 1900, D., 1900. 2. 181; Sachet, v. 2, nos. 820-828.

(5) Grenoble, 6 nov., 1907, D., 1909. 2. 177; Sachet, v. 1, n. 820.

(6) Section 13.

(7) *Penn. v. Spiers & Pond* (1908), 1 K. B., 766 (C. A.). See Beven, p. 393.