WHOSE MONEY IS IT?

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There was no question about it; being a server at Charley's Restaurant was hard work. You were on your feet all evening, doing your best to make the dining experience pleasurable. However, there was a reward to look forward to for all of your hard work—tips.

When the practice of tipping for food service started, no one knows for sure, but the custom had become firmly established in American restaurants and bars. In fact, tips had become so common, that an acronym was now associated with the practice; **TIPS**, **T**o **I**nsure **P**rompt **S**ervice. And, tips had become a significant part of many food servers total compensation.

By tradition and practice, customers typically left 15% to 20% of the total check as a tip. During a busy meal period, tips for fast, efficient, and pleasant service could be very rewarding. Under the Fair Labor Standards Act (FLSA), restaurants like Charley's were allowed to take a tip credit and pay servers less than the federally mandated minimum wage, based on the assumption that servers received tips from their customers.

While receiving tips may seem like a simple and expected practice, the distribution of tips can become a cause for concern and dissatisfaction. When servers receive all monies left on the table and credit and debit cards, the servers are satisfied, but greeters, bussers, and kitchen staff can feel left out. Recognizing the importance of the whole service team, servers frequently share a small portion of their tips with bussers. Some restaurants attempt to address what may seem like an inequity by establishing tip pooling plans. In these plans, servers pool and divide all of their tips based on pre-established allocation formulas.

No matter how tips are received, it seems like someone is always dissatisfied. In fact, dissatisfaction would be putting it mildly for one server at Charley's, Katy. She was downright mad and wasn't going to take it anymore. She had decided that the tip pooling plan at Charley's was unfair and she was taking action to make sure that she would be treated fairly.

Charley's followed the practice of pooling tips. The idea in and of itself wasn't so bad. If you had a bad day, had some lousy tippers for customers, or were assigned to a slow station, you could make it up by dividing tips equitably with other servers. The problem, as far as Katy was concerned, was that Charley's included the kitchen staff in the tip pool. Katy didn't mind pooling her tips with the other servers or giving a little bit to the bussers, but she finally decided to draw the line when it came to sharing with the cooks and dishwashers.

Katy had known about the practice at Charley's of servers receiving only 30% of the pooled tips in proportion to their hours worked and the kitchen staff receiving the remaining 70% when she was hired. She had accepted the idea because Charley's hourly pay rate had been $2.10 above the federal minimum wage. But, once she saw the money from her "hard work" being "taken" away from her and being given to "those out-of-sight" people, it was more than she could stand!

Katy wanted "her" money back and filed suit against Charley's to get it. Katy claimed that, although Charley's had paid her more than the required minimum wage, it had violated the FLSA. She claimed that even though Charley's had not taken a tip-credit, it was not customary for cooks and dishwashers to participate in the tip pool.

Since no management or supervisory employee participated in the tip-pooling plan, Charley's argued that the compensation program was valid and no laws were violated. So, whose money is it?