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Thousands of Workers Who Were Shorted On Overtime Pay Are Headed To the Supreme Court

It's the biggest Supreme Court case you've never heard of.

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Workers who band together to sue their employers over wage theft or discrimination are about to have their biggest day in court in years.

On Tuesday, the Supreme Court will hear oral arguments in a crucial case that could tighten the rules dictating how workers and consumers band together in the first place -- which could limit their ability to bring class-action lawsuits and other collective actions against corporations.

The case, Tyson Foods v. Bouaphakeo, involves a group of pork-processing workers in Iowa who claimed the meatpacking giant shorted them on overtime pay. The employees sued under the Fair Labor Standards Act in 2007, arguing they should have been compensated for the time it took to put on and take off the safety equipment they were required to wear while they worked. A jury eventually agreed, resulting in a $5.8 million judgment in favor of roughly 3,300 workers.

Now, Tyson wants the hefty award thrown out. The company does not dispute that the workers should have been paid for the hours in question. Rather, Tyson argues that the statistical method a court used to determine damages for the workers was legally bogus, and that the workers therefore aren't eligible to sue collectively.

At issue are the federal rules of procedure judges must follow when “certifying” a class of plaintiffs -- the first step in all class-action cases. Both plaintiffs and corporations put up their biggest legal fight at the certification stage, which can easily take years to complete. If a handful of workers can’t adequately show that they represent a "class" of thousands, the certification fails and the case essentially dies. Each employee is then left to sue on their own, and most don’t have the resources to do that.

For worker advocates, that could be a big setback. An individual meatpacking worker who was shorted on pay might be owed a few hundred or thousand dollars -- probably not enough to entice a lawyer to pursue her case alone. But when workers join together in large classes, there's a greater incentive for attorneys to represent them. The Supreme Court, for its part, has been all too eager to stiffen the highly technical rules of class actions, often to the detriment of plaintiffs.

That’s why the Tyson Foods case could have huge implications. A look at the lengthy list of who’s supporting who in the dispute shows as much: Organized labor and low-wage worker advocates have filed briefs in support of the workers, while the Chamber of Commerce and other major business lobbies have lined up behind the company.

"Not only Tyson but employers and companies of all kinds would, I'm sure, welcome a broad ruling restricting the availability of class actions," Scott Michelman, a lawyer with Public Citizen who is representing the workers, told The Huffington Post. "A lot of the workers may be from marginalized populations in one way or another and have trouble seeking recourse without this device of a class action."

On the other side, Tyson and management-side lawyers argue that the method used to determine damages -- applying an average sample to all the workers in the class -- is a sham.

According to the company, the plaintiffs relied on experts who applied average damages across the class, even though workers had different jobs with different responsibilities, and some spent more time donning, doffing and rinsing equipment than others. (The company also says the class of workers is illegitimate because a small percentage of the employees turned out not to be owed any overtime.)

Andrew Grossman, who penned an amicus brief on behalf of the libertarian think tank Cato Institute, argues that applying average damages is unfair not only to Tyson but also to individual workers, since some are entitled to more money than others.

"They set up the class action in a way that frustrated individual determinations of damages," Grossman said. "Is it fair to plaintiffs?"

"What they're trying to is have a 'trial by formula,' using an unsound, unrepresentative sample, and thrust it down the throat of the defendants," said Richard Alfred, head of the wage-and-hour litigation group at the law firm Seyfarth Shaw.

“Trial by formula” is a phrase pulled from another major class-action case, Wal-Mart v. Dukes, in which the Supreme Court virtually tossed what Justice Antonin Scalia called “one of the most expansive class actions ever." The case was led by a trio of female workers at the retail giant who claimed they were being denied equal pay and opportunities for promotion.

Demonstrators gather outside the Supreme Court in Washington, Tuesday, June 21, 2011, to protest the court's Wal-Mart class-action lawsuit decision.

Tyson is relying heavily on the Walmart precedent to make its case to the justices. In fact, shortly after the court decided the case in 2011, Tyson invoked it unsuccessfully to try to kill the class action altogether -- contending that the plant workers couldn’t show “in one stroke” that all of them were injured equally and that an award of damages would make the class whole.

Meatpacking companies in particular have a long history with this type of class-action suit. The suits are known in legal circles as "donning and doffing" cases, since they have to do with the time spent putting on and taking off equipment. In slaughterhouses, dressing for work isn't as simple as putting on a T-shirt; many employees wear heavy protective gear that resembles chain

mail. At the Tyson plant in Storm Lake, Iowa, some of the knife-wielding workers also spend extra time cleaning and storing their equipment.

Tyson itself has been sued numerous times over donning and doffing issues, according to federal court records. In a settlement with the Department of Labor in 2010, the company agreed to have certain line workers start clocking in before they put on their gear and clocking out after they took it off. At the time, Tyson said it was modifying its practices "in order to avoid the continued expense and disruption of further litigation." (The workers involved in the current case were employed at Tyson between 2004 and 2010, according to Michelman.)

In an emailed statement to HuffPost, Tyson said "we value our employees and strive to treat them fairly."

Complicating the "trial by formula" argument is that both sides agree that Tyson failed to keep an adequate record of how much each worker spent working overtime. In the absence of such records, the Supreme Court itself has said that workers can “approximate” how much they’re owed in such cases by drawing a “just and reasonable inference” -- which is exactly what the Tyson workers did, and what the lower courts that ruled in their favor accepted as valid.

So how will the Supreme Court deal with these competing precedents? It could simply find ways to deploy them in Tyson’s favor by tying them to the real end game: the rules of forming a class action in the first place. Because the rules require “commonality” among all the class members very early in the litigation, the court could easily agree with Tyson that the variance in the workers’ duties and damages owed -- which a statistical average obscures -- were too great at the outset to warrant bringing them all together under a large class action.

If the court agrees the employees are too dissimilar, the class action is bound to fail -- at which point workers would have no other recourse but to pursue their claims as individuals or as smaller classes, in which workers might be grouped according to more discrete job categories. This would set a precedent limiting the scope of future class-action suits, which would be a boon to Tyson and other big companies -- including Walmart, the nation's largest private-sector employer, which filed an amicus brief in support of Tyson.

The National Employment Law Project, an advocacy group for low-wage workers, filed a brief in support of the Tyson employees. Catherine Ruckelshaus, the group's general counsel, told HuffPost it was "sort of disgusting" that Tyson hadn't tracked the workers' donning-and-doffing time and paid them for it. Ruckelshaus said a broad ruling against the workers could make it harder for workers of all kinds to pursue back pay in class actions.

"There continues to be wage theft in lots of jobs in this country, and meat processing is one of the top employers that the Department of Labor has consistently identified as repeat offenders," Ruckelshaus said. "The suits are mostly filed by immigrant workers who don't have a lot of power in the workplace. [A ruling in Tyson's favor] is going to keep these workers from coming to the courts to enforce their rights."