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# The New York Times

**Late Edition** 

New York: **Today**, morning snow showers, high 35. **Tonight**, breaking clouds, low 31. **Tomorrow**, mostly sunny, high 38. **Yesterday**, high 35, low 28. Weather map appears on Page C8.

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\$1 beyond the greater New York metropolitan area.

75 CENTS

## Deliverymen to Get \$3 Million to Settle Wage Case

### By STEVEN GREENHOUSE

Deliverymen who often earn just \$2 an hour lugging bags of groceries to apartments up and down Manhattan for the Food Emporium supermarket chain will receive \$3 million in back pay under a settlement announced yesterday.

Some deliverymen — most of them immigrants from West Africa — stand to receive more than \$30,000, a windfall some say they will use to go to college or bring loved ones from Africa or move out of apartments they share with as many as five people.

Food Emporium, which uses about 110 deliverymen at more than a dozen stores in Manhattan, agreed to the

settlement after the company was sued on charges of violating minimum wage and overtime laws.

The deliverymen accused Food Emporium of wage violations because many of them worked from 9 a.m. to 9 p.m., six and sometimes seven days a week, but earned just \$150 to \$180 a week, even with tips. The result, workers and state investigators said, was that they were often paid less than half the federal minimum wage of \$5.15 an hour.

For several years, the Food Emporium deliverymen have been in a legal limbo, caught between the supermarket chain, which said it did not employ them, and the delivery

them, which insisted that they were independent contractors not covered by minimum wage laws.

company that hired and supervised

The deliverymen hailed the settlement as a vindication of their rights. These immigrant workers, many of them here illegally, are often too frightened to speak up about violations of their rights.

"This settlement is important because it will teach Food Emporium a lesson that this shouldn't happen anymore," said Mamadou Camara, who made deliveries for five years for the Food Emporium at 68th Street and Broadway. "We were all working like slaves. No one was making much money, there was no medi-

Continued on Page B4

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CITY

#### Supermarket Deliverymen to Get \$3 Million in Back Pay

Continued From Page Al

cal, no benefits, nothing at all."

These cart-pushing deliverymen are a phenomenon limited largely to Manhattan. Several factors have created a huge demand for them: Manhattan's high population density, Manhattanites' limited use of cars, and the difficulty of lugging heavy groceries up and down stairs and in and out of elevators.

Their situation is somewhat different from that of deliverymen at many Chinese restaurants and dry cleaners, in New York and in other cities, that readily acknowledge that deliverymen are their employees.

In reaching the settlement, the Great Atlantic and Pacific Tea Company, which owns the Food Emporium, Waldbaum's and A.&P. chains, persuaded the deliverymen, represented by the National Employment Law Project, and Attorney General Eliot L. Spitzer to drop their lawsuits against the company.

Food Emporium executives denied any wrongdoing in a statement about the settlement. "The responsibility for any underpayment of these workers lies with the outside delivery companies who employ them," they said. "These workers have never been employees of Food Emporium. We believe that we ultimately would have prevailed were these claims to have gone to trial."

But the deliverymen are maintaining a lawsuit against two Manhattan retailers — Gristede's supermarkets and Duane Reade drugstores — as well as against two closely linked delivery companies, Hudson Delivery and Chelsea Trucking, that provide workers to Food Emporium, charging all of them with widespread minimum wage violations.

Several deliverymen interviewed yesterday voiced optimism that their lot would improve, not just because of the settlement but also because Food Emporium officials said they might hire their deliverymen as regular employees. In addition, some 230 deliverymen recently joined a labor union and signed a contract.

Hudson Delivery and Chelsea Trucking have long maintained that they were not violating minimum wage laws, on the grounds that those laws do not apply to independent contractors. But the deliverymen asserted that they were employees, not



Fred R. Conrad/The New York Time

Marcel Mweze, from Burundi, preparing to deliver groceries from a Food Emporium store.

contractors, because those delivery companies directed them day to day.

"This is one of the worst situations of sweatshop treatment that I've seen," said Catherine K. Ruckelshaus, a lawyer for the deliverymen and litigation director of the National Employment Law Project, a nonprofit group based in New York. "Given the magnitude of the hours and the puny amount they were paid, it just shows how misclassification of workers acts to put them into servitude."

The law project will not share in the settlement, but it expects to be awarded lawyers' fees by the court, she said.

To improve their situation, more than 200 deliverymen working for Hudson Delivery and Chelsea Trucking voted to unionize last January. Under their union contract, they are guaranteed at least \$5.15 an hour and, unlike before, time-and-a-half for work on Sundays and for all hours worked above 40 hours each week.

Great Atlantic, the parent company of A.&P., based in Montvale, N.J., is owned by the Tengelmann Group of Mülheim an der Ruhr, Germany.

Under the settlement, several hundred deliverymen who have worked

over the last six years at Food Emporium stores, as well as at a handful of Waldbaum's and A.&P. stores in Manhattan, can apply to Attorney General Spitzer for wages due because of minimum wage and overtime violations. Lawyers estimated that 200 current and former workers would apply, with back pay based largely on hours worked.

"We worked enormously hard to cajole, push and lobby A.&P., that this was the right thing to do," Mr. Spitzer said. "It's very much to their credit that they stepped up to the plate and have now agreed to pay this amount."

Mr. Spitzer said his lawsuit against Food Emporium was part of a broad effort, evidenced by lawsuits against greengrocers and garment shops, to prevent employers who rely on immigrant workers from preying on them by, for example, paying less than minimum wage.

Mr. Spitzer said his office was investigating allegations that Gristede's, Duane Reade, Hudson, Chelsea and another delivery company violated minimum wage laws.

Randy M. Mastro, a lawyer for Gristede's, said the company had complied with all of its legal obligations. "It was never the employer of any of these deliverypersons," he said. "They're employed by an independent delivery agency. Nevertheless, Gristede's has insisted that this independent delivery agency pay its workers the minimum wage as a condition of continuing to do business."

Anthony Cuti, Duane Reade's chief executive, also denied underpaying any delivery workers. "We have numerous people delivering or dropping goods off," he said. "We are not responsible for the myriad of people who are delivering for us."

Martin Gringer, a lawyer for Hudson and Chelsea, said now that the two delivery companies had signed a contract with the Retail, Wholesale and Department Store Union, they had stopped insisting that the deliverymen are independent contractors

He said the two companies were in serious settlement negotiations that might be resolved soon. He said that the companies complied with minimum wage laws and questioned assertions that many deliverymen were paid just \$2 an hour, suggesting that they never would have stayed in those jobs if they earned so little.

#### A Sense of Disbelief And Family Obligation

#### By SUSAN SAULNY

The number is almost unfathomable to Bukuru Benoît, a Food Emporium deliveryman who arrived in New York from Burundi nearly penniless six years ago. He is reluctant to broach the subject, to muse about how he would spend it, to even say, "\$30,000."

It's not that he feels undeserving; he believes he is owed that much or more. It is, rather, a matter of disbelief, almost skepticism, about someday soon having a check for more money than he thought he would ever see all at once, for an amount it would take three years to earn by shuttling groceries around the Upper West Side.

Mr. Benoît, 34, is one of about 100 deliverymen to whom the Food Emporium supermarket chain has agreed to pay \$3 million in back pay under a settlement announced yesterday. The deliverymen, most of them immigrants from West Africa, accused Food Emporium of wage violations because they worked long hours, six or seven days a week, for half the federally mandated minimum wage.

So they lived five, six or more to an apartment, eating homecooked rice and beans and doing without all the amenities they thought they could earn in the "country of opportunity," as Mr. Benoît called the United States.

Despite word of the settlement, Mr. Benoît and his co-workers at the Food Emporium on Broadway and 68th Street were not gloating yesterday and had no plans to quit their jobs or quickly spend the money. Rather, there was just a muted sense of relief.

"My family does not have something to eat," Mr. Benoît explained. "For me to have things here means they would not have anything. This money would make me happy, but it will be sent first to my family."

Mr. Benoît left Burundi on a mission, he said, not only to make a better life for himself, but to earn enough money to ease the hardships endured by his mother and other family members. Tribal factions had ripped apart his homeland's economy, he said, leaving factories closed and many of his countrymen dead. Mr. Benoît said he felt obligated to help them before he helps himself.

Batchili Charles, 30, a native of Congo who lives in the Bronx, agreed that his share of the money would not go toward consumption for consumption's sake. "I don't think the money is going to reflect on my actual life," he said. "It will just give some relief."

So no shopping sprees? What about a more spacious apartment?

"The first priority for most of

#### Money earned here can ease lives in Africa.

us is family," Mr. Charles said. "Many of us also want to go to school. The problem has been not having money to get training to get better jobs. To study computer science, that is my dream."

Marcel Mweze, 31, agreed. "I want to do any training that can help me to have any skill, any nice job in America," he said.

Mr. Benoît said that he and many of the others had accepted the working conditions because they did not have a choice.

"It was not enough money to live on, but I only had one friend in New York and I had to do something for myself," Mr. Benoît said, his words a soft-spoken mix of French and English. "We lived in one house, five or six people."

"The situation was very bad," he said. "But I believe I will be happy soon."