performace of the duty resting on the driver of the truck at the time. The driver cannot excuse himself from not seeing a person on the highway if, under the circumstances, he as an ordinarily prudent person driving his truck would have seen him. The law charges the driver with seeing all that he ought in the exercise of due care to have seen.

It cannot be demonstrated with mathematical certainty that the front of the tractor or trailer struck the plaintiff and cast him to the road to be run over by the rear wheels, but such a high degree of proof is not required. *Hennessey v. Hennessey*, 145 Conn. 211, 214.

There is room for a reasonable difference of opinion with respect to the issues in this case, and the plaintiff is entitled to have the issues of fact determined by the jury. *Maroncelli v. Starkweather*, 104 Conn. 419, 422.

The motion for judgment in favor of the defendants is denied.

**ADMINISTRATIVE REGULATIONS**

**LABOR DEPARTMENT**

Minimum Wage Division

Mandatory Order No. 8 Re: Minimum Fair Wage for Restaurant Occupations

The following minimum wages are ordered:

**SEC. 180-12-1. MINIMUM WAGE:** $1.00 per hour.

Gratuities received by a service employee may be allowed as part of the minimum fair wage but shall not exceed 35 cents per hour when in compliance with all provisions of Section 180-12-8.

**Minimum Daily Earnings Guaranteed:** Any employee regularly reporting for work unless given adequate notice the day before to the contrary, or any employee called for work in any day shall be assured a minimum of two hours’ earnings at the minimum rate of $1.00 per hour if the employee is able and willing to work for that length of time. If the employee is either unwilling or unable to work the number of hours necessary to insure the two-hour guarantee, a statement signed by the employee in support of this situation must be on file as part of the employer’s records.

**Work On Seventh Consecutive Day:** Not less than one and one-half times the minimum rate for all time worked on the seventh consecutive day.

**Overtime:** Not less than one and one-half times the minimum rate for all hours worked in excess of 48 in any work week.

In the case of a salaried employee, whose salary is in excess of the required minimum, the excess over the minimum is not to be applied to cover overtime in excess of the usual and regular work week and instead in such a case the employee should receive an additional $1.50 for each hour worked over his usual and regular work week.

**SEC. 180-12-2. RESTAURANT OCCUPATION** as used in this order shall include all persons engaged in the preparation and serving of food for human consumption, or in any operation incidental or supplemental thereto, irrespective of whether the food is served at or away from the point of preparation, and irrespective of whether the preparation and serving of food is the sole business of the employing establishment or enterprise, with the exception that this definition shall not include the preparation and serving of food in a non-profit educational, charitable or religious organization where the food service is not regularly available to the general public, or the preparation and serving of food in hospitals, convalescent homes or homes for the elderly where the food service is not regularly available to the general public and is incidental to the care of the patient.

This occupation includes but is not limited to employees of restaurants, cafeterias, that portion of the hotel business involving the preparation and serving of food, commissaries, dairy bars, grills, coffee shops, luncheonettes, sandwich shops, tea rooms, nightclubs, cabarets, automats, caterers, frankfurter stands, operators of food vending machines, and the serving of food in department and variety stores, drugstores, candy stores, bakeries, pizzerias, delicatessens, places of amusement and recreation, commercial and industrial establishments, and social, recreational, fraternal and professional clubs which either regularly or intermittently serve food, as well as other establishments or businesses meeting the condition stated in this paragraph.

**SEC. 180-12-3. DIVERSIFIED EMPLOYMENT WITHIN THE RESTAURANT INDUSTRY.** If an employee performs both service and non-service duties, and the time spent on each is definitely segregated and so recorded, the allowance for gratuities as permitted as part of the Minimum Fair Wage may be applied to the hours worked in the Service category. If an employee performs both service and non-service duties and the time spent on each cannot be definitely segregated and so recorded, or is not definitely segregated and so recorded, no allowances for gratuities may be applied as part of the Minimum Fair Wage.

**SEC. 180-12-4. EMPLOYMENT UNDER OTHER WAGE ORDERS.**

**Mercurialite:** If an employee is engaged partly in the restaurant occupation but is also engaged partly in an occupation covered by the Mercantile Wage Order, the provisions of the Mercantile Wage Order shall apply to the entire work period except that when time spent in each occupation is segregated and separately recorded, the allowance for gratuities as permitted as part of the Minimum Fair Wage may be applied to the hours worked by an employee in the restaurant service category.

**Other:** If an employee is engaged partly in an occupation under the Restaurant Wage Order but is also engaged partly in an occupation covered by another wage order
other than the Mercantile Wage Order, the higher provisions of each wage order shall apply to the entire work period unless the time spent in each occupation is definitely segregated and so recorded. Where the time spent in each occupation is definitely segregated and so recorded the provisions of the applicable wage order will apply.

SEC. 180-12-5. RESTAURANT EMPLOYEE means any person who is employed or permitted to work in any restaurant occupation, establishment, or enterprise.

SEC. 180-12-6. SERVICE EMPLOYEE shall mean any employee whose duties relate solely to the serving of food and/or beverage to patrons seated at tables or booths, and to the performance of duties incidental to such service, and who customarily receives gratuities. For the purpose of this Order, the person shall not be considered to customarily receive gratuities unless a minimum of $10.00 per week in gratuities is received in the case of full time employees, of $2.00 per day in the case of part time employees, as evidenced by signed statements of the employee, stating unequivocally that such worker did receive gratuities as herein required, which must be maintained as part of the records of the employer.

SEC. 180-12-7. NON-SERVICE EMPLOYEE shall mean an employee other than a service employee, as herein defined. A non-service employee shall include, but is not limited to, countergirls, counterwaitresses, countermen, counterwaiters and those employees serving food or beverage to patrons seated at tables or booths and who do not customarily receive gratuities as defined above.

SEC. 180-12-8. DEFINING AND GOVERNING GRATUITIES AS PART OF THE MINIMUM FAIR WAGE. For the purpose of this wage order, gratuities shall mean a voluntary monetary contribution received by the employee directly from a guest, patron or customer for service rendered.

Gratuities may be recognized as constituting a part of the Minimum Fair Wage when all of the following provisions are complied with:

(a) The employee must be engaged in an employment in which gratuities have customarily and usually constituted and have been recognized as part of his remuneration for hiring purposes and

(b) The amount received in gratuities claimed as credit for part of the Minimum Fair Wage must be recorded on a weekly basis as a separate item in the wage record even though payment is made more frequently and

(c) Each employer claiming credit for gratuities as part of the Minimum Fair Wage paid to any employee shall obtain weekly a statement signed by the employee attesting that he or she has received in gratuities the amount claimed as credit for part of the Minimum Fair Wage. Such statement must contain the week ending date of the payroll week for which credit is claimed and

(d) Gratuities received in excess of 35 cents per hour need not be reported or recorded for the purposes of this regulation.

SEC. 180-12-9. DEFINING AND GOVERNING DEDUCTIONS AND ALLOWANCES FOR THE REASONABLE VALUE OF BOARD AND LODGING. For purposes of this Wage Order "Board" shall mean food furnished in the form of meals on a regularly established schedule. "Lodging" shall mean housing facility available to him at all hours of the day wherein the employee sleeps, rests and may store clothing and personal belongings.

Wages paid to any employee may include the reasonable value of board and/or lodging as herein established and may be considered as part of the Minimum Fair Wage if such condition is made known to and accepted by the employee at the time of hiring or change of classification as a usual condition of employment.

In accordance with the foregoing:

An allowance (or deduction) of not more than 60 cents for a full meal and 35 cents for a light meal will be permitted as part payment of the Minimum Fair Wage provided such allowance (or deduction) shall be made in accordance with the hiring agreement which provides for such an allowance (or deduction).

A full meal must provide to the employee a variety of wholesome nutritious food and shall include adequate portions of at least one of the types of food from four of the following groups:

(a) fruit, fruit juice, soup
(b) cereal, bread (or a recognized substitute)
(c) eggs, meat, fish, including sandwiches made thereof (or a recognized substitute)
(d) dessert
(e) beverage

For a meal which does not meet the qualifications of a full meal as herein defined but does provide to the employee adequate portions of wholesome nutritious food, and does include one of the types of food from at least three of the following groups, an allowance not to exceed 35 cents will be permitted as part payment of the Minimum Fair Wage:

(a) fruit, fruit juice, soup
(b) cereal, bread (or a recognized substitute)
(c) eggs, meat, fish, including sandwiches made thereof (or a recognized substitute)
(d) dessert
(e) beverage

No allowance (or deduction) in excess of $1.80 a day for full meals as supplied, or in excess of 70 cents for light meals, as supplied, will be permitted as part payment of the Minimum Fair Wage.

In any case where full meals are made available to the employee by the employer, the allowance of 60 cents for a full meal as defined will be permitted as part payment of the Minimum Fair Wage. In such a case the employee may not elect the light meal in lieu of the full meal.

Allowances (or deductions) may be made only for meals consistent with the employee's work shift when the employee is on duty, and only for meals consistent with a regular meal schedule when the employee is off duty.

An allowance (or deduction) of not more than $4.00 a week for a private room or of not more than $5.00 a week for a room shared with others, will be permitted as part payment of the Minimum Fair Wage, provided the allowance (or deduction) shall be made in accordance with a hiring agreement which provides for such an allowance (or deduction).

An allowance (or deduction) for lodging will be permitted as part payment of the Minimum Fair Wage only when the facility supplied conforms to reasonable specifications with respect to size, privacy, sanitation, heat, light and ventilation. All such facilities shall be open to inspection by an authorized representative of the Labor Commissioner at any reasonable time.

When housing consisting of more than one room is provided for the employee and such circumstances are established in the hiring agreement, the Labor Commissioner shall establish reasonable allowance for such housing and
in establishing such allowances as it should apply in terms of
of Section 2025d through 2034d of the 1955 Supplement
to the General Statutes shall be guided by the prevailing
rentals for similar quarters including those authorized by
the local Housing Authority in privately or publicly fin-
nanced housing.

No allowances (or deductions) will be permitted as part
payment of the Minimum Fair Wage when an employee is
required to share a bed.

Any deduction for board or lodging not conforming to
the conditions herein set forth leaves the employer liable
under those sections of statute forbidding the payment to
the employee of a wage less than that due him because of
his services.

Sec. 180-12-10. DEDUCTIONS. No deductions shall be
made from the minimum wage rates excepting those
required or authorized by law, and excepting deductions
made by the employer for the purpose of paying the employee’s
premium in an individual or group life insurance policy
or a hospitalization policy.

Deductions for such premiums should not be made
without the written consent of the employee. Such written
consent shall be kept on file and subject to review by the
Labor Department.

Sec. 180-12-11. DEPOSIT. No deposit shall be required
by an employer from any employee for a uniform or for any
other purpose except by permission of the Connecticut State
Labor Department.

Sec. 180-12-12. HOURS WORKED shall include all time
during which an employee is required to be on the em-
ployer’s premises or to be on duty, or to be at a prescribed
work place, and all time during which an employee is em-
ployed or permitted to work, whether or not required to do
so.

Meal periods may be credited as non-working time pro-
vided the beginning and ending of the meal period are so
recorded on the time records, and provided the employee is
entirely free from all work requirement during the period
and is free to leave the establishment.

Sec. 180-12-13. TRAVEL TIME AND TRAVEL EXPENSES. Any employee who is required or permitted to travel from
one establishment to another after the beginning or before
the close of the work day, shall be compesated for travel
time at the same rate as for working time, and shall be re-
imbursed for cost of transportation.

Sec. 160-12-14. COMPUTATION OF TIME. All time shall
be reckoned to the nearest unit of fifteen minutes.

Sec. 180-12-15. DEFINING AND GOVERNING THE PHYS-
ICALLY OR MENTALLY HANDICAPPED. For the purpose
of this regulation issued in accordance with Section 3790 of
the General Statutes a “physically or mentally handicapped
person” shall mean a person whose earning capacity is im-
paired by age or physical or mental deficiency or injury.

To prevent curtailment of employment opportunities
physically or mentally handicapped workers whose earning
capacity has been impaired by a physical or mental
impairment which constitutes an actual handicap as di-
rectly related to the performance of the duties which the
employee is required to perform may be paid at a modifi-
cation of the Minimum Fair Wage rate provided that:

1. Permission has been granted by the Labor Com-
misssioner, after an investigation, to employ the worker
at a rate lower than the established Minimum Fair
Wage. Such permission shall specify the minimum
wage to be paid to the employee and the type of work
for which modification of the Minimum Fair Wage was
granted. Such permission shall be valid from the date
of issuance and acceptance by employer and employee
to the date of revocation or the cancellation of such
permission. Such permission may be revoked by the
Commissioner if investigation discloses that it was
obtained by misrepresentation of any kind.

2. Any deviation from the terms of the permission
except an upward revision of the minimum wage set
forth in the permission shall be deemed a violation of
this regulation and will cancel the permission effective
on the date the violation occurs and from that date
forward the minimum wage as defined in this Wage
Order shall be applicable for all hours of employment.

An employer desiring to employ a physically or mentally
handicapped worker at a modification of the Minimum Fair
Wage rate shall make application to the Labor Commissi-
ioner prior to such employment and shall set forth:

1. The name and address of the person to whom
the modified Minimum Wage Rate shall apply.

2. Nature of the handicap.

3. The duties to which the worker will be assigned
and the apparent degree of handicap in performing
such duties.

4. The proposed hourly rate at which the handi-
capped worker is to be employed based upon the extent
to which the worker is handicapped in the performance
of duties required.

5. The willingness of the employee to accept a modi-
fied hourly rate subject to approval.

In any case where the nature of the handicap and its
relation to the performance of duties to be assigned is not
discernible by ordinary observation, it shall be within the
authority of the Labor Commissioner to require certification
of such handicap and its relation to job performance by a
licensed physician at the expense of the employer.

In any case where the nature of the handicap is due
to mental disability the legal guardian of the employee may
act in behalf of the employee with respect to the acknow-
edgment of the handicap and the acceptance of the modi-
fied Minimum Wage Rate.

Sec. 180-12-16. EXECUTIVE EMPLOYEE. An employee
engaged in a bona fide executive capacity shall mean any
employee:

(a) who is compensated for his services at a rate
not less than $15.00 per week or $355.50 per month;
and

(b) whose primary duty consists of the manage-
ment of the establishment in which he is employed or
of a customarily recognized department or subdivision
thereof; and

(c) who customarily and regularly directs the work
of two or more employees therein; and

(d) who has the authority to hire or discharge
other employees or whose suggestions and recommen-
dations as to hiring or discharging and as to the ad-
vancement and promotion or any other change of
status of other employees will be given particular
weight; and

(e) who customarily and regularly exercises dis-
cretionary powers.

Sec. 180-12-17. DEFINING AND GOVERNING RECORDS.
For the purpose of this regulation issued in accordance
with the provisions of Section 2033d “true and accurate rec-
ords” shall mean accurate legible records for each employee
showing:
DECISIONS OF SENTENCE REVIEW
DIVISION OF SUPERIOR COURT

STATE OF CONNECTICUT v. NORMAN TARDIFF

Decided August 21, 1958

Application for review of sentence imposed by the Superior Court in Hartford County (No. 19421). Sentence confirmed.

Norman Tardiff, pro se, the defendant.

Albert S. Boll, state's attorney, for the state.

BY THE DIVISION. The defendant, age thirty-three, was sentenced on May 20, 1952, by the Superior Court at Hartford to a term of not less than fourteen nor more than fifteen years in state prison on a charge of manslaughter. He was permitted to plead guilty to manslaughter notwithstanding the fact that the grand jury had indicted him for murder in the second degree.

The only previous conviction of the defendant was for nonsupport in Auburn, Maine, in December of 1946, for which he received a sentence of six months.

Agnes Tardiff, the defendant's wife, died on January 25, 1952, as a result of multiple stab wounds inflicted upon her by him. He and his wife, parents of six children, had had marital difficulties over a period of years. Prior to the slaying, the defendant had written a lengthy letter addressed to the chief of police in Hartford setting forth grievances against his wife, claiming that his wife was going around with other men and that she had transmitted a venereal disease to him. On the night of the stabbing, he and his wife had a quarrel as to whether or not their marriage should be re-established. The knife which inflicted the fatal wounds was a one-blade fishing knife. The autopsy revealed sixteen stab wounds. After wounding her, he attempted suicide by stabbing himself twice.

The state felt there was sufficient evidence for a first degree murder indictment. The grand jury apparently believed the defendant had been in a temporary state of passion and that he was not motivated by malice. This coupled with the fact that the state did not desire to have two of defendant's young children, eleven and twelve years old, testify against him, were factors leading the state to recommend the acceptance of the plea to manslaughter. The court expressly placed upon record its recommendation that the sentence should at no time be reduced by the board of pardons, because of its feeling that the ultimate and maximum consideration was being shown the defendant in accepting his plea to manslaughter.

In returning an indictment for murder in the second degree, the grand jury appears to have recorded the defendant the benefit of every consideration to which he might be entitled. He received additional consideration at the hands of the state in being permitted to plead to manslaughter, which saved him from being exposed to a conviction of murder in the second degree, with its consequent life sentence.

The opinion of the sentencing court is entitled to great weight in determining whether the sentence may be too severe or otherwise inappropriate. The trial court did not take too severe a view of the matter.

The sentence imposed in this case should stand.

Thim, Ryan and Pastore, Js., participated in this decision.
DECISIONS OF SENTENCE REVIEW
DIVISION OF SUPERIOR COURT

STATE OF CONNECTICUT v. NORMAN TARDIFF

Decided August 21, 1958

Application for review of sentence imposed by the Superior Court in Hartford County (No. 19421). Sentence confirmed.

Norman Tardiff, pro se, the defendant.

Albert S. Bill, state's attorney, for the state.

By the Division. The defendant, age thirty-three, was sentenced on May 20, 1952, by the Superior Court at Hartford to a term of not less than fourteen nor more than fifteen years in state prison on a charge of manslaughter. He was permitted to plead guilty to manslaughter notwithstanding the fact that the grand jury had indicted him for murder in the second degree.

The only previous conviction of the defendant was for nonsupport in Auburn, Maine, in December of 1946, for which he received a sentence of six months.

Agnes Tardiff, the defendant's wife, died on January 25, 1952, as a result of multiple stab wounds inflicted upon her by him. He and his wife, parents of six children, had had marital difficulties over a period of years. Prior to the slaying, the defendant had written a lengthy letter addressed to the chief of police in Hartford setting forth claimed grievances against his wife, claiming that his wife was going around with other men and that she had transmitted a venereal disease to him. On the night of the stabbing, he and his wife had a quarrel as to whether or not their marriage should be re-established. The knife which inflicted the fatal wounds was a one-blade fishing knife. The autopsy revealed sixteen stab wounds. After wounding her, he attempted suicide by stabbing himself twice.

The state felt there was sufficient evidence for a first degree murder indictment. The grand jury apparently believed the defendant had been in a temporary state of passion and that he was not motivated by malice. This coupled with the fact that the state did not desire to have two of defendant's young children, eleven and twelve years old, testify against him, were factors leading the state to recommend the acceptance of the plea to manslaughter. The court expressly placed upon record its recommendation that the sentence should at no time be reduced by the board of pardons, because of its feeling that the ultimate and maximum consideration was being shown the defendant in accepting his plea to manslaughter.

In returning an indictment for murder in the second degree, the grand jury appears to have accorded the defendant the benefit of every consideration to which he might be entitled. He received additional consideration at the hands of the state in being permitted to plead to manslaughter, which saved him from being exposed to a conviction of murder in the second degree, with its consequent life sentence.

The opinion of the sentencing court is entitled to great weight in determining whether the sentence may be too severe or otherwise inappropriate. The trial court did not take too severe a view of the matter.

The sentence imposed in this case should stand.

Thim, Ryan and Pastore, Js., participated in this decision.

RENEATO E. BOCUTTI,
Labor Commissioner

Received and filed in triplicate, this 6th day of November 1958, in accordance with Section 221 of the General Statutes, Revision of 1949; Mildred F. Allen, Secretary of State, By: Louis J. Tapogna. Approved: John J. Bracken, Attorney General, November 10, 1958.