

[Cite as *Billups v. Ohio Dept. of Rehab. & Corr.*, 2004-Ohio-2374.]

IN THE COURT OF CLAIMS OF OHIO

DAVID BILLUPS :
Plaintiff :
v. : CASE NO. 2003-10210-AD
OHIO DEPARTMENT OF : MEMORANDUM DECISION
REHABILITATION AND CORRECTIONS :
Defendant :
: :::::::::::::::

FINDINGS OF FACT

{¶1} 1) On or about January 22, 2003, plaintiff, David Billups, an inmate, was transferred from defendant's Southern Ohio Correctional Facility ("SOCF") to defendant's Ross Correctional Institution ("RCI"). Plaintiff related his personal property was packed and delivered into the custody of SOCF personnel incident to the transfer.

{¶2} 2) Plaintiff asserted that after he arrived at RCI and regained possession of his personal property, he discovered his radio, typewriter, and fan were not among the returned property items. Plaintiff contended the radio, typewriter, and fan were lost while under the control of SOCF staff. Consequently, plaintiff filed this complaint seeking to recover \$322, the replacement value of the alleged lost articles.

{¶3} 3) In a totally unrelated matter, plaintiff stated his cell was subjected to a shakedown search on July 31, 2003 by an

employee of RCI. Plaintiff maintained the RCI employee damaged his television set and headphones during the course of the shakedown search. Plaintiff is seeking an additional \$245.00 for his property damage claim. Plaintiff's total monetary claim amounts to \$567. Filing fees for this complaint were paid.

{¶4} 4) Plaintiff submitted copies of his property inventories compiled incident to his transfer from SOCF to RCI. One inventory, compiled at SOCF on January 21, 2003 lists a radio, typewriter, and fan among plaintiff's packed property. A second inventory made at RCI, after plaintiff's transfer was completed, does not reflect a radio, typewriter, and fan among the items received at RCI.

{¶5} 5) Defendant admitted liability for the loss of plaintiff's radio, typewriter, and fan. However, defendant argued plaintiff's damages for these items should be limited to \$279.99, the reasonable replacement value for all articles claimed lost.

{¶6} 6) Defendant denied plaintiff's television set and headphones were damaged during a shakedown search. Defendant contended plaintiff has failed to produce evidence to establish his property was damaged by an RCI employee. Although defendant acknowledged a search was made of plaintiff's cell on July 31, 2003, defendant denied any of plaintiff's property was damaged during this search.

{¶7} 7) Plaintiff submitted a response to defendant's investigation report and insisted his damage claim is an accurate representation of his loss. Furthermore, plaintiff reiterated his television set and headphones were damaged by an RCI employee during a July 31, 2003 shakedown search. The trier of fact does not find plaintiff's assertions particularly persuasive.

CONCLUSIONS OF LAW

{¶8} 1) It has been determined by this court that when a defendant engages in a shakedown operation, it must exercise ordinary care in doing so. *Henderson v. S.*

Ohio Correctional Facility (1979), 76-0356-AD.

{¶9} 2) Plaintiff has the burden of proving, by a preponderance of the evidence, that he suffered a loss and that his loss was proximately caused by defendant's negligence. *Barnum v. Ohio State Univ.* (1977), 76-0368-AD.

{¶10} 3) Plaintiff has failed to prove he suffered any property damage as a result of defendant's conduct during the shakedown operation. *Zanders v. Dept. of Rehab. & Corr.* (1997), 96-11921-AD.

{¶11} 4) Plaintiff has failed to show any causal connection between any damage to his television set and headphones and any breach of duty owed by defendant in regard to protecting inmate property. *Druckenmiller v. Mansfield Correctional Inst.* (1998), 97-11819-AD.

{¶12} 5) In respect to the loss of a typewriter, fan, and radio, plaintiff has proven, by a preponderance of the evidence, negligence on the part of defendant. *Baisden v. S. Ohio Correctional Facility* (1977), 76-0617-AD.

{¶13} 6) As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. S. Ohio Correctional Facility* (1988), 61 Ohio Misc. 2d 239.

{¶14} 7) The court finds defendant liable to plaintiff in the amount of \$279.99, plus the \$25 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Dept. of Rehab. & Corr.* (1990), 62 Ohio Misc. 2d 19.

{¶15} Having considered all the evidence in the claim file and, for the reasons set forth in the memorandum decision filed concurrently herewith, judgment is rendered in favor of plaintiff in the amount of \$304.99, which includes the filing fee. Court costs are assessed against defendant. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

DANIEL R. BORCHERT
Deputy Clerk

Entry cc:

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