

[Cite as *Dailey v. Dept. of Rehab. & Corr.*, 2019-Ohio-5481.]

TIMOTHY DAILEY

Plaintiff

v.

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

Case No. 2018-01392AD

Deputy Clerk Daniel R. Borchert

MEMORANDUM DECISION

FINDINGS OF FACT

{¶1} Plaintiff, Timothy Dailey, an inmate, filed a complaint against defendant, Department of Rehabilitation and Correction (“DRC”). Plaintiff related on August 19, 2018, while he was housed at defendant’s Warren Correctional Institution (“WCI”), Correctional Officer (“CO”) Ballard conducted a search of his cell while he was at food service. Plaintiff contended a search was not allowed outside his presence. Plaintiff asserted CO Ballard took his 15” Clear Tunes television. The television was put on the contraband control slip without a serial number or name brand. He stated he showed a Sergeant his title to his television and the Sergeant directed defendant’s personnel to give his television back. However, at that time, the television could not be located.

{¶2} Plaintiff seeks damages in the amount of \$250.00 for the loss of his 15” Clear Tunes television. Plaintiff was not required to submit the \$25.00 filing fee.

{¶3} Plaintiff submitted a copy of a document revealing he received a television on December 21, 2015.

{¶4} Plaintiff provided a copy of a Conduct Report dated August 19, 2018 for a Rule 51 violation, possession of contraband, which stated: “On the above date and time Officer Ballard was conducting a random cell search in cell 3C229. I found the following contraband items: stolen TV, broken fan, and modified TV antenna. Inmate Dailey #513633 claimed all contraband items were his.

{¶5} Plaintiff supplied a copy of a hearing officer’s Report dated August 20, 2018. The Report in relevant part stated the following:

IN THE COURT OF CLAIMS OF OHIO

“Conduct report. Inmate did present title for TV. Finding: Inmate did have contraband. Based on these findings, the hearing officer finds reason to believe that the accused inmate violated Rule #51 and that disposition by the hearing officer is appropriate. Therefore, the hearing officer imposes the following disposition: Guilty, verbal warning: The TV can be returned to inmate, the other contraband can be destroyed if it has been altered/destroyed.”

{¶6} Plaintiff also submitted a copy of Chairman of the Rules Infraction Board Review which affirmed the decision of the hearing officer.

{¶7} Finally, plaintiff provided copies of the Contraband Control Slip which lists the following: T.V., broken fan (destroyed), homemade antenna (destroyed).

{¶8} Defendant filed the investigation report denying liability. DRC questioned the decision of the hearing officer. DRC indicated the hearing officer was under the impression the television in question was the television for which plaintiff presented title. However, the television taken during the random search of plaintiff's cell was an AMP'd TV not a Clear Tunes TV, for which he had title. Accordingly, defendant asserted the hearing officer's decision was erroneous. Therefore, plaintiff's claim should be denied.

{¶9} Defendant submitted a copy of the Contraband Log dated for August, 2018, which revealed an AMP'd TV was taken from inmate Dailey's cell on August 19, 2018.

{¶10} Plaintiff filed a response to defendant's investigation report. Plaintiff asserted on the day in question, CO Ballard took his Clear Tunes television and set it on his desk. At that time, he got into an argument with another inmate at which time his Clear Tunes television went missing. Plaintiff stated he never owned or possessed an AMP'd television. Plaintiff stated the hearing officer reviewed the evidence and made his determination based on those facts. The officer ordered the return of his television

IN THE COURT OF CLAIMS OF OHIO

but the set was subsequently lost. In his response, he stated the purchase price of the television was \$220.00.

CONCLUSIONS OF LAW

{¶11} The Court of Claims does not have jurisdiction over decisions of the Rule Infraction Board. *Chatman v. Dept. of Rehabilitation and Correction*, 84-06323-AD (1985); *Ryan v. Chillicothe Institution*, 81-05181-AD (1981); *Rierson v. Department of Rehabilitation*, 80-00860-AD (1981).

{¶12} An RIB decision does not relate to civil law, a proper subject for adjudication pursuant to Chapter 2743 of the Ohio Revised Code. Instead, the RIB relates to private rights and remedies involving criminal proceedings and penalties imposed by a disciplinary board. Therefore, it falls outside the court's exclusive jurisdiction. *Maynard v. Jago*, 76-0581-AD (1977). Accordingly, this court has no jurisdiction to question the underlying factual determination of the RIB. See, *Hughley v. Southeastern Correctional Institution, et. al.*; 2008-09392, 2009-Ohio-2840; *Larkins v. Department of Rehabilitation and Correction*, 2001-07548, 2001-Ohio-1701; *Dearing v. Ohio Department of Rehabilitation and Correction*, 2011-09551-AD, 2011-Ohio-6916; *Bell v. Ohio Department of Rehabilitation and Correction*, 2016-00278-AD, 2017-Ohio-9444.

{¶13} It should be noted that the RIB decision was never reversed and remained in full force and effect.

{¶14} A long line of cases supports the proposition that decisions by the RIB cannot be questioned by this court. *Heyward v. Ohio Department of Rehabilitation and Correction*, 2016-00641-AD (2017), *aff'd jud* (2017). Therefore, the decision with respect to the return of plaintiff's television stands.

{¶15} When prison authorities obtain possession of an inmate's property, a bailment relationship arises between the correctional facility and the inmate. *Buhrow v. Department of Rehabilitation and Correction*, 85-01562-AD (1985); *Sallows v.*

IN THE COURT OF CLAIMS OF OHIO

Department of Correction, 85-07773-AD (1986). Defendant does not deny it was in possession of plaintiff's television when plaintiff presented evidence to the hearing officer confirming his ownership of the set. "A bailment is defined as a delivery of something * * * by one party to another, to be held according to the purpose or object of the delivery, and to be returned * * * when that purpose is accomplished.' (Footnotes omitted.) 8 Ohio Jurisprudence 3d (1978), 401, Bailments, Section 2." *Bacote v. Ohio Department of Rehabilitation and Correction*, 61 Ohio Misc.2d 284, 578 N.E.2d 565 (Ct. of Cl. 1988). A bailment relationship was created when defendant's agents took possession of plaintiff's television.

{¶16} By virtue of this relationship, defendant must exercise ordinary care in handling and storing the property. *Buhrow, Sallows*. If property is lost or stolen while in defendant's possession, it is presumed, without evidence to the contrary, defendant failed to exercise ordinary care. *Merrick v. Department of Rehabilitation and Correction*, 85-05029-AD (1985); *Cox v. Southern Ohio Training Center*, 84-03740-AD (1986). Evidence reveals that defendant had possession of plaintiff's property on August 20, 2018, at the time of the hearing officer's report, since the hearing officer determined all property in question, with the exception of the television, was contraband.

{¶17} Negligence on the part of defendant has been shown in respect to the issue of property protection. *Billups v. Department of Rehabilitation and Correction*, 2000-10634-AD (2001).

{¶18} As trier of fact, this court has the power to award reasonable damages based on evidence presented. *Sims v. Southern Ohio Correctional Facility*, 61 Ohio Misc.2d 239, 577 N.E.2d 160 (Ct. of Cl. 1988). In the case at bar, plaintiff has provided information that the television was purchased on December 21, 2015. In his response, plaintiff stated the purchase price was \$220.00.

{¶19} Damage assessment is a matter within the function of the trier of fact. *Litchfield v. Morris*, 25 Ohio App.3d 42, 495 N.E.2d 462 (10th Dist. 1985). Reasonable

IN THE COURT OF CLAIMS OF OHIO

certainty as to the amount of damages is required, which is that degree of certainty of which the nature of the case admits. *Bemmes v. Pub. Emp. Retirement Sys. of Ohio*, 102 Ohio App.3d 782, 658 N.E.2d 31 (12th Dist. 1995).

{¶20} Plaintiff's television is a depreciable item. This court has the authority to determine depreciation based on the age of the property in question. See *Weaver v. Ohio Department of Rehabilitation and Correction*, 2011-10134-AD (2012); *Woodward v. Ohio Dept. of Rehabilitation and Correction*, 2016-00267-AD (2016); and *Bonnette v. Ohio Department of Rehabilitation and Correction*, 2017-00187-AD (2018). Evidence submitted revealed the television was over two and one-half years old when it was lost or stolen. Claims Page Depreciation Guide, see *Bonnette*, reveals a television has a useful life of twelve years. Plaintiff revealed the purchase price was \$220.00. Accordingly, at the time the television was lost or stolen, it had a replacement value of \$174.18.

{¶21} Therefore, judgment is rendered in favor of plaintiff in the amount of \$174.18.

TIMOTHY DAILEY

Plaintiff

v.

DEPARTMENT OF REHABILITATION
AND CORRECTION

Defendant

Case No. 2018-01392AD

Deputy Clerk Daniel R. Borchert

ENTRY OF ADMINISTRATIVE
DETERMINATION

IN THE COURT OF CLAIMS OF OHIO

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 \$174.18. Court costs are assessed against defendant.

DANIEL R. BORCHERT
Deputy Clerk

Filed 4/23/19
Sent to S.C. Reporter 2/13/20