

IN THE COURT OF CLAIMS OF OHIO

BARKIM ASADULLAH, #326-902 :
P.O. Box 7010
Chillicothe, Ohio 45601 : Case No. 2002-06936-AD

Plaintiff : MEMORANDUM DECISION

v. :

ROSS CORRECTIONAL INSTITUTION :

Defendant :

: : : : : : : : : : : : : : : :

For Defendant: Gregory C. Trout, Chief Counsel
Department of Rehabilitation and
Correction
1050 Freeway North
Columbus, Ohio 43229

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{¶1} THE COURT FINDS THAT:

{¶2} 1) On July 24, 2002, plaintiff, Barkim Asadullah, filed a complaint against defendant, Ross Correctional Institution. Plaintiff alleges on May 28, 2002, he was stopped by defendant's guards and required to give them possession of his cassette radio and its title. Plaintiff asserts during the course of the inspection defendant's agent, C/O Hairston, dropped the radio damaging it. Plaintiff seeks damages in the amount of \$43.00, the value of the cassette radio;

{¶3} 2) On September 17, 2002, plaintiff submitted the filing fee;

{¶4} 3) On September 17, 2002, plaintiff filed a motion to amend his complaint to include the amount of the filing fee.

Accordingly, he seeks to increase his prayer amount to \$68.00;

{¶5} 4) On November 18, 2002, defendant submitted the investigation report. Defendant confirmed that plaintiff was stopped and questioned by its agents on the day in question. However, defendant denies any of its officers dropped or in any way damaged plaintiff's cassette radio. Defendant asserts no damage report was ever filed by plaintiff nor did plaintiff complain of any damage to his cassette radio prior to filing this claim. Defendant submitted the statements of two of its agents in support of its position;

{¶6} 5) Plaintiff has submitted no evidence other than his own statements to support his allegations.

{¶7} THE COURT CONCLUDES THAT:

{¶8} 1) Plaintiff has the burden of proof to establish that his loss is caused by the negligence of defendant. *Barnum v. Ohio State University* (1977), 76-0368-AD;

{¶9} 2) When defendant engaged in a shakedown operation, it must exercise ordinary care in doing so. *Henderson v. Southern Ohio Correctional Facility* (1979), 76-0356-AD;

{¶10} 3) Plaintiff must produce evidence which affords a reasonable basis for the conclusion defendant's conduct is more likely than not a substantial factor in bringing about the harm. *Parks v. Department of Rehabilitation and Correction* (1985), 85-01546-AD;

{¶11} 4) Plaintiff has failed to prove, by a preponderance of the evidence, his property was damaged as a proximate result of any negligence on the part of defendant. *Fitzgerald v. Department of Rehabilitation and Correction* (1998), 97-10146-AD.

{¶12} Having considered all the evidence in the claim file and adopting the memorandum decision concurrently herewith;

{¶13} IT IS ORDERED THAT:

{¶14} 1) Plaintiff's motion to amend his complaint is MOOT;

{¶15} 2) Plaintiff's claim is DENIED and judgment is rendered in favor of defendant;

{¶16} 3) The court shall absorb the court costs of this case in excess of the filing fee.

DANIEL R. BORCHERT
Deputy Clerk

DRB/laa
2/4
Filed 2/26/03
Jr. Vol. 734, Pg. 85
Sent to S.C. reporter 2/26/03