

IN THE COURT OF CLAIMS OF OHIO

DAVID O. WARD	:	
Plaintiff	:	
v.	:	CASE NO. 2002-10411-AD
TRUMBULL CORRECTIONAL INSTITUTION	:	<u>MEMORANDUM DECISION</u>
Defendant	:	
	:	
	:	

FINDINGS OF FACT

{¶1} 1) Plaintiff, David O. Ward, an inmate incarcerated at defendant, Trumbull Correctional Institution, has alleged that on August 19, 2002, several items of his personal property were stolen from his locker box while defendant's personnel watched the theft occur.

{¶2} 2) Plaintiff filed this complaint seeking to recover \$84.67 for the property he lost as a result of the theft, plus \$25.00 for filing fee reimbursement. Plaintiff has claimed the loss of the following items: fifteen packs of cigarettes, five pouches of loose tobacco, two bags of coffee, a box of rolls, a combination lock, and a beard trimmer.

{¶3} 3) Defendant admitted liability for plaintiff's property loss with the exception of the claim for a beard trimmer. Defendant suggested plaintiff has not provided sufficient documentation to establish he rightfully owned a beard trimmer.

{¶4} 4) On June 23, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff insisted he rightfully owned the beard trimmer since he had purchased this item at an institution commissary. The trier of fact has no reason to dispute plaintiff's claim of ownership.

CONCLUSIONS OF LAW

{¶5} 1) Negligence on the part of defendant has been shown in respect to all property claimed. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD.

{¶6} 2) The assessment of damages is a matter within the province of the trier of fact. *Litchfield v. Morris* (1985), 25 Ohio App. 3d 42.

{¶7} 3) Where the existence of damage is established, the evidence need only tend to show the basis for the computation of damages to a fair degree of probability. *Brewer v. Brothers* (1992), 82 Ohio App. 3d 148. Only reasonable 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* (1995), 102 Ohio App. 3d 782.

{¶8} 4) The court finds defendant liable to plaintiff in the amount of \$84.67, plus the \$25.00 filing fee, which may be reimbursed as compensable damages pursuant to the holding in *Bailey v. Ohio Department of Rehabilitation and Correction* (1990), 62 Ohio Misc. 2d 19.

{¶9} 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 \$109.67, 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:

David O. Ward, #355-921
2075 South Avon-Belden Road
Grafton, Ohio 44044

Plaintiff, Pro se

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

For Defendant

RDK/laa
7/2
Filed July 11, 2003
Sent to S.C. reporter 7/22/03