

[Cite as *Crawford v. Noble Correctional Inst.*, 2004-Ohio-215.]

IN THE COURT OF CLAIMS OF OHIO

ANDRE C. CRAWFORD :

Plaintiff :

V. :

CASE NO. 2003-04805-AD

NOBLE CORRECTIONAL INST. :

## MEMORANDUM DECISION

Defendant :

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## FINDINGS OF FACT

{¶1} 1) Plaintiff, Andre C. Crawford, an inmate incarcerated at defendant, Noble Correctional Institution (NCI), has asserted he appeared before defendant's Rules Infraction Board (RIB) and was denied the opportunity to call witnesses on his behalf.

{¶2} 2) Additionally, plaintiff claimed he was promised \$36.00 in state pay for working in the kitchen at NCI. Plaintiff maintained he was not given the proper pay he was entitled to receive.

{¶3} 3) Furthermore, plaintiff alleged \$64.00 worth of his clothing items were lost or stolen.

~~{¶4}~~ 4) Plaintiff filed this complaint seeking to recover \$100.00 for lost wages and clothing, plus \$2,400.00 for “pain and suffering and harassment” associated with receiving false conduct reports.

{¶5} 5) Defendant denied liability in any matter raised by plaintiff. Defendant asserted plaintiff was properly paid. Defendant has no information regarding plaintiff's claim for lost or stolen property.

{¶6} 6) On November 7, 2003, plaintiff submitted a response to defendant's investigation report. Plaintiff disputes defendant's position in the investigation report.

## CONCLUSIONS OF LAW

{¶7} 1) To the extent that plaintiff's complaint alleges racial discrimination, retaliation, and violations of due process, his claims are founded upon alleged violations of Section 1983, Title 42, U.S. Code. However, it has been consistently held that actions against the state cannot be brought under Section 1983, Title 42, U.S. Code, because the state is not a "person" within the meaning of section 1983. See, e.g., *Jett v. Dallas Indep. School Dist.* (1989), 491 U.S. 701; *Burkey v. Southern Ohio Correctional Facility* (1988), 38 Ohio App. 3d 170; *White v. Chillicothe Correctional Institution* (Dec. 29, 1992), Franklin App. No. 92AP-1230.

{¶8} 2) Plaintiff has failed to prove he did not receive all his state pay based on his job classification. Furthermore, state pay loss if proven is not compensable in a claim of this type. *Cotten v. Dept. of Rehab. and Corr.* (1993), 92-02013-AD jud.

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

{¶10} 4) This court in *Mullett v. Department of Correction* (1976), 76-0292-AD, held that defendant does not have the liability of an insurer (i.e., is not liable without fault) with respect to inmate property, but that it does have the duty to make "reasonable attempts to protect, or recover" such property.

{¶11} 5) Plaintiff has failed to prove, by a preponderance of the evidence, his property was lost or stolen as a result of a negligent act or omission on the part of defendant. *Merkle v. Department of Rehabilitation and Correction* (2001), 2001-03135-AD.

{¶12} 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 defendant. Court costs are assessed against plaintiff. The clerk shall serve upon all parties notice of this judgment and its date of entry upon the journal.

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DANIEL R. BORCHERT  
Deputy Clerk

Entry cc:

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1/6  
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