[Cite as *Johns v. Chillicothe Correctional Inst.*, 2004-Ohio-6578.]

IN THE COURT OF CLAIMS OF OHIO

EVERETT L. JOHNS	:	
Plaintiff	:	CASE NO. 2004-08812 Judge Joseph T. Clark
v.	:	DECISION
CHILLICOTHE CORRECTIONAL INSTITUTION	:	
Defendant	:	

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

{¶ 1} On October 7, 2004, defendant filed a motion to dismiss pursuant to Civ.R. 12(B)(1). Although the basis of the motion is the court's lack of subject matter jurisdiction, defendant's argument also supports a dismissal based upon failure to state a claim upon which relief can be granted pursuant to Civ.R. 12(B)(6). On October 25, 2004, plaintiff filed a response.

{¶ 2} In construing a motion to dismiss pursuant to Civ.R. 12(B)(6) for failure to state a claim, the court must presume that all factual allegations of the complaint are true and make all reasonable inferences in favor of the non-moving party. *Mitchell v. Lawson Milk Co.* (1988), 40 Ohio St.3d 190. Then, before the court may dismiss the complaint, it must appear beyond doubt that plaintiff can prove no set of facts entitling him to recovery. *O'Brien v. University Community Tenants Union* (1975), 42 Ohio St.2d 242.

{¶ 3} Plaintiff alleges in his complaint that defendant failed to pay him overtime compensation for his work as a dog trainer while he was an inmate at defendant's Chillicothe Correctional Institution. Plaintiff claims that he is owed pay for 24 hours of work for every day that he was required to keep a dog in his cell during the training program.

{¶ 4} R.C. 4111.03 requires the payment of overtime wages as follows:

{¶ 5} "(A) An employer shall pay an employee for overtime at a wage rate of one and one-half times the employee's wage rate for hours worked in excess of forty hours in one workweek,

in the manner and methods provided in and subject to the exemptions of section 7 and section 13 of the 'Fair Labor Standards Act of 1938,' 52 Stat. 1060, 29 U.S.C.A. 207, 213, as amended."

{¶ 6} Generally, prisoners who perform work duties during incarceration are not employees of the institution. See *Hunt v. Ohio Dep't of Rehab. & Corr.* (1997), 90 Ohio Misc.2d 42, 44; *Fondern v. Ohio Dept. of Rehab. & Corr.* (1977), 51 Ohio App.2d 180, 183-184. Moreover, it has been specifically held that an employer-employee relationship does not exist between the state and an inmate for purposes of the federal Fair Labor Standards Act. See *Lentz v. Anderson* (N.D. Ohio 1995), 888 F.Supp. 847, (where the prison controlled and logged where each prisoner was during the day, prison selected which inmates worked and determined the hours and nature of work, and the only contract involved was a contract between the prison and a private business, not the prison and the inmate, an employer-employee relationship does not exist between the state and an inmate). Additionally, it is clear that the relationship between an inmate and a prison is custodial not contractual. *Hurst v. Department of Rehabilitation & Corr.* (Feb. 17, 1994), Franklin App. No. 93AP-716.

{¶ 7} Notwithstanding, plaintiff argues that Ohio Adm.Code 5120-3-08(B)(1) requires the prison officials to pay him overtime compensation for his work on a "special project."

{¶ 8} Ohio Adm.Code 5120-3-08(B)(1) provides:

{¶ 9} "Subject to the approval of the managing officer, category six and category seven inmates *may be paid* at the rate of one and one-half times their regular rate of pay for each hour in excess of one hundred forty hours per month, whenever the managing officer deems the additional employment of such inmates necessary and proper to the accomplishment of a special project or in the event of an emergency." (Emphasis added.)

{¶ 10} The applicable administrative code provision clearly gives discretion to the "managing officer" to determine matters of compensation and wages. The documents attached as exhibits to plaintiff's complaint conclusively establish that plaintiff's formal request for overtime pay was denied by defendant's managing officer.

{¶ 11} When dealing with the day-to-day operations of the prison, prison officials must be given a "wide-ranging deference in the adoption and execution of policies and practices that in their judgment are needed to preserve internal order and discipline and to maintain institutional

security." *Bell v. Wolfish* (1979), 441 U.S. 520, 547. See, also, *Jones v. North Carolina Prisoners' Labor Union*, (1977) 433 U.S. 119, 128. See, also, *Procunier v. Martinez*, (1974), 416 U.S. 396, 404-405. Based upon plaintiff's complaint and the documents attached thereto, the court finds that plaintiff's allegations fail to state a claim upon which relief can be granted. Defendant's motion shall therefore be granted and plaintiff's complaint shall be dismissed.

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Plaintiff :	CASE NO. 2004-08812
	Judge Joseph T. Clark
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	JUDGMENT ENTRY
CHILLICOTHE CORRECTIONAL INSTITUTION :	
:	
Defendant	
: : : : : : : : : : : : : : : : :	

For the reasons set forth in the decision filed concurrently herewith, defendant's motion to dismiss is GRANTED and plaintiff's complaint is DISMISSED. 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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JOSEPH T. CLARK
Judge

Entry cc:

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