

copies of receipts from the institution commissary showing plaintiff purchased these items on December 24, 2002 and January 22, 2003. Defendant has contended the claimed missing tobacco products, vitamins, and food stuffs were readily consumable and plaintiff would have probably consumed the bulk of the items before he was transferred on February 11, 2003.

{¶5} 5) Defendant denied liability for the loss of AIWA headphones. Defendant explained plaintiff possessed a title for a set of Colby headphones instead of the AIWA brand headphones listed in the complaint. Defendant has argued plaintiff failed to produce evidence showing he owned a pair of AIWA brand headphones. Defendant did not choose to offer an explanation concerning the disposition of plaintiff's Colby brand headphones.

{¶6} 6) On August 11, 2003, plaintiff filed a response to defendant's investigation report. Plaintiff denied consuming any of the products he purchased at the ToCI commissary he claimed that were lost during his transfer to TCI. Plaintiff insisted he owned a pair of AIWA headphones which were attached to his AIWA brand cassette player. Plaintiff was issued a title for an AIWA cassette player on January 8, 2003.

{¶7} 7) After reviewing all the evidence the trier of fact finds all property listed on the complaint with the exception of one box of nutty bars was lost while under defendant's control.

CONCLUSIONS OF LAW

{¶8} 1) Negligence on the part of defendant has been shown in respect to the loss of all property claimed except one box of nutty bars. *Baisden v. Southern Ohio Correctional Facility* (1977), 76-0617-AD; *Stewart v. Ohio National Guard* (1979), 78-0342-AD.

{¶9} 2) Defendant is liable to plaintiff in the amount of \$123.10, 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.

{¶10} 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 \$148.10, 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:

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