

Date: 20081103

Docket: T-1215-07

Citation: 2008 FC 1220

Toronto, Ontario, November 3, 2008

PRESENT: The Honourable Mr. Justice O'Reilly

BETWEEN:

STANLEY LEONARD POMFRET

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

[1] Mr. Stanley Pomfret argues that a Senior Deputy Commissioner (SDC) of the Correctional Service of Canada (CSC) wrongly denied his request to be reimbursed for certain craft materials that went missing when, in 2006, he was transferred from one institution to another.

[2] Mr. Pomfret asks me to overturn the SDC's decision. I agree that the SDC erred and will order a reconsideration by another decision-maker.

[3] The issue is whether the SDC's decision was unreasonable.

I. Factual Background

[4] In March 2006, Mr. Pomfret was transferred from Mountain Institution to Kent Institution. His belongings were packed by fellow inmates under CSC supervision. In June 2006, Mr. Pomfret made a claim for lost effects on the basis that a large quantity of valuable craft materials – 650 packages of beads and 80 packages of needles - had gone missing. He alleged that these materials were worth about \$2,000.00.

[5] In August 2006, the Acting Warden at Mountain Institution agreed with Mr. Pomfret that CSC policy had been violated in allowing inmates, rather than CSC staff, to pack his possessions. However, she refused to allow Mr. Pomfret's claim for reimbursement because the items were, in fact, packed and shipped to him.

[6] Mr. Pomfret appealed the Acting Warden's decision and, in November 2006, an Assistant Deputy Commissioner once again denied his claim. He noted that Mr. Pomfret had not produced receipts for the goods he claimed. In addition, records showed that a large quantity of craft materials had, in fact, been delivered to him at Kent.

[7] Mr. Pomfret took his claim to the next level and, on May 17, 2007, the SDC again denied it. The SDC found that Mr. Pomfret had received and signed for a large number of beads and needles at Kent. Further, Mr. Pomfret had no proof that these items were in his possession at Mountain before his transfer. Finally, the SDC noted that the goods in question were "consumable items" and, accordingly, were not normally compensable under the applicable Commissioner's Directive (being

CD-234 – *Claims Against the Crown and the Offender Accident Compensation Program*, para. 29 (see Annex "A").

II. Was the SDC's Decision Reasonable?

[8] I can overturn the SDC's decision only if I find that it was unreasonable.

[9] Mr. Pomfret's extensive submissions disclose three main areas of concern in the SDC's decision. First, the SDC found, as had the previous decision-makers, that Mr. Pomfret had received many hobby materials, including beads and needles, at Kent after his transfer from Mountain. Indeed, his hobby list is quite extensive. But it does not appear to contain beads and needles in quantities anywhere close to what Mr. Pomfret claims. None of the decision-makers identified the particular materials in issue on his hobby list.

[10] Second, Mr. Pomfret provided the SDC with a letter from a fellow inmate, Mr. Gray, who stated that he had seen inmates at Mountain exchanging Mr. Pomfret's beads for tobacco. Being aware that they were Mr. Pomfret's property, Mr. Gray seized 400 vials of these beads himself. Since he had also been transferred to Kent, he suggested that the beads should have been listed in the inventory of his cell contents. A CSC analyst reviewed this letter and, in a recommendation to the SDC regarding Mr. Pomfret's claim, stated "though he has provided a signed statement from another inmate, the validity of this statement is uncertain". The SDC did not refer to this statement or give any reason for discrediting it.

[11] Third, the SDC does not explain the finding that beads and needles are “consumable items” and, therefore, not compensable. The applicable Directive states that claims relating to “perishable and consumable effects shall normally not be accepted”. However, there is an exception where “the circumstances of the loss or damage justify the payment of compensation (*e.g.* the property could not have been consumed or used prior to its loss or damage).”

[12] This Directive appears to target goods that could readily be consumed. It is not clear that it was intended to cover craft materials. In addition, as the SDC himself noted, Mr. Pomfret’s effects were packed contrary to CSC policy. The SDC does not address the question whether these circumstances might justify the payment of compensation, even if the beads and needles could be considered consumables. Nor does it seem likely that these materials could have been “consumed or used” so quickly. Further, Mr. Pomfret’s hobby permit specifically states that consumable items should not be listed on it, which explains in part why Mr. Pomfret could not provide satisfactory proof of his possession of the claimed goods.

[13] Taking these concerns together, I find that the SDC’s decision is not reasonable in the sense that it does not fall “within a range of possible, acceptable outcomes which are defensible in respect of the facts and law” (*Dunsmuir v. New Brunswick*, 2008 SCC 9, at para. 47).

III. Conclusion and Disposition

[14] I find that the SDC failed to consider important evidence supplied by Mr. Pomfret and to analyze the issue whether he should be compensated for the loss of his belongings, even if they could be classified as consumable items.

[15] I will order that another decision-maker reconsider Mr. Pomfret's claim. As a self-represented litigant, Mr. Pomfret is not entitled to counsel fees, but he is entitled to disbursements.

JUDGMENT

THIS COURT'S JUDGMENT IS that

1. The application for judicial review is allowed. The matter is referred back to another decision-maker for reconsideration.
2. The applicant is entitled to disbursements.

“James W. O’Reilly”

Judge

Annex “A”

Commissioner’s Directive -234 – Claims
Against the Crown and the Offender Accident
Compensation Program, dated April 15, 2003

Directive du commissaire – 234 – Réclamations
contre l’état et programme d’indemnisation des
délinquants en cas d’accident, datée du 15 avril
2003

Perishable and Consumable Effects

Effets périssables et de consommation

29. Claims regarding perishable and consumable effects shall normally not be accepted. A settlement offer may only be made for these items when the circumstances of the loss or damage justify the payment of compensation (*e.g.* the property could not have been consumed or used prior to its loss or damage).

29. Les réclamations ayant trait à des objets périssables ou de consommation en sont normalement pas admises. Une offre de règlement ne doit être faite que lorsque les circonstances entourant la perte de ces effets ou les dommages causés à ceux-ci justifient le paiement d’un dédommagement (p.ex., si l’objet n’a pu être consommé ou utilisé avant sa perte ou son endommagement).

FEDERAL COURT

NAME OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: T-1215-07

STYLE OF CAUSE: STANLEY LEONARD POMFRET v. ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: Vancouver, British Columbia

DATE OF HEARING: April 24, 2008

**REASONS FOR JUDGMENT
AND JUDGMENT:** O'REILLY J.

DATED: November 3, 2008

APPEARANCES:

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