REPORTS

OF

Cases Argued and Determined

IN THE

COURT of CLAIMS

OF THE

STATE OF ILLINOIS

VOLUME 32

Containing cases in which opinions were filed and orders of dismissal entered, without opinion

for: Fiscal Year 1978 — July 1, 1977-June 30, 1978
Fiscal Year 1979 — July 1, 1978-June 30, 1979

SPRINGFIELD, LLINOIS
1981

(Printed by authority of the State of Illinois)

PREFACE

The opinions of the Court of Claims reported herein are published by authority of the provisions of Section 18 of the "Court of Claims Act," Ill. Rev. Stat. 1977, Ch. 37, para. 439.1 *et seq.*

The Court of Claims has exclusive jurisdiction to hear and determine the following matters: (a) all claims against the State of Illinois founded upon any law of the State, or upon any regulation thereunder by an executive or administrative officer or agency, other than claims arising under the "Workman's Compensation Act" or the "Workman's Occupational Diseases Act," or claims for certain expenses in civil litigation, (b) all claims against the State founded upon any contract entered into with the State, (c) all claims against the State for time unjustly served in prisons of this State where the persons imprisoned shall receive a pardon from the Governor stating that such pardon is issued on the grounds of innocence of the crime for which they were imprisoned, (d) all claims against the State in cases sounding in tort, (e) all claims for recoupment made by the State against any Claimant, (f) certain claims to compel replacement of a lost or destroyed State warrant, (g) certain claims based on torts by escaped inmates of State institutions, (h) all claims pursuant to the "Law Enforcement and Firemen Compensation Act," (i) all claims pursuant to the "Illinois National Guardsman's and Naval Militiaman's Compensation Act," and (j) all claims pursuant to the "Crime Victims Compensation Act."

A large number of claims contained in this volume have not been reported in full due to quantity and general similarity of content. These claims have been listed according to the type of claim or disposition. The categories they fall within include: claims dismissed without opinions, claims based on lapsed appropriations, claims for replacement of lost or expired warrants, certain back salary claims, and certain claims based on the "Crime Victims Compensation Act." However, any claim which is of the nature of any of the above categories, but which also may have value as precedent, has been reported in full.

OFFICERS OF THE COURT

JOHN B. ROE, ***Chief Justice***
Rochelle, Illinois
April 20, 1979—

S. J. HOLDERMAN, ***Judge***
Morris, Illinois
March 10, 1970—

LEO F. POCH, ***Judge***
Chicago, Illinois
June 22, 1977—

HARRY F. POLOS, ***Chief Justice***
Chicago, Illinois
December 6,1976—April 19,1979

ALAN J. DIXON
Secretary of State and Ex Officio Clerk of the Court
January 10,1977—January 4,1981

JIM EDGAR
Secretary of State and Ex Officio Clerk of the Court
January 5, 1981—

GERALD H. MAYBERRY, ***Deputy Clerk and Director***
Springfield, Illinois
June 1,1978—March 3,1980

ROBERT S. O'SHEA, ***Deputy Clerk***
Springfield, Illinois
November 1,1973—May 31,1978

WILLIAM G. O'ROURKE, ***Deputy Clerk***
Springfield, Illinois
March 3, 1980—

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(No. 75-CC-0833—Claim denied.)

JOHN DOUBLING, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order fzled January 2, 1976.

PRISONERS AND INMATES—*Bailments.* State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

PERLIN, C.J.

This is one of several actions pending in the Court of Claims wherein inmates of Illinois penal institutions are seeking damages for the alleged loss of items of personal property incurred when they were transferred between institutions.

The complaint herein alleges that on February 1, 1974, the Claimant had in his possession at the Illinois State Penitentiary, Menard Branch, certain items of personal property having a value of $183.82; that in mid-February he was ordered transferred to the Stateville Branch of the Illinois State Penitentiary; that he was not permitted to take his personal property with him during the course of the transfer, and that he accordingly delivered that property to an agent of the Department of Corrections for subsequent delivery to him at Stateville.

The complaint further alleges that when he arrived at Stateville Claimant was informed that his property was missing and could not be returned to him.

Claimant seeks damages for the value of that property, on the theory that it was negligently converted by Respondent's agents. Respondent has moved for a dismissal of this claim, contending that the complaint fails to state a cause of action upon which relief can be granted. Respondent asserts that the State of

Illinois is under no duty to inmates of its penal institutions to utilize due care in safeguarding their property.

We have held in *Bargas, et al. v. State of Illinois, 32 Ill. Ct. Cl.* that the State does not owe a duty to inmates of its penal institutions to safeguard property which they keep in their cells from pilferage by other inmates. The instant case presents a substantially different situation, however. Here it is alleged that at the instance of the State, Claimant was required to deliver his personal property to an agent of the State pending his transfer to another penal institution.

In this circumstance, where the State has taken actual physical possession of an inmate's property during the course of his transfer between penal institutions, a duty does devolve upon the State to utilize reasonable care to safeguard and return the property to an inmate once he reaches his new institution.

We hold only that the complaint herein does state a cause of action. The burden rests upon the Claimant to prove, by a preponderance of the evidence, that the property described in the complaint was in fact delivered to an agent of Respondent; that it was not returned to Claimant; that Respondent did not utilize reasonable care to insure its return; and the value of the property allegedly lost.

It is therefore ordered that Respondent's motion to dismiss this action be, and hereby is, denied.

This cause coming on to be heard on the motion of Claimant's attorney to dismiss, without prejudice;

And the Court being fully advised in the premises that Claimant has moved and can no longer be located.

It is hereby ordered that this cause be, and hereby is, dismissed without prejudice.

CASES ARGUED AND DETERMINED IN THE COURT OF CLAIMS OF THE STATE OF ILLINOIS

REPORTED OPINIONS

FISCAL YEAR 1978

(July 1, 1977 through June 30, 1978)

(No. 3025—Claimant awarded $12,083.17.)

ELVA JENNINGS PENWELL, Claimant, *v.* **STATE OF ILLINOIS**, Respondent.

Opinion filed ***August*** *11,1977.*

GOSNELL, BENECKI, BORDEN & ENLOE, LTD., Attorneys for Claimant.

WILLIAM J. **SCOTT**, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

AWARDS—*Periodic* ***payments.*** The Court can make awards on a continuing basis when the Claimant continues to have expenses as a result of compensable injury.

JURISDICTION— ***Workmen's Compensation.*** Court retains jurisdiction to **make** an award for a claim under the Workmen's Compensation Act where said Act had provided the Court with such at the time the injury occurred, the injury necessitated continuous care and expenses, and the Court, by Order, expressly retained jurisdiction to make periodic increments to the original award.

PER CURIAM.

Claimant filed her petition for reimbursement for moneys expended for nursing care and health medical services and expenses from January 1,1975, through December 31, 1975, praying for a total award of $12,524.42. This amount was subsequently reduced by

a joint stipulation of the parties to $12,083.17.

Claimant was seriously injured in an accident while employed on February 2,1936, as a supervisor at the Illinois Soldiers' and Sailors' Children's School, at Normal, Illinois, and the complete details on this injury can be found in the original cause of action, ***Penwell** v. **State** of Illinois,* 11 *Ill.Ct.Cl.* ***365,*** in which the Court retained jurisdiction for the purpose of granting future awards.

The joint stipulation by the Claimant and the Respondent was filed herein waiving their right to the filing of briefs and the making of arguments. Since the filing of the Claimant's petition, the Claimant has expired. Attorney, Maurice A. Rickelman, has been appointed as executor of the estate of Elva Jennings Penwell, deceased, estate number 76-P-116 in the Fourth Judicial Circuit, Effingham County, Illinois. However, the firm of Gosnell, Benecki, Borden & Enloe, Ltd., continues to represent the interests of the estate in conjunction with Mr. Rickelman. Having reviewed the record and the stipulation of the parties, an award is hereby made to the Claimant in the amount of $12,083.17 for the period of time from January 1,1975, through December 31, 1975. The matter of further claims is reserved **by** this Court for future determination.

(No. 5305—Claim denied.)

SAMUEL STEVENSON, ET **AL.,** Claimants, *v.* STATE OF ILLINOIS, DEPARTMENT OF PUBLIC **WORKS** AND BUILDINGS, DIVISION OF HIGHWAYS, Respondent.

Opinion ***filed November*** *7,1977.*

LYMAN R. FORT and DRISZER, STANSELL & CRISTER, Attorneys for Claimants.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—***Third party beneficiary.*** In order to recover for breach where contract requires proper maintenance of a levee, Claimants must prove **by** a preponderance of the evidence that the levee was not properly maintained, and that the failure was the proximate cause of damage to Claimant third-parties' lands.

POLOS, C.J.

This is an action in 32 counts, brought on behalf of 59 individual Claimants to recover damages to the properties of Claimants damaged by the flooding of the Mississippi River in 1965. Claimants seek a total of $1,275, 959.03 in damages for loss of crops, livestock, buildings, farm personality, cost of repairs and depreciation in land value.

Because of the large number of Claimants, the complexity of the proof of damages, and the amount of damages claimed, issues of liability and damages were segmented. The sole issue before the Court is whether the State is liable for the damages incurred by Claimants. Should the Court find for Claimants on that issue, the case would be remanded for further hearings on the damage issue.

The record herein establishes that on November 24, 1925, the Illinois Commerce Commission promulgated Order No. 14492 permitting the Illinois Department of Public Works and Buildings, Division of Highways, to tunnel under the tracks of the Chicago, Burlington and Quincy Railroad Company, at a point about seven miles southwest of Gladstone, in Henderson County, Illinois, for the purpose of constructing a subway through which State Bond Issue Route No. 8 (later known as Route 34) could pass. The order was

issued upon the Commission examining and approving an agreement entered into between the railroad and the Department of Public Works and Buildings covering the construction, maintenance and expense of the undercrossing thus to be formed. The railroad at this point was built across low lying lands and the tracks were built upon an embankment which, although not constructed for that purpose, acted as a secondary levee against high water along the Mississippi River. The main levee was about a mile to the west along the banks of the Mississippi River. Along with the underpass, there was to be built as per the above agreement, a horseshoe shaped levee in the river side of the railroad tracks for the purpose of preventing flood waters from flowing through the underpass and onto the low lying lands south of the tracks.

As seen from a photograph in the record identified as Respondent's Exhibit 1, and an engineer's drawing identified as Claimant's Exhibit 1, the levee commenced by abutting onto the north side of the railroad tracks at a point where the tracks ran roughly east and west. From its point of origin it ran in a straight line northerly 787 feet to a point where it met Route **34.** It then followed the east side of Route **34** back to the railroad tracks a distance of 970 feet, as Route **34** curved south-easterly in an arc to the underpass, the underpass being located approximately 625 feet east of the levee's point of origin.

The term "horseshoe" levee is somewhat misleading. From the air the structure presented more the appearance of a right triangle with a "curved" hypotenuse, the railroad tracks serving as the base of the triangle, the west arm of the levee serving as one side of the triangle, and the curve of Route **34** abutted by the east arm of the levee constituting the hypotenuse.

The levee was eight feet wide at the top, 70 feet wide at the base, 20 feet high on the river side, with a sand core, and rested on a sand base. Within the triangular space formed by the two arms of the levee and the railroad embankment was a small body of water known as the "fish hatchery pond."

The levee held at all times until April 27,1965. The primary levee system had failed a day earlier, and flood waters of unprecedented height were forced against the horseshoe levee. Portions of the levee were undermined and washed away. Attempts by the Division of Highways to plug the underpass failed and the low lying lands of the Claimants were subjected to the uncontained flood waters of the Mississippi River.

The levee collapsed because of a process known as piping. The pressure of the flood waters outside the west arm of the levee was sufficiently great that the water was able to open a subterranean channel beneath the levee and create a boil in the low pressure area of the fish hatchery pond located inside the levee. At the time of the boil there was a difference of 15 to 20 feet between the height of the water on the river side of the levee and the water in the pond, with a resulting discrepancy in the respective water pressures. When the boil was first discovered it appeared as a swollen spot in the pond, in about four to six feet of water, about 12 to 15 feet from the nearest levee embankment. To contain a boil properly it should be ringed with sandbags to build up the pressure within the contained area. but the men working at the site had no way to reach the boil. All they could do was try to seal it by throwing sandbags on top of it from the embankment. Within a short time a vortex had developed on the flood side of the levee so that the flood waters rushed into the vortex, ran underneath the levee, and boiled up like a

fountain in the fish hatchery pond. Sandbags thrown into the vortex were carried underneath the levee and tossed up into the air on the pond side of the levee. The subterranean piping of the water eroded the base of the levee sufficiently so that a portion of the west arm of the levee sank into the opening beneath it and left a gap through which the flood waters entered the entire inner area. They entered with such force that they blew out and splintered a wooden plug which had been installed in the Route **34** underpass to contain them.

Thereafter other portions of the levee gave way. Photographs in the record show the extensive damage done by the flood waters to Claimants' land and buildings as they poured through the Route **34** underpass onto the adjoining low lands.

Claimants charge the State for their loss in the following language appearing in each Count of the complaint:

"5. . . . that Respondent in violation of its duty and in violation of Illinois Commerce Commission Order No. 14492, failed to adequately maintain said horseshoe levee for a long period of time prior to April 27, 1965; that on April 26, 1965, the Mississippi River broke over the levee on the West, Northwest of the horseshoe levee and into the Henderson Creek area and that in its normal flow and course, it proceeded to the Chicago, Burlington and Quincy right of way levee and the horseshoe levee herein referred to; that then in the afternoon hours of April 27, 1965, the horseshoe levee, which was to be constructed and maintained by Respondent so as to restrain and hold back the flood waters of the Mississippi River, broke and gave way as a direct and proximate result of Respondent's failure to maintain it in violation of Illinois Commerce Commission Order No. 14492, so that the lands to the south and southeast therefrom, including Claimants', were flooded and placed under water with resultant damage."

It is thus Claimants' theory of this case that Respondent violated Illinois Commerce Commission Order No. **14492,** and its contract with the Chicago, Burlington and Quincy Railroad, by failing to properly maintain the levy. Claimants assert that they are the third party beneficiaries of that order and agreement,

and that they therefore have the right to bring suit for damages sustained by them as a result of Respondent's alleged breach of that order and agreement.

Respondent contends that Claimants were not the intended third party beneficiaries of the aforesaid order and agreement and that they therefore have no standing to sue. Respondent also asserts that it did not breach any of its obligations under the order and agreement with respect to maintenance of the levy.

We do not find it necessary to reach the issue of whether Claimants were the intended third party beneficiaries of the aforesaid agreement and order, and therefore have standing to sue for their breach. If Claimants are to prevail on their breach of contract theory, they must prove by a preponderance of the evidence that the levee was not properly maintained, and that the failure of Respondent to maintain the levee was the proximate cause of the damage to Claimants' lands.

Claimants' witnesses testified that the west arm of the levee was overgrown with trees and brush, and that there were ground hog holes on the west side. However, brush and ground hog holes did not cause or even contribute to the collapse of the levee. The record is clear that the levee failed because of a subterranean process known as "piping." Al Malmquist, a Maintenance Field Engineer for the Department of Transportation, was an eyewitness to the collapse of the levee. He testified that water did not come thru ground hog holes on the slopes of the levee, but rather that it boiled up within the fish hatchery pond too far from the banks of the levee for the State workers to contain the boil by surrounding it with sandbags. Similarly, the brush and trees on the top of the levee had nothing to do with its collapse, as all interfering brush and trees were

removed by bulldozers in time to permit State employees and volunteers to build the levee to an additional height prior to its collapse.

The Court therefore finds that the "horseshoe" levee failed not because of the allegedly faulty maintenance, but rather because of the piping of the flood waters of unprecedented intensity underneath the levee. This incident was unrelated to the condition of the levee, and Claimants have thus failed to prove that any breach by Respondent caused the damage to their lands.

It is therefore ordered that this claim be denied.

(No. 5360 - Claim denied.)

MILDRED L. LAINE, ET AL, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed September 29, 1977.

SMITH & MUNSON, by **LESTER MUNSON** and **ROBERT EMMETT BYRNE,** Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **MORTON ZASLOVSKY, MARTIN SOLL** and **SAUL WEXLER,** Assistant Attorneys General, for Respondent.

NEGLIGENCE—*Burden of proof.* In order for Claimant to recover, he must prove that the State was negligent, that such negligence was the proximate cause of the injury, and that the Claimant was in the exercise of due care for his own safety.

SAME—Evidence. Where testimony of witnesses was contradictory as to condition of shoulder of road, reference to the photographs of the accident scene show no failure to maintain shoulder.

POLOS, C.J.

This action arises out of an automobile accident that occurred on February 18, 1966, at about 3:30 p.m. on Illinois Route **132** near Gurnee, Illinois. Mildred Laine was driving east on Illinois Route **132** with her

two sons, Brian and Randolph sitting next to her in the front seat of the car, when the tires on the right side of her car left the highway. When she attempted to reenter the road she lost control of her car, swerved into the oncoming lane of traffic, and collided with a westbound car. Mrs. Laine was seriously injured and her two sons were killed.

Claimants contend that the State was negligent in maintaining the shoulder of the road so that a dangerous and unsafe condition existed where her car left the highway, and that this negligence was the proximate cause of injuries to Mrs. Laine and the deaths of her two children.

Respondent denies that it was negligent in maintaining the roadway, and argues that the negligence of Mildred Laine was the proximate cause of the accident.

Called as a witness on her own behalf, Mildred Laine testified that on the day of the accident she was traveling to Waukegan from her home in Round Lake Heights, Illinois. **As** she proceeded east on Route 132 traffic was light and she was driving at approximately 30 miles per hour. She said it was raining lightly, when she hit a bump or hole in the road, and her car went off the road onto the shoulder. She stated that the two right wheels of her car sank into the soft shoulder, and that as she attempted to get back on the road, the back end of the car slid sideways. She said that she tried to bring the car back into her own lane and she struck head-on a car proceeding in the westbound lane.

As a result of the accident, Mrs. Laine suffered a cerebral concussion, a nasal fracture, multiple lacerations of the face, fractures of the left fifth metacarpal, a complete fracture of the right humerus with severe overriding which required three bone graft operations,

a severe nine inch laceration of left thigh, and fractures of the left leg and sixth rib. Mrs. Laine testified that as a result of these injuries she has limited use of her right arm and a shortened left leg, and that her normal activities were substantially encumbered.

Brian Laine was dead on arrival at St. Therese Hospital in Waukegan, and Randolph Laine expired at the hospital shortly thereafter.

Orin Anderson, the Chief of Police of Gurnee, Illinois, was called as a witness for Claimant. He testified that he was at the scene of the accident immediately after the occurrence, and that Route 132 was "wet and slippery" on the day of the accident. He said that the shoulders were "muddy" and contained a number of holes and ruts. He estimated that there was a difference of about **six** inches between the level of the paved portion of the road and the shoulder of the road.

Emerson Kropf, a Lake County Deputy Sheriff, also testified that there was a drop-off in the level part of the paved portion of the road and the shoulder. However, he could not recall the depth of the drop-off, but he had previously testified at a coronor's inquest that there was a three to four inch drop-off from the road to the shoulder.

Charles Larson, the Captain of the Lake County Sheriffs Police, testified that he examined the shoulders of the road in question and that they were narrow and lacked gravel. He said there were a number of chuckholes adjacent to 'the pavement, which were muddy in spots in wet weather. Larson also said that prior to the accident he had written the Illinois Division of Highways, the Lake County Superintendent of Highways and Governor Kerner complaining generally of the conditions of roads in Lake County. The

letter, which was admitted into evidence, refers to all roads in Lake County, and it does not specifically refer to Route **132.**

Orin Anderson, the Chief of Police of Gurnee, who previously testified as a witness for Claimant, was also called as a witness for the Respondent. When asked to describe the condition of Route **132** he stated, "The road was blacktopped approximately a year or two years before that, in pretty good shape, not a bad road to drive on." He was further questioned as follows:

Q. "Chief, did you personally see any cracks, holes or bumps in the paved portion of the highway between Edic Road — between Route **132** and the place of the impact, the impact point?

A. I did not see it at all, any holes. To the best of my recollection, there were no holes there.

Q. All right. Now, did you see any cracks there, Chief?

A. To the best of my recollection, there were cracks across the blacktop road.

Q. And how far — what is the width of this crack; do you know?

A. It's well, it runs the whole length of the road here, going all the way to here. (Indicating).

Q. And how wide is it?

A. Oh, maybe an inch or two inches.

Q. Okay. Now do you consider that a road hazard, a hazardous road?

A. No, sir."

Rudolph R. Albores was employed by the Department of Public Works in the Division of Traffic at the time of the accident. He testified for Respondent that he investigated the accident about one week after the occurrence. He said that the condition of the roadway was normal. His report of the investigation stated that the shoulder of the road was four feet wide and covered with gravel, and that the shoulder was soft. He said he did not note that the shoulder was lower than the paved portion of the highway.

He testified further that he did not see any bumps or holes in the shoulder or deficiencies in the eastbound lane shoulder.

Louis Lesniak, employed as a maintenance field engineer by the Department of Transportation of the State of Illinois in the Lake County area, was called as a witness for the Respondent. He testified that he investigated the accident on the day following the accident, and that he observed the surface of the road to be in good condition. He said that it was smooth and that there were no cracks or holes in the paved portion of the highway. He also testified that the shoulder of the road was about one-and-a-half inches below the paved portion of the road, and that there were no ruts or holes in the shoulder.

Photographs of the accident scene, and detailed photographs of the shoulder of the road, were introduced into evidence.

The State owes a duty to those using its streets and highways to keep those roads in a reasonably safe condition. *Schuck u. State, 25 Ill.Ct.Cl. 209.* This duty extends to properly maintaining the shoulders of a highway for the uses for which they are reasonably intended. *Lee v. State, 25 Ill.Ct.Cl. 29; Welch u. State, 25 Ill. Ct.Ct. 270.* In order to recover in this action, Claimant bears the burden of proving, by a preponderance of the evidence, that Respondent breached this duty of reasonable care; that the Respondent's breach was a proximate cause of the accident; and that Mildred Laine was herself in the exercise of due care and caution for her own safety and well being.

However, we need not consider more than the threshold issue of whether the State breached its duty of reasonable care. Although Mildred Laine testified that she was forced off the roadway when her car hit a hole in the road, every witness who examined the road shortly after the accident testified that the road was in

normal condition, and that there were no defects in the road which constituted a hazard to traffic.

With respect to the condition of the shoulder, it is clear that it was soft due to the rain. However, the Claimant's own witnesses were contradictory with respect to the amount of the drop-off from the road to the shoulder. Orin Anderson said he found a six inch drop-off, while Emerson Kropf testified to a three to four inch drop-off.

Respondent's witnesses each testified that there was only a minimal difference between the height of the road and the shoulder.

This conflict in the testimony can be resolved by reference to the photographs of the accident scene which were introduced into evidence. Those same photographs show in clear detail the relationship of the road to the shoulder, and it is clear that there was only a slight drop-off from the road to the shoulder. This Court has previously held, in ***Lee** v. **State,** 25 Ill. Ct. Cl.* 29, that a difference in three or four inches in the levels of the road and a shoulder does not constitute a dangerous condition per se. Here it is clear both from the testimony of the witnesses, and the photographs of the accident site which were introduced into evidence, that there was not a substantial drop-off from the road to the shoulder, which would have caused a reasonably prudent driver to lose control of a vehicle which had left the roadway.

In sum, from our examination of those photographs, and our consideration of the testimony of all the witnesses, the Court must conclude that the Claimant has failed to establish by a preponderance of the evidence, that Respondent **was** negligent in maintaining either the highway or the shoulder.

The Court regrets this tragic occurrence, but for the foregoing reasons, this claim must be denied.

(No. 5405 and 5675—Claimant awarded $400,000.00.)

J.L. SIMMONS, INC., Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed November 2, 1977.

POLOS, C.J.

This cause coming on to be heard on the joint motion to consolidate and the stipulation of the parties hereto to settle the two causes of action, and the Court being fully advised in the premises.

It is hereby ordered that the joint motion to consolidate be and the same hereby is granted.

It is further ordered that the stipulation executed by Claimant, J. L. Simmons Company, Inc., Capital Development Board of the State of Illinois, and the Attorney General of Illinois, be and the same hereby is entered, and the Court having heard arguments in support thereof hereby accepts and adopts the statements contained therein and judgment is herewith entered in favor of J. L. Simmons Company, Inc. in the amount of $400,000.00 pursuant to the aforesaid stipulation, in full settlement of any and all claims presented in case Nos. 5405 and 5675.

(No. 5638—Claim denied)

WILLIAM SCHATZ, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed April 26, 1978.

REED, ARMSTRONG, GORMAN & COFFEY, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

NEGLIGENCE—*Burden of* ***proof.*** In order for Claimant to recover he must prove that State was negligent, that such negligence was the proximate cause of the injury, and that he was free from contributory negligence.

SAME—Evidence. Where evidence indicated that (1) the auto accident occurred because Claimant lost control of his car while driving on a section of road he was familiar with on a rainy day, **(2)** the pavement was slippery, and **(3)** lack of notice to State, State was not liable.

HOLDERMAN, J.

Claimant, William Schatz, brought this action against the State of Illinois, as the result of an automobile accident. The claim consists of two counts. Count I alleges negligence on the part of the State of Illinois, and asks for $25,000.00 in damages for injuries to Claimant. Count II is in the nature of the third party action in which Claimant, William Schatz, is praying for damages because of money paid to Jerry W. Hunter, a minor, and Jerry E. and Jean Hunter in settlement of a personal injury action concerning the same automobile accident.

An automobile accident occurred on Sunday, April 23,1967, between 1:00 and 2:00 p.m. on the Great River Road approximately one mile west of Clifton Terrace, Madison County, Illinois. Two automobiles were involved. Claimant, William Schatz, was driving a blue, 1963 Buick from Grafton, Illinois to Alton, Illinois. His wife, Brenda Schatz, was the only passenger.

The other automobile was a maroon, 1964 Chevrolet driven by Jerry E. Hunter. His passengers were Jean Hunter and a minor child, Jerry W. Hunter. The Hunter car was traveling west from Alton toward Grafton.

At the location of the accident, the Great River Road, was a road with four lanes generally running east and west with the Mississippi River running alongside on the south.

A new asphalt section of road ran into an older patched section of road and this is where the accident took place.

On the day of the accident, the road was wet and it had been raining for some time.

Claimant testified that his car was in good mechanical condition with practically brand new tires and that he had no problem steering or any other difficulties with his car.

From the accident area to Alton, the road had a number of dips in it which is not too uncommon for an asphalt road. Claimant was familiar with the area, having traveled the road many times before. He alleged that he was going 50 miles per hour on the new road surface and had slowed down to approximately 40 miles per hour as he approached the older section of the road. Claimant testified that as his auto went off the new road onto the old, it "stopped" as if hitting a hole in the road. The car then hit a series of ripples, causing the front end to bounce. He further testified that his vehicle then started sliding toward the river.

At this point, it appears there was not any guardrail between the road and the river. Claimant testified that he was trying to turn his car to the left and when he went off the paved road, he went onto the gravel shoulder and his car swerved from the eastbound lane into the westbound lane, hitting the Hunter automobile.

A State Trooper, Donald Johnson, testified that he

investigated the accident and described the scene as a four lane road with a dirt and gravel shoulder, and a dirt center median. There was a juncture between the new and old portions of the highway. The new road was smooth blacktop, with curbing, guardrails, and a nine inch high concrete divider, and he testified there was a "bit of a drop" of elevation from the new to the old road. He described the drop as not abrupt but feathered out.

Hueston Smith, a consulting engineer, testified that he examinated the accident scene approximately seven months after the accident. It was his opinion there were differences in grade between the old and new sections which created a hazard.

Evidence was introduced to the effect that Claimant's insurance company had paid a considerable amount of money to the Hunter family for damages to their automobile and for personal injuries.

This Court has passed on similar situations many times. The law is very thoroughly reviewed in ***30 Ill.Ct.Cl. 32.*** Claimant must prove in cases like the present one that the State is guilty of negligence, and that it had reasonable notice of the dangerous condition and failed to warn the motoring public. Claimant must also prove that he was free from any contributory negligence and that the negligence of the State was the proximate cause of the accident.

The record is completely devoid as to any notice on the part of the State that a dangerous condition existed.

This Court has repeatedly held that the State is not an insurer of every accident that occurs on its highways. The accident in question occurred because Claim-

ant lost control of his car while going over a section of road he was familiar with on a day when it was raining to the extent that windshield wipers were necessary and the asphalt pavement was slippery.

Taking these facts into consideration and the lack of notice by the State as to there being a dangerous condition, if, in fact, there was such a condition, relieves the State of liability in the present case.

Award is hereby denied.

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*(No.*5660—Claimant awarded *$5,000.00.)*

ANTIONETTE R. **BOCHENEK,** Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed September 30, 1977.

BRODY and GORE, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL** WEXLER, Assistant Attorney General, Attorney for Respondent.

NEGLIGENCE—Duty to patients. The State cannot escape its duty to an individual merely because he or she is a patient of an institution. The State must provide protection and exercise reasonable care as the patient's known condition may require.

SAME—contributory negligence. Where a Claimant was mentally incompetent at the time of an accident, and unable to care for himself, he is incapable of contributory negligence.

WRONGFUL ***DEATH—Defense.*** It is no defense to wrongful death that death was caused in part by the contributory negligence of one or more beneficiaries of the deceased. **A** next of kin found to be negligent, however, may not share in any award of damages.

POLOS, C.J.

This wrongful death action has been brought by Antionette R. Bochenek, as Administrator of the Estate of Stanley Bochenek, deceased. Claimant alleges that Stanley Bochenek, while mentally incompetent

and a patient at the Chicago State Tuberculosis Hospital, was improperly supervised, in that he was permitted to acquire smoking materials with which he burned himself extensively. Claimant further alleges that those injuries resulted in his death.

Respondent contends that it was not negligent in its care and supervision of the deceased; and that in any event Antionette Bochenek, the wife of the deceased, was contributorily negligent. Respondent also asserts that the deceased's burns did not cause his death.

On June 7,1968, Stanley Bochenek fell while working at the Chicago Post Office, and sustained a skull fracture. He was admitted to Presbyterian St. Luke's Hospital for treatment. On July 19,1968,he was transferred to Chicago State Tuberculosis Hospital. His admission diagnosis at Chicago State showed advanced pulmonary tuberculosis, the recent skull fracture, chronic brain syndrome, cirrhosis of the liver, and a history of alcohol addiction.

At about 6:00 a.m. on January 14,1969, while the deceased was still a patient at Chicago State, he incurred severe burns on the upper part of his body, as a result of his smoking or handling matches and smoking materials. He was found by a hospital attendant with his hospital gown aflame. The attendant also saw smoke coming from the deceased's bedside table. The deceased was treated at Chicago State and attempts were made to have him transferred to specialized burn treatment centers. However, because of overcrowded conditions at the centers, he was not transferred and he died on January 24,1969.

Antionette R. Bochenek, the wife of the deceased, had visited her husband two days prior to the accident.

She testified that he had been incapable of holding and lighting a cigarette since December, 1968, and that he was unable to smoke without assistance. She said that since December, 1968, he was unable to leave his bed, and was generally in a confused mental condition. She said it was her habit during her visits to give her husband a cigarette, and hold it for him while he smoked. Mrs. Bochenek said that she never left any cigarettes or matches with her husband after Christmas, 1968. She said that she examined his night table on January 12, 1969, as she did on all her visits, and did not find any smoking materials.

She testified that she was never told not to give her husband cigarettes, and that other patients in his room who were able to leave their beds often smoked in the room. She said that ashtrays were placed throughout the room. She talked to her husband immediately after he was burned, but he was unable to tell her how the accident happened.

Stanley Bochenek's daughter, Sandy Plouzek, also visited him on January 12, 1969. She said that his mental condition was poor, and that he was not able to hold a cigarette or matches. She also said that he had been unable to smoke without assistance since December, 1968, and that she never left cigarettes or matches with her father. She testified that she did not see cigarettes or matches in her father's room on her last visit.

Crispina Bullido, the supervising nurse in charge of the deceased at the time of the accident, was called by Claimant as an adverse witness. She testified that she looked in on the deceased at about midnight on the night prior to the accident, and found him resting. She examined the deceased's room after the fire had been

extinguished, and observed cigarettes and matches on his night table. She said that she had never before found cigarettes or matches on his night table. She said it was her practice to search the night tables of those patients too ill to smoke without supervision. However, she said she had not searched the deceased's night table in January, 1969, or December, 1968. She said to her knowledge it was not hospital policy to search the night tables of those patients who were unable to smoke without supervision.

Aldona Simonaitis was the head nurse at Chicago State Hospital at the time of the accident. She testified it was the rule of the hospital that no smoking was permitted in beds, and that patients not confined to their beds were not allowed to smoke in their rooms.

She said she instructed all her nurses and aids to remove cigarettes and matches from all bedridden patients, and that this was a standard rule at the time of the accident, posted on a bulletin board at the nursing station on the floor.

In January, 1969, she would enter the deceased's room two to three times daily. She said the deceased was confused, and was permitted to smoke only when assisted by a hospital aid. His cigarettes, and those of other bedridden patients, were kept in the nursing station outside his room.

Dr. Herbert Neuhaus, the Medical Director and Superintendent of Chicago State Tuberculosis Sanitarium at the time of the accident, was called as a witness by Respondent. He testified that it was hospital policy that there was to be no smoking in patients' rooms; but that bedridden patients could smoke in their beds if there was a hospital attendant present. Debilitated patients were also prohibited from keeping cigarettes

or matches at their bedsides.

Dr. Neuhaus further testified that it was hospital policy for nurses to search the bedsides of bedridden patients for smoking materials, and that such searches were to be made "as often as possible, at least once each shift.''

Dr. Jerome J. Kearns, a pathologist for the Coroner of Cook County, examined the body of the deceased. He determined that the primary cause of death was toxemia, and that in his opinion the toxemia resulted from the burns suffered by Stanley Bochenek on January **14, 1969.**

The standard of care owed by the State to patients in its hospitals was set forth in *Karulski v. Board of Trustees, 25 Ill. Ct. Cl. 295.* There we said,

> "A hospital is not an insurer of a patient's safety, but owes the patient the duty of protection, and must exercise reasonable care as the patient's known condition may require... The extent and character of the care which a hospital owes its patients, depends on the circumstances of each particular case. However, this rule is limited by the rule that no one is required to guard against or take measures to avert that which a reasonable person under the circumstances would not anticipate as likely to happen."

In order to recover for the death of the deceased, Claimant must prove that the State breached this standard of care; that the deceased was not contributorily negligent; and that the State's negligence proximately caused his death.

The Claimant has established that Chicago State Hospital did not use reasonable care in supervising the deceased. Hospital personnel were shown to have violated hospital rules calling for frequent searches of bedridden patients for smoking materials. Dr. Neuhaus, the superintendent of the hospital, testified that it was hospital policy for nurses to search the bedsides of bedridden patients for smoking materials at least

once each shift. Aldona Simonaitis, the head nurse at the hospital, also stated that she had instructed her nurses to remove cigarettes and matches from all bedridden patients. Yet Crispina Bullido, the nurse in charge of the deceased at the time of the accident, testified that she had not searched the deceased's nightstand for smoking materials during December, 1968 **or** January, 1969. She had looked in on the defendant approximately six hours prior to the accident, and found him sleeping. Had she followed hospital policy and searched his nightstand for smoking materials, it appears that the accident would not have occurred.

The Court therefore concludes that Claimant has established the negligence of Respondent, and that such negligence was the proximate cause of the injury to Claimant. It is also clear that the deceased was mentally incompetent at the time of the accident, and was unable to care for himself. We therefore find that he was incapable of contributory negligence.

The Court further finds that the weight of the evidence establishes that the burns suffered by the deceased on January 14, 1969, proximately caused his death.

Respondent contends that Antionette R. Bochenek, the wife of the deceased, was contributorily negligent. Respondent relies upon the testimony of Aldona Simonaitis, who said that Mrs. Bochenek told her that she had given smoking materials to the deceased two days before the accident. Mrs. Bochenek denied that this conversation ever took place, and denied that she gave the deceased smoking materials.

It is not a defense to a wrongful death claim that the death of the deceased was caused in part by the

contributory negligence of one or more beneficiaries of the deceased. A next of kin found to be negligent, however, may not share in any award of damages. *Sheley v. Guy, 29 Ill.App.3d 361, 330 N.E.2d 567.*

Here, even if Mrs. Bochenek did give the deceased smoking materials during her visit of January 12, such an act was not a proximate cause of his injury. It was hospital policy to search the bedsides of mentally confused and bedridden patients at least once each shift, and had this rule been followed the smoking materials given to Mr. Bochenek would certainly have been discovered by hospital personnel before January **14,** the date of the accident. We therefore find that even if Mrs. Bochenek did give smoking materials to the deceased two days before the accident, her action was not a proximate, contributing **cause** to his injury.

It is quite clear from the record that the deceased was in very poor physical condition at the time of the accident. He was suffering from tuberculosis, cirrhosis of the liver, a recent skull fracture, and chronic alcoholism. Although he was six feet tall, he weighed only 95 pounds. He was **54** years old, and prior to the accident was unable to work because of his physical condition. When he was able to work, he earned approximately $65.00 per week.

Under the "Wrongful Death Act," any recovery is to be distributed by the Court to each of the widow and next of kin of the deceased, in proportion to their relative dependence upon the deceased. Here the deceased left surviving a widow and two adult children, all of whom were in part dependent upon him for support.

Given the age and deteriorated physical condition of the deceased at the time of the accident, and the minimal contribution he was capable of making to his

family, the Court finds that the sum of $5,000.00 should be awarded to the Claimant herein, to be distributed as follows:

(a) the sum of $3,500.00 to Antionette Bochenek, the widow of the deceased; and

(b) the sum of $750.00 *to* each of Paul Bochenek and Sandra Bochenek Plouzek, the adult children **of** the deceased.

(No. 5692—Claimant awarded $44.02.)

KAY LAWLEY, Claimant *v.* **STATE** OF ILLINOIS, Respondent.

Opinion filed December 30, 1977.

ROUTMAN & LAWLEY, by ROBERT T. LAWLEY, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM WEBBER, Assistant Attorney General, for Respondent.

COURT REPORTERS—official court reporter appointed by a circuit or superior court judge has no proprietory interest in the transcript.

POLOS, C.J.

Claimant, Kay Lawley, seeks to recover the sum of $38,732.35 from Respondent for her services as a court reporter. Claimant was employed by the State from September 1, 1963 to April 30, 1969 as an official court reporter of the Circuit Court of Sangamon County, Illinois. She was assigned to perform court reporting services for Judge Creel Douglas during this period.

In the course of her employment, Claimant was the court reporter assigned to report all proceedings in a lengthy criminal trial heard by Judge Douglas entitled, ***People v. Bassett, et al.*** Pre-trial motions were heard in the case in May, 1966, and ended on August 30, 1966. Post trial motions were heard in September, 1967, and sentencing occurred in October. At issue is whether Claimant is due additional compensation for her ser-

vices rendered dluring those proceedings.

Claimant was the sole witness to testify in this action. She said that at the conclusion of the *Bassett* trial the prosecutors and defense attorneys requested that a rough draft of the transcript be prepared for use in preparing their post-trial motions. Claimant prepared an original and six copies of rough draft transcript, totalling **10,441** pages, which was completed in May, 1967. Claimant submitted a bill to the State for that transcript, computed at the rate of **$3.20** per page, and totalling **$33,411.20.** The bill was approved by the trial judge, and the Department of Public Safety paid the full amount billed. The bill was computed at the same statutory rate as a final transcript.

Subsequently, Chief Circuit Judge William H. Chamberlain challenged this billing, and Claimant submitted a revised bill for the draft transcription, showing a credit of **$2,088.20** due to the State.

In January., 1968, Claimant attended a meeting between Judge Douglas and all counsel, to determine how many copies of the trial transcript were needed for preparation of the appeal. It appears that a special Assistant Attorney General requested an original and eight copies, but that Judge Douglas rejected the request as being too costly. Instead, Judge Douglas directed Claimaint to prepare one original and one copy of the final transcription. Judge Douglas further directed Claimant to turn the copy over to the State Police headquarters so that they could Xerox as many of the final transcript copies as were needed by counsel in the case.

Claimant used the rough draft transcript in preparing the final draft transcript, and delivered a copy to the State Police as directed by Judge Douglas. The

final transcript totalled 11,068pages. The State Police delivered the Xerox copies back to Claimant. Claimant said she sorted and bound them, and mailed them to the respective parties.

Claimant submitted periodic billings to the State during her preparation of the final transcript based upon a charge of $1.80 per page. Claimant testified that she computed this charge on the basis of $.60 per page for the original and $.30 per page for each of four copies, even though she was only preparing one copy. Claimant said she charged the State for four copies, despite the order of Judge Douglas that only one copy was to be prepared by her, because she felt she was entitled to charge for a copy for each defendant.

Despite Judge Douglas's order, the bills submitted by Claimant for final transcription based upon preparation of an original and four copies of the final transcript and totalling $19,922.40, was paid in full.

Claimant completed the final transcription of the trial testimony on December 20,1968. She testified that she was fully paid for her work through that date; but that her billings to that date did not include any work in transcribing the post-trial motions and sentencing.

Claimant said that in January or February, 1969, she contacted one Ray Terrell, a Special Attorney General who had newly been assigned to the Bassett case, and asked for instructions on preparation of the transcript of the post-trial motions and sentencing. She said she was told to prepare a rough draft and then a final draft, as she had done in transcribing the trial testimony. Claimant said she prepared an original and five copies of the rough draft of the post-trial motion proceedings. In March, 1969 she took the draft and her bill to the Department of Public Safety, but she was

advised that they did not want the copies and would not pay for them. Claimant was subsequently advised by the Department that they had not ordered the rough draft copies of the transcript, and that they would pay only for one copy in finished form.

Claimant then stopped typing the transcript of the post-trial proceedings, but upon the request of Judge Douglas did finish the transcript. Claimant filed an original and three copies of the post-trial proceedings, three copies of which were supplied to defense counsel.

Claimant has not been paid for any of the transcription work on the post-trial proceedings, for which she had submitted a bill of $5,482.35.

Claimant's claim before this Court is two-fold. She first asserts that she is due the sum of $32,225.00, representing her statutory charge for four additional copies of the final transcript of the trial proceedings. In essence, it is Claimant's position that because her "work product" was used by the parties to the case, she should be compensated for the four additional copies of the trial transcript furnished to the Department of Public Safety, at the rate of $.75 per page per copy.

Claimant also seeks payment of $3,713.85 for the original and five copies of the rough draft of the post-trial proceedings transcript, and payment of $1,768.50 for the work on the original and three copies of the final post-trial transcription.

Claimant's claim for additional fees for work on the final transcription is founded upon the proposition that she had a propriety interest in those transcripts, and that the parties to the trial proceeds had no right to use those transcripts unless they paid her for the privilege.

This contention clearly has no legal basis. In *Tansor v. **Checker** Taxi Company, 27 Ill.2d 250, 188 N.E.2d* 659, *at **633,*** our Supreme Court said:

> "Any notion that **a** court reporter or a litigant may have a propriety interest in a transcript of the evidence introduced in **a** judicial proceeding cannot survive the statute which provides for official court reporters. That statute authorizes each Judge of the Circuit and Superior Courts to appoint an official shorthand reporter, and provides that the salaries of **a** reporter so appointed shall be paid by the State... under this statute, neither party can claim a propriety interest in the official reporters notes *or* transcripts."

Claimant a'dmitted that she was fully paid for her work in preparing the rough and final transcriptions of the trial testimony. She had no propriety interest in that transcript, and there is therefore no basis for her claim that she is entitled to additional compensation because four Xerox copies were made of that transcript and used by the litigants. Her claim for $33,225.00 for the four additional copies of the final trial transcript must accordingly be denied.

We now turn to Claimant's contention with respect to her work on the post-trial proceedings. Claimant seeks payment for preparing an original and five copies of the rough draft of those proceedings, and additional payment for preparing an original and three copies of a "final draft" of those proceedings.

Initially, the Court notes that it is difficult to comprehend why it was necessary to prepare both a rough and final draft of the post-trial proceedings. The Court also notes that in preparing multiple copies of the rough and final transcripts, Claimant violated the spirit and intent of Judge Douglas' express direction that only an original and one copy of the transcript was to be prepared.

Claimant argues that Judge Douglas was without authority to direct that **Xerox** copies of the transcript be used by the indigent defendants and the State. How-

ever, if Claimant had a quarrel with that order, such rights as she may have had should have been asserted at that time and in another forum. Instead Claimant ignored the order of Judge Douglas, and billed the State for an original and four copies of the trial transcript, although she had herself only prepared an original and one copy. For some reason Claimant was paid for the original and four copies of the trial transcript, notwithstanding the trial judge's express instructions.

Claimant similarly ignored the order of Judge Douglas when she prepared more than one original and one copy of the rough and final transcripts of the post-trial proceedings. Had Claimant heeded the instructions of Judge Douglas and prepared an original and one copy of the rough and final transcripts, she would have been due $1,061.11 for each of the transcripts, or a total of $2,122.22. The Court does not feel that Claimant should profit by her failure to obey the instructions of the trial judge, and finds that Claimant's recovery for work performed on the post-trial proceedings should not exceed the amount she would have charged had those instructions been obeyed.

Claimant admits that she overcharged the State the sum of $2,088.20 for the rough draft of the trial transcript, and that there is a credit owing to Respondent in that amount. Offsetting the State's credit for the overcharge against the amount we have found due to Claimant for her work on the post-trial proceedings, we hereby award Claimant the sum of **$44.02.**

(No. 5796—Claim denied.)

ALPHIE SCHMIED AND COUNTRY MUTUAL INSURANCE CO., Claimants, v. STATE OF ILLINOIS, Respondent.

Opinion filed August 25, 1977.

ANTHONY J. MANUELE, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; DOUGLAS G. OLSON, Assistant Attorney General, for Respondent.

NEGLIGENCE—Maintenance of bridge.

POLOS, C.J.

This action arises out of an accident that occurred on March 26, 1969 on Interstate 55, about three miles north of Springfield, Illinois. A tractor-trailer owned by Alphie E. Schmied, and driven by one Amos Deininger, was southbound on Interstate 55, when it skidded on the Sangamon River Bridge and collided with the concrete railings located on the sides of the bridge.

Claimants contend that the resultant damage to the tractor-trailer was caused by the negligence of the State, in failing to keep the bridge clear of ice and snow, and to warn the public of its slippery condition. Alphie E. Schmied seeks damages in the amount of $2,500.00 for the loss of use of the tractor-trailer while it was being repaired, and the additional sum of $500.00 which is the deductible provision of the policy of insurance on the tractor-trailer carried with the Country Mutual Insurance Company.

In a separate count of the complaint, Country Mutual Insurance Company, as subrogee of Alphie E. Schmied, seeks damages in the amount or 4,200.00, being the amount it paid out under its policy for damages to the tractor-trailer.

The evidence shows that on March 26, 1969, at approximately 6:30 a.m., Amos Deininger was driving a 1962 International Tractor and pulling a 1959 Fruehauf trailer, owned by the Claimant, Alphie Schmied,

in a southerly direction on Interstate 55 and was approaching the Sangamon River Bridge.

In his testimony, Amos Deininger stated that he had been driving since 4:00 a.m. that morning. There had been freezing rain, and the road was slippery as he approached the bridge. At the time of the accident it was misting. He indicated that the roads that morning were "kind of slippery," and that he had driven over icy spots before reaching the bridge. At the time of the accident the truck was traveling at approximately 40 m.p.h. He testified that he was familiar with the Sangamon River Bridge and had traveled it many times. He could not remember whether there were any signs indicating the upcoming bridge or a warning of icy conditions. At the time of the accident the trailer he was hauling was empty. Deininger stated that a tractor-trailer truck with an empty trailer "will slide a lot easier on—and quicker on ice than a loaded one will."

As the tractor-trailer entered upon the bridge it slid and collided with the concrete railing located on both sides of the bridge. The trailer was destroyed and the tractor was badly damaged.

Deininger said that when he exited from his damaged truck, he found no indication that salt or cinders had been spread on the bridge floor.

William Pickett and Arthur Peratt, who were employed by the State as road maintenance personnel on the date of the accident, testified that they had applied a mixture of salt and cinders to the Sangamon River Bridge three times on the morning of the accident between 12:30 a.m. and the time of the accident.

In order for a Claimant in a tort action to recover

against the State he must prove that the State was negligent, that such negligence was the proximate cause of his injury and that the Claimant was in the exercise of due care and caution for his own safety. McNary *v.* State, 22 *Ill.Ct.Cl.* 328; *Bloom v.* State, 22 *Ill.Ct.Cl.* 582. It is also well settled that the State is not an insurer against accidents occurring on its streets and highways, but is charged only with using reasonable diligence in keeping roads under its control in reasonable safe condition.

The Claimants have waived the filing of briefs and have advised the Court that they are relying upon *Bouy v.* ***State,*** 22 *Ill.Ct.Cl.* 95. We find that case to be clearly distinguishable. In *Bouy,* the State had actual notice that a bridge under its jurisdiction and control had been improperly constructed, and was subject to swaying and slipperiness in damp and icy weather. The State knew that the bridge would ice over when the pavement and other bridges in the area were merely damp, yet took no special precautions to clear ice from the bridge.

Here there was no proof that the Sangamon River Bridge had a tendency to ice over faster than other surrounding bridges, or the surrounding pavement, or that the State had actual notice of any unusual condition on the bridge. Moreover, the record is clear that the bridge was treated with salt and cinders on three occasions within six hours of the time of the accident. We think this demonstrates that the State did use reasonable diligence in maintaining the bridge; and we find that the Claimants have failed to establish negligence by the State.

This claim is accordingly denied.

(No. 5897—Claim denied.)

EDWIN DIXON, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion *filed July 18, 1977.*

DONALD L. JOHNSON and **PHILLIP** M. **BASVIC,** Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, Attorney for Respondent.

PRISONERS AND INMATES— Wrongful mcarceration. To recover for wrongful incarceration a Claimant must show by a preponderance of the evidence that he was innocent of the "fact" of the crime for which he was convicted. It was not the intention of the General Assembly to open the treasury to technical innocence of a crime.

SAME—*Evidence.* Where testimony at earlier trial indicated Claimant committed act of robbery, but on post conviction relief witness at trial who identified Claimant was unavailable and where testimony at trial was admitted to Court, fact of innocence was not **proved.**

POLOS, C.J.

This is a claim against the State for time unjustly served in prison, brought pursuant to Section 8(c) of the "Court of Claims Act" Ill. Rev. Stat. Ch. 37, §439.8(c). The case is to be decided pursuant to Section 8(c) as in effect prior to its amendment, effective October 1,1973, which made obtaining a pardon on grounds of'innocence, a condition precedent to maintenance of an action for unjust imprisonment.

As effective prior to its amendement, Section 8(c) provided that this Court had jurisdiction to determine, ". . . all claims against the State for time unjustly served in prisons of this state, where the persons imprisoned prove their innocence of the crime for which he was convicted, and the amount of damages to which he is entitled." See, *Tate u. State,* ***25*** *Ill. Ct.* ***Cl. 245;*** *Pitts v. State,* ***22*** *Ill. Ct.* ***C1.258.*** As the Court said in *Dirkins u. State,* ***25*** *Ill. Ct. Cl.* ***343, 347,***

"It is the studied opinion of this Court that the legislature of the State of Illinois in the language **of** Ill. Rev. Stat., Ch. 37, §439.8(c) intended that a Claimant must prove his innocence of the "fact" of the crime. It was not, we believe, the intention of the General Assembly to open the treasury of the State of Illinois to inmates of its penal institutions by the establishment of their technical ***or*** legal innocence of the crimes for which they were imprisoned."

As appears from the record herein, on January 26, 1967, an armed robbery occurred at Ray's Groceries, located at 1228 South Wood Street, Chicago, Illinois. The owner of the grocery store, one Raymond Ross, and an assistant, one Willie Blunt, both identified Claimant and another individual as the perpetrators of the crime.

Claimant was indicted, tried and convicted for the robbery. On September 28, 1967, he was sentenced to a term of five to ten years in the Illinois State Penitentiary.

Claimant appealed, but his conviction was sustained. He subsequently filed a petition for post conviction relief, which resulted in him being granted a new trial. At the time of the second trial Willie Blunt, who had testified at the first trial, was deceased. Raymond Ross, who also identified Claimant at the first trial, testified at the second trial that he was unable to recall who robbed him on January 26, 1967, because he had suffered a head injury in July, 1970, and had been robbed so many times since the first trial. Claimant's second trial ended in a directed verdict of acquittal.

In all, Claimant was incarcerated in a prison of the State of Illinois from February 16, 1968, to March 20, 1970, which he was remanded to the custody of the Sheriff of **Cook** County, Illinois pursuant to a subpoena ad testificandum.

Claimant testified in his own behalf, and denied

any participation in the robbery. He was 29 years old at the time of his conviction, was married and had five children.

Respondent did not present any witnesses, but did make a showing of diligent, unsuccessful efforts to subpoena Raymond Ross. Respondent then introduced into evidence without objection by Claimant, a transcript of the testimony at Claimant's first trial, wherein Ross identified Claimant as one of the robbers.

The Court has carefully weighed Claimant's testimony against that of the witnesses, Ross and Blunt, who identified Claimant at the first trial. The Court has also considered certain discrepancies between Claimant's testimony before this Court, and at the initial trial. On balance, we must conclude that Claimant has failed to sustain his burden of proving by a preponderance of the evidence that he did not commit the crime for which he was convicted.

It is therefore ordered that this claim be, and hereby is, denied.

(No. 6165—Claim denied.)

GLENN D. SQUIRES, Claimant *v.* STATE OF ILLINOIS, ILLINOIS YOUTH COMMISSION, Respondent.

Order filed April *18,* 1978.

PRISONERS AND INMATES. Damages caused by escaped inmates. Minimum security institutions are not held to the same standard of care as higher security institutions in preventing escapes and must be accorded a certain degree of discretion in order to allow them to achieve their rehabilitative purpose.

HOLDERMAN, J.

Claimant filed a claim against the State of Illinois for damages sustained to his automobile in an accident

with another vehicle driven by an escapee from the New Salem Juvenile Camp. Rex McGuire was a juvenile inmate at the New Salem Camp operated by the Illinois Department of Corrections.

On August 25, 1970, which was the day the accident occurred, Rex McGuire was on a work detail with two other boys and under the supervision of Mr. Smith, an employee and supervisor of boys at the New Salem Camp.

Rex McGuire was riding in the back of a truck when he jumped off and escaped and later stole the car which he was driving when it ran into the car of Claimant.

Mr. Smith promptly notified the camp of the disappearance of **Rex** McGuire, who in turn notified law enforcement officials of the escape. Mr. Smith had been a supervisor at the camp for ten years and up to this time had not lost an inmate. Mr. Smith's supervisor indicated he was very security conscious and at the hearing Mr. Smith stated that he had no trouble with Rex McGuire until the time of the escape.

In the case of *American States Insurance Company v. State, 22 Ill. Ct. Cl. 47, 50,* this Court stated that "each of these escape cases rests upon their own peculiar set of facts and circumstances.'' Furthermore, the Court stated that it was not the occurrence of the escape which was to be controlling, but rather what condition existed prior to the escape.

There is no evidence in the record to indicate that the escapee was troublesome or likely to escape.

A certain amount of discretion should rest with the officials in charge of such an institution in pursuing a rehabilitation program, but it is not a defense to rely

solely on the contention of rehabilitation without establishing what Respondent did in exercising a reasonable restraint of such a person. *United States Fidelity and Guarantee Company u. State of Illinois, 23 Ill.Ct.Cl. 188, 191.*

In Elgin Salvage and Supply Company, Inc. u. State of Illinois, 26 Ill.Ct.Cl. 278, where recovery was allowed, the Court stated:

> "It is the opinion of the Court that the evidence offered by Claimant is sufficient to establish a prima facie case of negligence on the part of the Respondent." Berdine, in view of his past record should have been kept under greater surveillance than the ordinary inmate. The evidence does not indicate that Respondent took any special steps to prevent this escape, even though the record indicated prior escapes. Respondent offered no testimony on the point. The facts pertaining to the surveillance and escape of the inmate were in the exclusive control of the Respondent and lead, the implication that said evidence would have been presented had the same been favorable to the Respondent."

In this case, the Respondent did introduce testimony regarding the degree of supervision over Rex McGuire. Rex McGuire had only been in the Camp for approximately one week, so he was placed in the hands of the most security conscious supervisor, Mr. Smith. Rex McGuire escaped from the custody of Mr. Smith in a most unexpected and unpredictable manner.

If minimum security institutions, like New Salem, are to function properly, then cannot be held strictly liable for the escape of any inmate at any time under any conditions. In this case, the State did not provide adequate supervision over inmate Rex McGuire.

The record does not disclose that the State was negligent in their supervision of Rex McGuire, therefore, this claim is denied.'

(No. 6230—Claim dismissed.)

HELEN B. BITNER and DONALD W. BITNER, Claimants, *v.* STATE OF ILLINOIS, and STATE OF ILLINOIS DEPARTMENT OF PUBLIC WORKS AND BUILDINGS, Respondent.

Order filed June 15,1978.

HIGHWAYS—Burden *of* proof. Where Claimants failed to prove existence of hole in roadway and knowledge of State of said defect, as was alleged to have been the cause of the accident, award is denied.

HOLDERMAN, J.

This matter comes before the Court on a motion filed by Respondent for summary judgment to which no answer has been filed by Claimant. Neither party has filed briefs in said cause.

This action is brought as a result of an accident which took place on Illinois Route 116, approximately nine-tenths of a mile to one mile west of Hanna City. Hanna City is approximately 15 miles west of Peoria on Route 116.

On August 22, 1969, at about 4:00 p.m., Helen B. Bitner, one of the Claimants, while driving **a** 1966 Chevrolet in a generally easterly direction towards Peoria, Illinois, and Sharoll Wilcox, driving a 1963 Dodge in a generally westerly direction towards Farmington, Illinois, collided on Route 116 in the eastbound lane.

Claimant alleges that immediately prior to the collision, Sharroll Wilcox hit **a** triangular-shaped hole in the seam of Route 116, which caused his car to go out of control onto the shoulder of the road and into Mrs. Bitner's lane.

The evidence of the Claimant showed that at the time of the accident, there was a seam on the right hand side of each lane of Route 116. The seam was

created when the highway was widened in the mid 1950's. Each edge of this seam was eventually, through time, chipped away until a groove existed on each side of the highway. This groove existed on both sides of the road approximately from Hanna City to Farmington and had existed for a substantial length of time and was from two to four inches wide and a couple of inches deep. Claimant also established there were no warning signs on the sides of the highway to indicate the grooves in the road.

The car that struck the automobile of Claimant was driven by 16 year old Sharroll Wilcox who had been driving approximately two months. Evidence indicated he was familiar with the road and was aware of the existence of the groove in the road.

In direct testimony, Mr. Wilcox stated, "I was coming up on a curve and I hit a hole in the pavement. I lost control of the car, run off the road and come back on. The next thing I knew I was about a quarter of a mile down the road with the front of my car ripped off."

In a Police Report made shortly after the accident, Mr. Wilcox stated that "I believe in the accident report I said I run off the road and lost control.'' No indication of a hole in the road was made at that time.

Under cross examination by Mr. Webber, Counsel for Respondent, the following conversation took place:

Q. "Mr. Wilcox, I understand you said you had been driving down this depression or this groove, or how did you characterize it?

A. It was a low spot in the highway.

Q. You say you had been driving down that all the way from Hanna City?

A. Yes, off and on. It was because I usually —

Q. And I understood you to say that was not what caused the accident. What caused the accident was when you hit this hole in the road, is that right?

A. Yes."

The record indicates that Claimant adequately proved the existence of a groove in the road and also there was sufficient evidence to show actual and constructive notice on the State, but there was no evidence showing the existence of a hole and Claimant failed to show that the State had notice of a hole if, in fact, there was such a hole.

The testimony of State Trooper John Grant, who was called by Respondent, is significant and is as follows:

Q. "Did you investigate as Mr. Wilcox was proceeding in a westerly direction, did you investigate east of the tire track? Did you investigate for holes at all, is what I'm asking? Did you have any reason to investigate for holes in the roadway there?

A. Yes, I would investigate where he had gone off the road. I would naturally look for these things as to why he went off the road. But to myself I didn't see anything to signify that he hit a hole that caused him to go off, that is what I am saying."

Mr. Wilcox testified that he went back later and found a place where he thought the hole was, and at that location there was a hole that had been patched.

The law involved in a case like this has been stated on many previous occasions. The State has the duty to maintain its highways in a safe condition or to warn traffic of the existence of unsafe conditions. *Rickelman v. State of Illinois, 19 Ill.Ct.Cl. ,54.* Also, if the State has knowledge, either actual or constructive, of a dangerous condition on its highways and fails to warn the public of the danger, then it must respond in damages for injuries received as a result. *Bouey v. State of Illinois, 22 Ill.Ct.Cl. 95 at 108.* However, the State is not an insurer against accidents on its highways. *Bloom v. State of Illinois, 22 Ill.Ct.Cl. 582.*

The Claimants have failed in their obligation to prove there was a hole in the road and that the State had actual or constructive knowledge of such defect

and that such defect caused the accident complained of.

Motion for summary judgment is hereby granted and this cause dismissed.

(No. 6461—Claim denied.)

LUKE J. GRIMELLI, M.D., Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed** March 29, **1978.

VITO DALEO, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL WEXLER, Assistant Attorney General, for Respondent.

CONTRACTS—*Services **rendered.*** Claim for medical services rendered pursuant to authorization of Divison of Vocational Rehabilitation was denied where Claimant was unduly late in performing and time was of the essence or his authorization had been cancelled prior to performance, and State had to engage other doctors to perform the services.

POLOS, C.J.

This is a claim by Dr. Luke J. Grimelli to recover the sum of $380.00 which he contends he is owed for diagnostic consultations and laboratory tests performed on five patients at the request of the Division of Vocational Rehabilitation of the State of Illinois.

The parties waived the filing of briefs, and the only issue before the Court is whether Claimant is entitled to recover for the work he claims he performed.

The record establishes that Claimant was authorized by the Division of Vocational Rehabilitation to examine five patients and file reports to determine whether they were eligible for payments under the Federal Disability Program. In order to determine disability, time was of the essence so that those persons who qualified could receive payments as soon as possi-

ble. As to all five patients, the Claimant's authorization was cancelled due to his delay in filing the reports. In three instances, no report was ever received from Claimant; in the other two cases, reports were received after the cancellation had been sent to Claimant.

A brief summary of evidence as to each of the five patients involved is as follows:

1. Geraldine Holland the sum of $75.00
   Examined May 19,1970.
   Tests performed May 26,1970.
   Notice of cancellation sent July 6 1970.
   Report mailed by Claimant August 20,1970.
   Report returned to Claimant.

2. Phronia Belcher the sum of $92 00
   Examined June 18,1970.
   No report received.
   Claimant alleges report sent Sept. 18,1970.
   Notice of Cancellation Dec. 8, 1970.

3. Julia Notaro the sum of $90.00
   Examined June 12,1970.
   No report received.
   Claimant alleges report sent Sept. 18,1970.
   Notice of cancellation Dec. 8, 1970.

4. Ruby Roundy the sum of $64.00
   Examined June 23,1970.
   No report received.
   Claimant alleges report sent Sept. 18,1970.
   Notice of cancellation sent Dec. 8, 1970.

5. Evelyn Zaborsky the sum of $59.00
   Examined June 9,1970.
   Cancellation sent July 8, 1970.
   Report sent August 20 and returned to Claimant.

In none of the instances did Claimant recall receiving notice of cancellation, although he did recall having "received some mail . . . but I don't know exactly what it was." The Claimant tried to ascribe the delay in his preparing reports to the fact that patients often had to be sent to hospitals for tests, but on cross-examination, he admitted that all five of the patients in-

volved were tested in "our building, our laboratories," the same building in which Claimant examined the patients. Moreover, in every instance the patients were tested on the same day as the doctor examined them, and in one case, before the patient was examined by Claimant.

Because of Claimant's delay in returning his reports, Respondent had to have the examinations, tests and reports on the five patients performed by other doctors, since the Division of Rehabilitation attempts to have determination of disability made within 30 days of the application date. Although Claimant allegedly mailed three reports before notices of cancellation were sent to him he admitted that he personally did not mail them, that he was in the process of moving his office, and that, in one instance, the date of mailing was two weeks after the report had been prepared.

In view of the fact that the Respondent had to engage other doctors to perform the services for which Claimant seeks payment, and in view of Claimant's failure to provide these services in a timely manner, Claimant has failed to establish that he is entitled to recover on his claim.

It is therefore ordered that this claim be and hereby is, denied.

(No. 6494—Claimant awarded $13,076.00.)

THOMAS N. GROGAN, d/b/a ILLINI HEAT & POWER, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed March 29, 1978.

HORSLEY, KIMBLE, LOTT & SURMAN, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*Modification.* Where Claimant encountered unforeseen difficulties in performance of the contract and agreed **to** perform additional work upon assurances of additional compensation given by persons cloaked with authority to grant such assurances, Claimant will recover additional compensation under theory that there was a modification based upon sufficient consideration or detrimental reliance.

POLOS, C.J.

This claim arises out of a contract awarded to Claimant for the installation of a 10,000 gallon underground gasoline storage tank in a parking lot of the Ottawa State Garage in Ottawa, Illinois. The contract called for the excavation of the site, installation of the appropriate footings and foundations for the tank, and the return of the parking lot and surrounding sidewalks to their original condition.

The contract was let for bidding, and Claimant's low bid of $4,970.00 was accepted by the State. At issue is whether Claimant should be paid the additional sum of $13,076.00 to compensate him for the difficulties encountered in completing the work, which were not foreseen by either party when the contract was executed.

The facts are not in dispute. Prior to bidding on the contract in question, the Claimant visited the installation site and made three test borings, each to a depth of eight feet. He testified that he encountered no unusual conditions in his testing.

Claimant commenced work on the site on September 11, 1970. On the first day of excavation, Claimant's employees encountered solid rock under a portion of the excavation site. They also struck and damaged a sewer which ran diagonally across the excavation site. The broken sewer and exceptionally heavy rains flood-

ed the excavation, and caused part of the surrounding parking lot and a nearby fence and gate to collapse. Claimant was required to place pumps in the excavation during construction to control the flooding.

When Claimant became aware of the existence of the rock and storm sewer on the site, he so advised the supervising architect of the Department of General Services. On October 20, 1970, the supervising architect sent Claimant a letter, requesting that Claimant submit a proposal for rerouting the sewer.

Claimant submitted the proposal to the Illinois Auditor General, along with the affidavit of Robert McAlpine, the Superintendent of the Division of Vehicles of the Department of General Services. The affidavit certified that the relocation of the sewer, and correction of the flooding, were emergency matters. Submitted with the proposal was a requisition signed by McAlpine, and approved by the director of the Department of General Services, requesting that Claimant be paid the sum of $13,076.00 for his work in correcting the flooding, removing rock from the excavation site, and rerouting the sewer.

Claimant said that he undertook the additional work on the site only after Robert Manker, Superintendent of Building and Grounds of the Secretary of State, had assured him that he would be paid for his additional efforts. Claimant subcontracted the job of removing the rock from the excavation, which took approximately two weeks. In rerouting the sewer Claimant had to saw through the asphalt pavement of the parking lot, dig a ditch approximately 25 feet from the tank, and lay cast iron sewer pipe around the tank.

Claimant fully performed all work required under the contract, including rerouting the sewer and replac-

ing the surface pavement. Claimant purchased all the materials used in rerouting the sewer, and has been paid only the original contract price of $4,970.00.

It is the position of the State that this claim for additional compensation is barred by the contract between Claimant and the State. With respect to Claimant's contention that he should receive additional compensation for removal of the rock at the site, the State points to Sections 1-8 and 11-7 of the contract, which, in substance, states that a contractor bidding on the job must familiarize himself with conditions at the site, and that the State would not be responsible for paying for additional work required by the failure of the contractor to note those conditions. With respect to the rerouted sewer, Respondent points to Sections 11-5 and 11-26, which provide, in substance, that the State made no effort to discover underground utilities, and that it is the responsibility of the contractor to determine if difficulties would be encountered in completing the job because of underground utilities.

The State's reliance upon these contractual provisions might be valid, had not the State previously engaged in a course of conduct clearly evidencing an intention not to hold Claimant to these terms. It is uncontradicted that before Claimant began excavating the rock and rerouting the sewer, he was assured by a person with supervisory authority in the Office of the Secretary of State that he would be paid for the additional work. In fact, the State went so far as to requisition the additional payment, and the director of the Department of General Services approved that requisition.

The Court feels that now that Claimant has satisfactorily performed the additional work, the State may

not abandon its prior position, upon which Claimant relied in relocating the sewer and excavating the rock from the job site. The record is clear that after the contract in question was executed, Claimant and the State of Illinois agreed to a modification of its terms. Specifically, Claimant agreed to perform the additional work discovered to be necessary to install the gasoline tank, and Respondent agreed to pay him the additional sum of $13,076.00. This agreement was supported by sufficient consideration and in any event, Claimant clearly relied upon it to his detriment. The parties made a valid modification of their contract, and Claimant is entitle to additional compensation.

The State does not contest the reasonableness of Claimant's charge for the additional work, and agrees that it was satisfactorily performed.

Claimant is therefore awarded the sum of $13,076.00.

(No. 6537—Claim denied.)

BEVERLY A. WAGNER, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed February 3, 1978.

REESE AND SCHAFNER, by HARRY B. ARON, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; SAUL R. WEXLER, Assistant Attorney General, for Respondent.

HIGHWAYS—*Constructive* ***notice*** *of* ***dangerous condition.*** State may be charged with notice of a dangerous condition when, from all the circumstances, it is determined that the State should have been aware of the existence of a condition in the exercise of due diligence.

POLOS, C.J.

Claimant, Beverly A. Wagner, Administrator of the Estate of her late husband, Bernard A. Wagner, has brought this action to recover damages for his death.

Bernard Wagner died on August 25, 1971, as the result of injuries he suffered in a motorcycle accident on August 18,1971. The accident occurred at the intersection of an exit ramp from Interstate 55 and County Line Road in Cook County, Illinois. Claimant contends that the death of her husband was proximately caused by the negligence of the State of Illinois in permitting gravel to accumulate on the exit ramp, which caused the deceased to lose control of his motorcycle while traveling on the ramp.

At about 8:45 p.m. on August 18, 1971, Bernard Wagner was proceeding from his place of employment at **2400** South California Avenue in Chicago, to the Santa Fe Speedway. He was driving a 1964 B.S.A. motorcycle. It appears that he was an experienced motorcycle driver who took good mechanical care of his machine. Mr. Wagner was not wearing a crash helmet at the time of the accident.

Wagner proceeded westbound on Interstate 55, and left 1-55 at the southbound County Line Road exit. The exit ramp was a single lane concrete roadway with shouders on either side, which were in turn bounded by gravel. The exit ramp was part of a full cloverleaf interchange at County Line Road.

The parties stipulated that the exit ramp from Interstate 55 to County Line Road was under maintenance jurisdiction of the State of Illinois. County Line Road itself was not under the jurisdiction of the State, but rather was maintained by the County.

Road conditions were clear and dry, and the **exit** ramp was well illuminated.

As the deceased reached the top of the exit ramp, near its intersection with County Line Road, his motorcycle fell to the pavement. Another motorcycle rider and his passenger, who had been following about 50 yards behind the deceased, testified that they saw sparks near the top of the exit ramp where Wagner fell, and that when they reached the top of the ramp they found him lying on County Line Road near his fallen motorcycle.

Wagner suffered severe head injuries in the accident and the parties have stipulated that those injuries resulted in his death on August 25. The disputed issues are whether Claimant's death was proximately caused by the negligence of the State, and whether the accident actually occurred on that portion of the exit ramp which was under the control of the State.

Officer John Hallock, Jr. was the police officer first called to the scene of the accident. Hallock said that he found an accumulation of gravel near the point of the merger of County Line Road with the exit ramp. He also said that there was construction taking place on the exit ramp during the week prior to the accident, involving replacement of the gravel outside the shoulders of the exit ramp. He was unclear as to exactly when the construction occurred, but was sure that it was "at least several days" before the accident.

Hallock said he observed gravel at the top of the ramp, but that there was no gravel on County Line Road itself. He said there was a "significant amount" of gravel "completely across" the paved portion of the exit ramp near the intersection with County Line road. He said it did not appear possible for a motorcycle to avoid the gravel as it entered County Line Road. Hallock said that the gravel was clearly visible to him and

that he did not observe any skid marks at the accident scene.

John Andrews, a consulting mechanical engineer called as an expert witness by Claimant, testified that it was his opinion that the accident was caused by the accumulation of gravel on the roadway.

Eugene Nosal was the driver of the motorcycle which was following the deceased, and Kenneth Bailek was his passenger. Neither was in a position to actually observe the deceased fall from his motorcycle, and both said that they merely observed sparks at the top of the exit ramp, and that it would not have been possible for Wagner's motorcycle to avoid the gravel as it entered County Line Road. Bailek said he also observed dark patches on the pavement, which might have been oil slicks.

Eugene Nosal also said he observed gravel on the exit ramp. He testified that he observed construction on County Line Road about 50 yards from the intersection with the exit ramp, and that there was also gravel on County Line Road near the construction site.

Joseph J. Kostur, Jr., the Regional Safety Claim; Administrator of the Department of Transportation, was called as witness by Respondent. Kostur said he had searched the records of his office, and was unable to find any contracts or awards let for construction on the County Line Road exit ramp on or about the time of the accident. Nor did Kostur find any maintenance records reflecting repair work on the ramp at the time. However, on cross-examination Kostur said that he would not necessarily be aware of a small patching operation on the exit ramp.

Bernard **A.** Wagner was **32** years old at the time of

his death. He was married, and had two children. It appears that he had a close relationship with his family, particularly with a son who suffers from muscular dystrophy.

The deceased had been steadily employed prior to his death by the Ford Motor Company as a metal finisher, earning approximately $8,500.00 per year. In addition, he worked part time as a motorcycle salesman on a commission basis.

It is the State's position that Claimant has failed to establish that it was negligent in maintaining the exit ramp in question; that Claimant has failed to establish that the accident occurred on the exit ramp, as opposed to County Line Road itself; and that Claimant has failed to establish that Bernard Wagner was free of contributory negligence.

It is axiomatic that the State is not an insurer of the safety of all persons who travel roadways under its jurisdiction and control. Rather, the State is held to a standard of reasonable care in maintaining those roads. *Bloom u. State, 22 Ill.Ct.Cl. 582; Meygandt u. State 22 Ill. Ct.Cl. 498.* In order to recover in this action, 'Claimant bears the burden of proving by a preponderance of the evidence that Respondent breached this duty; that the State's breach was the proximate cause of the death of Bernard Wagner; and that Bernard Wagner was in the exercise of reasonable care for his own safety at the time of the accident. *McNary u. State, 22 Ill.Ct.Cl. 328.*

Claimant has established that there was a quantity of gravel on the exit ramp from 1-55 at the point where the deceased fell from his motorcycle. All of the witnesses who were at the scene agreed on that point. However, we find there is an absence of proof as to how

long that gravel remained on the roadway prior to the accident. The only testimony bearing on this point was that of Officer Hallock, who said that he had observed construction on the exit ramp during the week prior to the accident; but neither Officer Hallock nor any other witness testified to having seen the gravel on the roadway prior to the day of the accident.

The State may be charged with constructive notice of a dangerous condition when, from all the circumstances of a case, it is determined that Respondent should have been aware of the existence of **a** condition in the exercise of due diligence. ***Joyner** v. **State,** 22 Ill. Ct. Cl.* 213, 217. Here there was no testimony as to the length of time the gravel had laid on the roadway, and thus no evidence upon which we can charge the State with constructive notice of its existence.

Nor has the Claimant established that the State had actual notice of the existence of the gravel. Claimant contends that there is proof that the gravel originated with construction work performed by the State on the exit ramp. Again Claimant relies on the testimony of Officer Hallock, who said that "at least several days before the accident'' he saw the State patching the gravel outside the shoulder of the exit ramp. Hallock offered no testimony that the State's construction resulted in the gravel at the accident scene, and there is ample evidence in the record from which the Court can conclude that the gravel originated from another source.

Eugene Nosal, the operator of the motorcycle which followed the deceased, said that on the night of the accident he observed construction work on County Line Road about 50 feet from the exit ramp. Nosal said that he examined the construction area and found that

the ground was covered with gravel, which extended to the exit ramp from Interstate *55.*

Given Nosal's testimony, the Court is unable to conclude that Claimant has established by a preponderance of the evidence that the gravel on the exit ramp originated with the construction on the ramp, as opposed to the construction on County Line Road, which was not under the control of the State.

This was an extremely unfortunate accident, and the Court has accordingly carefully scrutinized the record. We must conclude, however, that Claimant has failed to establish the negligence of the State, and this claim must accordingly be denied.

(No. 6777—Claimant awarded $405,424.49.)

ORR CONSTRUCTION COMPANY, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed December 2, 1977.

HARRY M. BROSTOFF, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL** R. **WEXLER,** Assistant Attorney General, for Respondent.

DAMAGES—Determination of amount.

HOLDERMAN, J.

This matter comes before the Court after a hearing by the Commissioner to determine the damages suffered by Claimant. Motion for summary judgment filed by Respondent was previously denied and the remaining issue is to determine the amount of damages sought by Claimant as a result of being required to use unsuitable material in the embankment.

Donald Orr, secretary of the Claimant company, called as a witness, identified certain documents as final estimates of quantities, payroll records, equipment records, statements of materials and labor on the Fayette Project.

Charles Covert, formerly employed by Claimant on the project in question as a grading supervisor, testified that the State engineers ordered Claimant to use excavated material, which was unsuitable, in the embankment. This was over the objection of the Claimant who wanted to use suitable borrowed material. The silty or unsuitable material would be put in the embankment and a lift of better earth or dirt would be placed in alternate layers; the lifts of the unsuitable and the better borrowed earth were then compacted; the equipment rutter and sank into the unsuitable material from one to three feet; the equipment was slowed down and sometimes the scraper and bulldozer would "drag bottom" necessitating the equipment being pushed or pulled by tractors. As a result of which, the construction of the road embankment was slowed down. He stated that silty material was soft and mushy causing the equipment to become rutted in.

Edwin Klump, Jr., Market Development Engineer for the Caterpillar Tractor Company, testified that he edited the Caterpillar performance handbook. This book is an estimator's guide in figuring production of the various Caterpillar machines. The book is a guide to earth moving and in it is a chart setting out production data on the "631" scraper used by the Claimant on this project.

Frank Bower, Senior Project Engineer, Terex Division at General Motors, identified performance charts for "S" 24 Graders used by Claimant in this project.

Charts are used to aid contractors in calculating productivity within the engineering department.

Charles Antonetti, former engineer and head estimator for Claimant, called as a witness, testified he prepared Claimant's estimate for the project in question; that they planned to waste the unsuitable material for the reason "that it has no stability" and "you can't travel on it."

He testified as to meetings regarding the handling of the unsuitable material, the Claimant wanting to waste it, the Respondent wanting to use it in the embankment. Using the State's methods, he stated, haul costs would be greatly increased. He testified that he prepared the claim filed in this cause. He further testified, "I took the performance chart from the equipment manufacturers and with the information I had from what had happened on the job, I prepared two sets of figures. One set of figures was based on our proposition and the way we wanted to bill the job. This entailed using a clay material and a particular depth of penetration in the tires of the machines, the hauling units, which would give us a calculated rolling resistance, which in turn would give us the speed of the equipment and the daily production of that piece of equipment. By taking that and taking our daily costs, I arrived at a cost per unit of material hauled. Then, I turned and took another set of figures based on the type of penetration that we were getting where we incorporated the unsuitable material in the embankments and calculated the rolling resistance under those conditions, got the daily production, put that into our daily cost, and came out with a unit cost, compared those two and took the difference and calculated our loss based on that information.

And, as far as the amount used, the amount of silty material incorporated in the embankments, I took from a set of figures that was prepared by the State of Illinois and used that in those particular embankments along with the other material that went in, which I also got from the State of Illinois."

He further testified, "In calculating these costs, I have taken all the information supplied by the State of Illinois as to where we had the unsuitable material, etc., and the amount that was incorporated in the fill and the amount that we hauled and put in stockpiles and brought back. And, then I attempted to arrive at the type of costs.

In my calculation, I have taken for the average spread a six scraper, which would contain six hauling units."

He stated, "And the daily cost with the corrected labor rates and health and welfare and ownership cost rather than a rental figure for the equipment and a fuel and maintenance cost came to $3,372.53 on a daily cost basis."

He further testified, "Once we decided on what the crew was, the daily cost, we went to the Caterpillar **book** which was previously introduced to get the hauling times or daily production in the two situations."

Q. "What do you mean by the two situations?

A. In situation 1, which would be the type of hauling conditions we had assumed when we bid the job using a clay material in the embankments. We calculated that our normal tire penetration would be approximately six inches by these machines, which in turn would give us a rolling resistance of roughly eleven percent, and give us a production of around ten to 12 loads per hour, which we apply our efficiency percentages ***to*** it. We came up with about between seven and one-half and eight loads production under the condition we asusme we were going to be using clay.

Then, I also did a set of calculations based upon the information I received from the job and some personal observations on the job where our

machines were just hanging up in the material. At that point the penetration is somewhere in the vicinity of three feet.

We were getting by report that we were going anywhere from a foot up to this just marred down position, which could be roughly three feet. And, I assumed an average penetration under these adverse conditions of approximately 24 inches for this calculation.

When I applied this to the normal formulas and sets presented in the book, 1came up with a cycle that would produce around slightly over three loads per hour versus the seven and one-half to eight that we counted upon.

I divided those two. Well, I computed the daily production based on those two loads counts, 7.7 loads which gave us in excess of 10,000yards, I believe, and 3.04 loads which gave us just slightly in excess of 3,600 yards.

I divided both of those in the daily cost of 3,300. I came up with a figure of 52.33 cent cost per cubic yard to move over the silty material versus a cost of 32.82 across the clay material. I then multiplied that by the amount of material.

Q. What is the difference?

A. The difference, I got the 19%cents. Multiply that by the amount of material hauled over the unsuitable material in the embankment where unsuitable material had been placed, and that's how I came up with Count **I.**

Q. The recalculation total was how much?

A. **I** have it here some place. $375,508.98. The difference is 55.95."

He further testified, "When we're hauling over clay with six inch tire penetration, we arrive at a cost of .3649. And when we're hauling over the unsuitable material at the **3.04** loads, we arrive at a cost of .9244, which gives us a difference of .5595 cents per cubic yard hauling under the two types of conditions presented, one over clay and one over embankments with silty material incorporated.

Q. And that difference is the damage that was suffered by Orr Construction Company as a result of hauling that material over the unsuitable material as against hauling it over clay?

A. That's correct."

At the time of the hearing, the Claimant made a motion to amend Count I to read $375,508.98instead of $402,000.00.No objection was made to the amendment, and the claim was amended as to that particular Count.

Claimant, at the time of the hearing, withdrew

Count II in the amount of $36,152.80. Claimant originally sought that sum for the furnishing of additional borrowed dirt.

As to Count III of the Complaint, Claimant seeks damages for having been required to haul empty to the borrow area and return loaded with borrowed excavation in the amount of 90,382 cubic yards of material. Claimant seeks damages in the amount of $17,624.49. Based upon specifications, field measurements and computations submitted to the Commissioner, the amount of cubic yards actually used was 31,885 yards at .195 per cubic yard, so that the Claimant has now reduced said claim to $6,217.58.

In Count IV, Claimant alleges that the unsuitable material elected by Claimant to be disposed of, on which basis Claimant has prepared its proposal, upon excavation would have become the property of Claimant. Claimant alleges that said material was suitable for topsoil required by the contract and Claimant used 50,990 cubic yards of said material for topsoil. Claimant alleges Respondent wrongfully deducted 27,239 cubic yards of said quantity from the measured borrow excavation and refused to pay Claimant for said amount deducted. Claimant alleges damages for this in the amount of $44,361.30. Submitted to the Commissioner was evidence that the amount of topsoil involved here was 27,239 cubic yards at .87 per cubic yard. This amount is determined by the job summary final quantity sheet. Claimant's claim in this Count is therefore reduced to $23,697.93.

Count V seeks the sum of $70,183.78 which was amended to $58,436.48, and is for damages due to the delay in completion of the mass excavation and embankment resulting from the order regarding the use of the unsuitable material.

It appears from the evidence that the delay involved in this project was primarily due to bad weather and was not any fault of the Respondent. An extension was requested by Claimant of 87½ days and it appears that 54½ days was granted by the Respondent. On the basis of such extension, Claimant withdrew Count V of the original complaint.

This matter was previously briefed and argued before the Court and for that reason the filing of additional briefs and abstracts have been waived.

From the evidence submitted, the Court believes that an award of damages be as follows:

As to Count I, an award in the amount of $375,508.98;

As to Count 111, an award in the amount of $6,217.58;

As to Count IV, an award in the amount of $23,697.93,

for a total award to Claimant in the amount of **$405,424.49.**

(No. 6802—Claimant denied.)

HONEYWELL, INC., Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed July ***18,1977.***

CARDOSE & CARDOSE, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—Bunden of proof. In order to recover for amounts due, Claimant must show by a preponderance of the evidence the allegations in the complaint.

SAME – Warranty. Where evidence failed to show work was performed outside contracted warranty period, claim will be denied.

POLOS, C.J.

Claimant, Honeywell, Inc., seeks to recover the sum of **$472.63** from Respondent for services and materials furnished at the Illinois School for the Deaf in Jacksonville, Illinois.

Claimant had contracted with the State of Illinois for installation of a fire alarm system at the school. It appears that the job was completed in January, 1970, and was subject to a one year warranty.

Either just before or just after the expiration of the warranty period, Claimant replaced a defective part in the system and has now brought suit to recover the cost of the installation. Respondent contends that the work performed was covered by the warranty, and was therefore not subject to charge. Claimant contends that the work was performed after the expiration of the warranty period, and that it should be paid for the work.

There is no dispute as to the necessity for the work, or the reasonableness of Claimant's charge therefore. The sole issue in dispute is whether the work performed was covered by the warranty.

Dale Zittling, Commercial Service Manager for Honeywell in the Jacksonville, Illinois area, was the only witness to testify for Claimant. Zittling said that he "believed" that the job at the School was completed in January, 1970, but he was unable to state the date of completion, and the date on which the warranty expired. On direct examination he testified that the services were performed on February 18, 1971, which was subsequent to one year after the installation of the system. On cross-examination, however, Zittling said that he was unable to state the date on which the materials were furnished and services performed, or the date on which Respondent requested the repair

work. He further testified that it was Claimant's practice to honor, under a warranty, request for service made prior to the expiration, even if the work was performed after the warranty expired.

The Court also notes that Claimant's invoice for the work performed bears the date of February 18,1971. Zittling testified that this was the date of the invoice, not the date that the work was performed, and that Claimant's billings were usually issued one month after the date the work was performed. The parties agree that if the work was performed one month prior to the invoice date, it was covered by the warranty.

From the foregoing, the Court must conclude that Claimant has failed to sustain its burden of proving, by a preponderance of the evidence, that Respondent is indebted to Claimant as alleged in the Complaint. The Claimant failed to prove either the date of the expiration of the warranty **or** the date upon which the work was performed.

Claimant's invoice bears the date of February 18, 1971, and Claimant's witness testified that invoices were generally issued one month after work was performed.

Claimant has failed to carry its burden of proving that the work was done within the warranty period. This claim is accordingly denied.

(No. **6841—Claimant awarded $3,821.29.)**

PEKIN INSURANCE COMPANY, BEARDSTOWN TRANSFER, INC., ILLINOIS VALLEY ASPHALT COMPANY AND AETNA LIFE AND CASUALTY INSURANCE COMPANY, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

***Opinion filed June** 14, 1978.*

DRACH, TERRELL & DEFENBAUGH, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **WILLIAM E. WEBBER,** Assistant Attorney General, for Respondent.

NEGLIGENCE—Maintenance of drawbridge.

POCH, J.

Claimants seek an award of damages against the State of Illinois in the original sum of $3,821.29, arising out of damage to Claimants' truck-trailer, in an accident allegedly caused by the negligence of the State in maintaining a certain "bridge gate" on the Florence Street Bridge over the Illinois River in Florence, Illinois.

It was stipulated at the hearing of this cause that Claimant, Pekin Insurance Company, had sustained losses as a result of the accident in the sum of $3,621.29; and that Claimant, Beardstown Transfer, Inc., had sustained losses in the sum of $200.00.

The evidence adduced at the hearing before a Commissioner of this Court that on November 9, 1970, Robert Coats was operating a semi-trailer truck west on a two-lane bridge with a lift span in Florence, Illinois. The bridge must be raised to allow river traffic to pass under the bridge, and at the time the bridge is raised, gates 24 feet in length descend on a system of chains and pulleys across the traffic lanes to block traffic from entering upon the bridge while it is raised. At the same time, Spencer Evans was driving a truck for Illinois Valley Asphalt Company eastbound on the same road at the same bridge. As the trucks were approaching each other on the bridge, the large metal gate, hereinabove referred to, fell in front of the Illinois Valley Asphalt truck operated by Evans. The Illinois

Valley Asphalt truck struck the gate, and caused the gate to spin around and allegedly strike the rear wheel and tire of the Beardstown, Inc. truck, causing it to go out of control. The Beardstown Transfer vehicle struck the bridge and the tractor of that truck was a total loss.

An investigation conducted by the Department of Public Works and Buildings revealed that the gate had fallen through a malfunction in the bridge operation equipment.

Respondent's employee, Wendell Baird, stated that he worked as a bridge mechanic for the State of Illinois, and was present at the bridge on the day of the accident, engaged in the preventative maintenance program, which called for bi-monthly inspections of the bridge equipment. Baird conducted an investigation after the accident and determined that a pin broke in a chain, allowing the gate to fall. The pin that broke attached the chain to the barricade gate. Baird testified that truck traffic on bridges of this kind tended to "bevel" pins in locations similar to that of the pin that broke in the present case, causing the pin to bend and snap. Baird testified that the only way to check pins of this type would be to take the chain off and that that was not part of the periodic maintenance.

The record clearly shows that wear to the pin that broke in the present case could cause the gate to fall in front of traffic, and that this was known to the employees of the State prior to the accident. Baird testified that with respect to inspection of these parts, "we always try to be very careful because it could be a very dangerous situation."

The defect which caused the malfunction of the bridge in the present case could have only been found by dissassembling the chain mechanism. This was not

done as a part of any periodic inspection. If this pin broke as a result of a beveling condition from truck traffic, there was no system to prevent the gate from falling onto or in front of bridge traffic.

The gate in question fell directly in front of the Illinois Valley Asphalt truck, making it impossible for Claimant's employee to avoid the accident. We accept Claimant's argument that if the gate had not fallen there would have been no accident in this case.

Before any Claimant may recover, they must prove by a preponderance of evidence that (1)Claimant was free from contributory negligence; **(2)**that Respondent was negligent; **(3)** that Respondent's negligence was the proximate cause of Claimant's injuries, and **(4)** damages, *Illinois Ruan Transport Corp. v. State of Illinois, 28 Ill.Ct.Cl. 323, 327 (1973).*

First, as set forth above, there is no evidence to show any independent intervening cause of the accident, or that the driver for the Claimant, Beardstown Transfer, acted unreasonably under the circumstances. The driver testified that when the gate fell, he immediately applied his brakes. He did not put on his brakes to their full extent because he was afraid of losing control of the truck and colliding with the oncoming truck. Claimant has proven that it was free from contributory negligence by a preponderance of the evidence.

Second, it was acknowledged that the State tries to be careful because a gate falling in front of traffic "could be very dangerous." Further, the State admits that it would be possible to install a safety mechanism to prevent the gate from falling in the event that the beveled condition of the pin in question caused the pin to break.

Therefore, the above testimony taken with the remainder of the record establishes that the Claimant has proven that the Respondent was negligent by an overwhelming preponderance of the evidence.

Third, as related above, it does not appear that this accident would have occurred but for the direct causal relationship between the falling of the gate in front of Claimant's vehicle and the ensuing accident. Respondent does not argue that the collapse of the gate was not the proximate cause of this accident. The record substantiates that the breaking of the pin and the falling of the gate was in fact the proximate cause of the accident and the resulting damages.

Fourth, and last, the damages of Claimants have been stipulated in the following amounts: Pekin Insurance Company, $3,621.29; Beardstown Transfer Inc., $200.00.

Subsequent to the hearing in the above case, a motion was made to join the claims of Aetna Life and Casualty Insurance, and Illinois Valley Asphalt Company in the combined sum of $352.00, arising from the same accident. The Commissioner permitted an amended complaint to be filed, but it was later pointed out by the Attorney General through a motion to strike the amended complaint that the statute of limitations with respect to the tort claims of Aetna Life and Casualty Insurance Company and the Illinois Valley Asphalt Company had been barred by the applicable two-year statute of limitations. Therefore, the claims of Aetna Life and Casualty Insurance Company and Illinois Valley Asphalt Company are denied.

An award is hereby made to Pekin Life Insurance Company in the sum of $3,621.29, and to Beardstown Transfer, Inc. in the sum of $200.00.

(No. 6863—Claimant awarded $5,100.00.)

DOROTHY MIRELES, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion fded March 9, 1978.

WILLIAM S. KECK, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL** WEXLER, Special Assistant Attorney General, for Respondent.

NEGLIGENCE— Duty *to maintain* ***sidewalk.***

HOLDERMAN, **J.**

This action is based on a claim for injury to Dorothy Mireles resulting from a fall occurring around 9:00 a.m. on November 30,1971, in the parking lot at the Illinois State Psychiatric Institute located at 1601 West Taylor Street, Chicago, Illinois.

While there to seek marriage counseling, she claimed she stepped into a "crack **or** hole" in the parking lot of the institute while attempting to avoid a patch of ice. She suffered a fracture of the tibia and fibula of the right leg. She identified on a photograph where the hole was that she stepped into.

Claimant was a waitress whose loss salary and tips totaled $1,950.00. Her net medical expenses were $150.00. Dr. Belza, Claimant's physician, states "there should be no impairment of function. . . however the injury will probably leave a minimal bone deformity without any manifestation on the external surface. . ." Dr. Gleason in a joint exhibit, indicated no permanency other than 11 degree flexion - extension of the right ankle and a loss of 10 degree inversion of the right foot as compared to the left. Both doctors said that she could continue her normal activity.

Respondent argues that Claimant herself was negligent; that the State had no Notice of any so-called defective condition of the premises; and that the hole shown in the photograph was too small to impose a duty on the State to correct. Respondent cites *Walkowitz v. State, 29 Ill.Ct.Cl. 10; 28 Ill.Ct.Cl. 368, 373; Davis v. City of Chicago, 290 N.E.2d 250; and Arvidson v. City of Elmhurst, 11 Ill.2d 601.*

Claimant relies heavily on *Mary F. Jones v. City of Rockford, 101 Ill.App.2d, 174, 242 N.E.2d 302.* In that case, Claimant fell on a broken sidewalk curb and gutter of defendant when she stepped to avoid ice accumulated in the broken sidewalk. The jury awarded her $4,000.00. The Appellate Court refused to set the verdict aside, saying, "The questions which were raised in this case were obviously questions for the jury."

The case before this Court simply is a question of fact. If this were a jury trial, our judgment would affirm whatever verdict the jury would return. We cannot say as a matter of law in this case that the State was negligent nor as a matter of law that Claimant was free of contributory negligence, nor as a matter of law, the State had notice of the defect. However, we must in this instance act as a jury and give a judgment based on whatever we think the preponderance of the evidence proves.

In *Arvidson v. City of Elmhurst, 11 Ill.2d 601, 145 N.E.2d 105,* the Court said:

> "The rule in Illinois, reiterated in the case law, is that a jury question on the issue of the city's negligence is presented only when the defect in the sidewalk is such that a reasonably prudent man should anticipate some danger to persons walking upon it." Citing *Walter v. City of* Rockford, *332 Ill.App. 243, 74 N.E.2d 903.*

The *Arvidson* case sets forth in clear language the rule of law applicable to a situation where a person

falls on a defective sidewalk. One of the basic questions in determining liability is whether the sidewalk irregularity is too slight to impose a duty on the city to remedy. The Court said on *Page 106 of 145 N.E.2d:*

> "While Courts are in marked disagreements as to when the sidewalk irregularity or defect is so slight that the question is one of law, and where it is one of fact for the jury, nevertheless, the decisions recognize that no mathematical standard can be adopted in fixing the line of demarcation, and that each case must be determined upon its own particular facts and circumstances."

Whether a fact is proven or not is tested by the definition of "Burden of Proof' in *Illinois Pattern Jury Instructions,* No. 21.01. The test is whether a fact is "more probably true than not true," as shown by the evidence.

Viewing the pictures and considering the testimony of the Claimant, we find that she has sustained her burden of proof that she fell when she stepped in a hole while avoiding an icy patch; and that the defect was such that a reasonably prudent person should anticipate some danger to persons walking in the area.

We find Claimant is entitled to an award for the following:

As to medial expenses,	$ 150.00
As to lost wages,	$1,950.00
As to injury,	$3,000.00

Claimant is hereby awarded $5,100.00.

(No. 6951 — Claimant awarded $13,481.58.)

CRAWFORD, MURPHY & TILLY, INC., Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Order filed August 18, 1977.

TRAYNOR & HENDRICKS, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; LAWRENCE W. REISCH, JR., and WILLIAM E. WEBBER, Assistant Attorneys General, for Respondent.

CONTRACTS—*Mutual* ***mistake.*** In order to reform a contract on the ground of mistake, the mistake must be one of fact, mutual and common to both parties in existence at the time of the execution of the contract, and showing that at such time the parties intended to stipulate a certain thing and by mistake stated it in a different way.

HOLDERMAN, J.

Claimant, on April 1, 1970, entered into a contract with the State of Illinois through the Department of General Services to furnish engineering services in connection with the construction of certain road improvements including the construction of an all-weather entrance road and parking plan.

The claim before this Court is for the sum of $13,481.58 which Claimant contends is the balance due for the services, rendered. Respondent contends that Claimant is entitled only to the sum of $9,456.96. The sole dispute is whether or not Claimant is entitled to be remunerated based on nine percent of the actual cost of construction or whether Claimant must settle for seven percent of the revised estimated cost. The contract provisions relative to remuneration are as follows:

Compensation of Associate Engineer:

It is agreed that the Associate's commission shall be based either upon nine percent of an estimated cost of $63,850.00, which is $5,746.00, or nine percent of the actual cost of construction, whichever is lesser. It is agreed that the cost of construction, whichever is lesser. It is agreed that the supervising architect be given a revised final estimate upon completion of drawings and specifications and prior to advertising for bids. If this estimate is greater than the original estimate, the Associate fee will be adjusted as approved by the supervising architect and paid on the basis of the foregoing percentage applied to this approved revised estimate, or to the actual cost of construction, whichever is lesser."

The original estimate was the sum of $63,850.00, but this estimate was not made by Claimant. It was prepared within the office of the supervising architect

and the Department of Conservation.

However, the scope of the work was expanded extensively and the revised final estimate was the sum of $201,230.75. This was less than the construction cost and therefore the basis for computing the fee.

If Claimant is entitled to the fee based on nine percent of the estimated cost, then it is entitled to recover the amount sued for, that is, $13,481.58. This also includes remuneration for special duties in the amount of $1,116.81 but there is no dispute on this last item. If the seven percent rate is to be used, then Claimant has coming $9,456.96, which sum also includes the $1,116.81 for special duties. The balance of the consideration for services rendered due to Claimant has been paid for.

The work was completed on August 20,1971. Thereafter, on December 27,1971, the Department of General Services approved a fee based on nine percent of $201,230.75, the final estimate. At that time, the Department of General Services sent to Claimant a change order, setting forth the change from the original contract price of $5,746.00 to the new price, based on nine percent which was in the amount of $18,110.77. The communication to Claimant requested Claimant to sign the change order and return it to the Department, and that they, in turn, would forward it to the using agency with recommendations for approval and further processing. It was not until nine months later, on May 3,1972, that the Department of General Services notified Claimant for the first time that the fee had to be adjusted to seven percent because the project exceeded $200,000.00, and they had to stay within the guidelines created by the State Legislature.

Respondent argues that a contract may be reformed when an agreement sets forth something dif-

ferent than what was intended and that courts freely exercise their power to correct mistakes when the proof leaves no doubt that the contract entered into was something different from the real agreement of the parties. There is no argument with this principal of law, but there is no proof anywhere in the record to indicate that the parties actually intended to agree on something different than the nine percent rate set forth in the contract. There was no evidence that there was a mutual mistake of fact nor any evidence that the rate of compensation was erroneous or on its face was known to be erroneous by Claimant.

In order to reform a contract on the ground of mistake, the mistake must be one of fact, mutual and common to both parties, in existence at the time of the execution **of** the contract, and showing that at such time the parties intended to stipulate a ceratin thing and by mistake stated it a different way. The evidence must leave no reasonable doubt as to the mutual intention of the parties.

We fail to find that Respondent has established that there was a mistake in the first place that was common to both parties and understood by both parties. The chief engineer for Claimant did testify that he knew the Department of General Services had a policy that on engineering projects they had a schedule of fees based on nine percent up to $200,000.00 and that had the State required the fee to be seven percent after $200,000.00, it was certain that Claimant would have negotiated a contract based on such a rate of payment. However, since the written contract contained no such provision and there was no mention of a seven percent figure until nine months after the work was done, we feel that justice requires the States to live up to its agreement as spelled out in the contract. *Ambarann*

Corp. v. Old Ben Coal Corp. 395 Ill. 154, 69 N.E.2d 835 (841).

The State offered no explanation as to why the original contract did not set forth a graduated rate in accordance with what it refers to as the "policy" of the office. It prepared the contract and should have inserted a clause reducing the rate to seven percent if it wanted such an agreement.

Judgment is hereby entered for Claimant in the sum of $13,481.58.

(No. 6958—Claimant awarded $8,832.00.)

MONTGOMERY ELEVATOR COMPANY, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed November 7, *1977.*

GRADY F. HOLLEY, of GIFFIN, WILLING, LINDER, NEWKIRK, COHEN, BODEWES & NARMONT, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—Rescission. Rescission should not be permitted unless breach is total, substantial, and fundamental, and defeats the object of the contract.

SAME—Evidence. Where evidence indicated Claimant was prevented from performance by Respondent, which ordered Claimant's personnel off performance site without justification, State may not rescind contract because of breach thereof

POLOS, C.J.

Claimant, Montgomery Elevator Company, seeks damages from the State in the amount of $8,832.00. The claim is founded upon a contract between the parties by which Claimant agreed to service elevators, dumbwaiters and escalators in the State Capitol complex

during the period July 1,1971,through June 30,1972. The contract provided for Respondent to pay Claimant the sum of $2,944.00 per month during each and every month of the contract. Claimant performed and was paid under the contract thru March 31,1972. At issue is whether Claimant should be paid for the months of April, May and June, 1972.

Respondent denies that it was obliged to pay Claimant for the final three months of Claimant's contract. Respondent argues that it rightfully rescinded the contract on or about April 16, 1972, and that the State is therefore not obligated to pay Claimant for the last three months of the contract.

On March 30, 1972, a strike was called against certain elevator repair companies. Montgomery Elevator Company was among the companies struck by the International Union of Elevator Constructors. Claimant's employees Michael Sanders and Everett Hofele in Springfield, Illinois stopped working as a result of the strike. After the strike was called, Claimant attempted to, and did continue to, maintain preventative maintenance schedules with supervisory help, and notified Respondent that it was able to perform under the contract with supervisory personnel.

On or about April 2, 1972, an elevator emergency occurred on the capitol grounds. A supervisory employee of Claimant went to the grounds to assist in the emergency. As a result of the presence of that supervisory employee, a picket line was established by the International Union of Elevator Constructors at the Capitol Building, which caused union tradesmen working on renovative construction work at the Capitol Building to cease work. Claimant's supervisory employee was asked to leave the Capitol Building by

an employee of the Secretary of State, whereupon the tradesmen employed at that building resumed their work. Shortly thereafter, Respondent entered into a new contract for maintenance of the elevators with a different elevator company which was not the object of the strike.

Respondent argues that Claimant breached the contract by failing to have service available on a 24-hour a day basis, and, in addition, in failing to have more than one serviceman available in Springfield at all times and on the job Monday through Friday of each week from 8:00 a.m. to 5:00 p.m.

Claimant responds with the argument that maintenance calls during the first few days of the strike were handled by supervisory personnel who also responded to any emergency problems. Therefore, Claimant argues, it substantially complied with the contract. Claimant contends that it stood ready to perform its obligations, but was prevented from doing so by Respondent which ordered claimant's employee off of the job as a result of other tradesmen honoring a picket line.

Claimant was terminated within eight work days after the national strike occurred. There is no evidence in the record to justify the conclusion that Claimant failed to respond to emergency calls or failed to render adequate maintenance to the equipment during the first eight working days of April, 1972. Clearly, after Claimant was ordered by Respondent to remove its personnel from the State building complex, further performance under the contract would have been impossible.

Respondent does not argue that Claimant failed to perform such maintenance and emergency duties as

were reasonably required under the contract prior to the strike, nor does Respondent argue that necessary maintenance aind emergency work was not available after the strike. Respondent's sole contention relates to whether the absence of two full-time employees in Springfield is sufficient to entitle Respondent to rescind the service contract and seek the services of another contractor.

Respondent relies on *Wenthe Bros. v. State, 18 Ill.Ct.Cl. 32 (1948),* for the proposition that strikes do not excuse the non-performance of contracts with the State in the absence of **a** strike clause. Respondent's reliance is misplaced for the reason that in *Wenthe* the Claimant was prohibited from performing due directly to a strike. In the present case, the Claimant was asked to leave the Capitol grounds by the State, because of the effect that Claimant's personnel were having on other workmen completing other work on the Capitol grounds.

Rescission is an extreme right, and should not be permitted unless the breach is total, substantial and fundamental, and defeats the object of the contract. *I.L.P. Contracts,* § *347.* There is no proof in the present record that the object of the contract was defeated by a breach as Respondent contends. Rather, it appears that Claimant was prevented from performing by Respondent, which ordered Claimant's personnel from the Capitol complex without justification.

It is therefore ordered that Claimant be awarded the sum of $8,832.00.

(No. 7088—Claim dismissed.)

JOHN W. YOUNG, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed May 12, 1978.

PRISONERS AND INMATES—*Wrongful incarceration.* A pardon on the grounds of innocence is a condition precedent without which the **Court** of Claims lacks jurisdiction *to* make an award for wrongful incarceration.

POLOS, C.J.

This is an action pursuant to Section 8(c) of the "Court of Claims Act," Ill.Rev.Stat. Ch. 37,§437.8(c), to recover for time unjustly served in prison.

On September 5, 1973, this cause was continued generally to permit Claimant to attempt to obtain a pardon on grounds of innocence, in accordance with **the** amendment to Section 8(c) which became effective on October 1,1972.That amendment made a pardon on grounds of innocence a condition of this Court's jurisdiction to hear and determine claims for time unjustly served in prisons of this state.

Since the date of our order continuing this case generally Claimant has failed to obtain a pardon, and has now moved to restore this case to the Court's active calendar. Claimant contends that as his conviction was reversed by the Illinois Appellate Court it is unnecessary for him to obtain a pardon on grounds of innocence.

Respondent has moved to dismiss this claim, on the ground that in failing to obtain a pardon on grounds of innocence Claimant has abandoned his claim, and that in the absence of such a pardon, this Court has no jurisdiction to consider this matter.

On consideration of the foregoing motions, the Court finds that in failing to obtain a pardon on grounds of innocence since September 5, 1973, when this cause was continued generally to permit him to do so, Claimant has failed to prosecute this action. The

Court further finds that in the absence of a pardon on grounds of innocence, it is without jurisdiction to consider this claim.

It is therefore ordered that Respondent's motion to dismiss this cause be, and hereby is, granted and this cause is hereby dismissed.

(No. 73-CC-0022—Claimant awarded $25,000.00.)

HENRY Y. NISHI, Administrator of the Estate of **SOFIA NISHI**, Deceased, Claimant, *v.* **STATE OF ILLINOIS, DEPARTMENT OF MENTAL HEALTH, CHARLES REED MEDICAL CENTER,** Respondent.

Opinion filed February 27, 1978.

O'BRIEN & TRITTIPO, LTD., by **DONALD V. O'BRIEN**, Attorney **for** Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,** Assistant Attorney General, **for** Respondent.

NEGLIGENCE—***Hospitals and institutions.*** State has a duty to exercise reasonable care in restraining and controlling dangerous, insane persons committed to its custody, so that they will not have the opportunity to inflict foreseeable injury upon others.

DAMAGES—***Personal injury.*** Where the legislature increases the statutory limit on damages for personal injury claims the increase is applied only to causes of action arising on or after the effective date of the change.

POCH, J.

The Claimant, Henry Y. Nishi, Administrator of the Estate of his deceased wife, Sofia Nishi, brings this claim seeking $100,000.00 in damages due to the death of his wife while she was a patient at the Charles Read Mental Health Center in Chicago, Illinois, an institution operated by the Respondent for treatment of the mentally distressed. At the time **of** her death on March **30, 1972,** the statutory limit on the amount of damages recoverable was **$25,000.00,** ***Ill. Rev. Stat., Ch. 37,*** **§439.8,**

1957. Subsequent to the death of Mrs. Nishi, the General Assembly in 1972 increased the limit on damages to $100,000.00. The Claimant seeks to recover the higher amount regardless of when the cause of action accrued.

The parties entered into various stipulations and adduced evidence before a Commissioner of this Court, Joseph P. Griffin. The evidence showed that Sofia Nishi, then age 39, entered the Read Center as a voluntary patient on March 21, 1972. She responded to treatment and was to be discharged later to be an outpatient at the hospital. On March 30, 1972, Mrs. Nishi was strangled to death by Manfred Sadowski, who was a patient at the hospital. Sadowski, who was in his fourth admission, had previously attacked a social worker and a female patient at a half-way house where he had been a resident. Sadowski was indicted by the Grand Jury of Cook County but never stood trial on the charge of murder because he was found mentally unfit to stand trial.

Henry Nishi, husband of the decedent and Administrator of her Estate, testified that she was 39 years old and a graduate of junior college in Puerto Rico. She had taught grammar school for eight or nine years before coming to the United States in **1964.** She had been a full time resident of Chicago since 1969. Mr. Nishi testified that his wife had worked for several electronic companies in Chicago and also worked as a baby sitter for her next door neighbor, Joyce Tajnia. Mrs. Nishi's burial expenses, including the removal of her remains to Puerto Rico, amounted to approximately $2,000.00.

The Respondent called as its only witness Daniel Greenberg, the administrator of Chicago Reed Mental Health Center. On the date of Mrs. Nishi's death there

were 28 patients in her unit. During that time, the unit was supervised by only one or two staff people to care for the patients who suffered from varying degrees of mental distress.

The Court finds that the Respondent was negligent in failing to exercise adequate supervision over the decedent in order to protect her from injury and death. The Respondent had previous notice that Manfred Sadowski had violent tendencies which had resulted in previous attacks on individuals while he was in State custody. The Respondent breached its duty by failing "to exercise reasonable care in restraining and controlling dangerous, insane persons committed to its custody, so that they will not have the opportunity to inflict a foreseeable injury upon others." *Choiniere u. State, 30 Ill.Ct.Cl. 174,176 (1974),* citing with **approval** *Robinson v. State, 25 Ill.Ct.Cl. 67, 74 (1965).*

The Claimant and the deceased were free of any contributory negligence in this matter.

The Claimant is, therefore, entitled to an award for damages due to the decedent's death. The Claimant seeks an award of $100,000.00. The Respondent asks that the statutory limit on damages in the sum of $25,000.00, which was in effect when the cause of action accrued, controls in this case.

The Court has carefully considered the authority cited and arguments made by the parties on the issue of damages. The Court in *Theodosis u. Keeshen Motor Express Co., 341 Ill.App. 8, 92 N.E.2d 794 (1950)* held that an increase in the amount of recovery in the "Wrongful Death Act" applies prospectively only. This Court in *Shockley v. State, 21 Ill.Ct.Cl. 346, 349 (1952)* found the reasoning in *Theodosis, supra,* to be persuasive and held that **a** Claimant is limited to the statutory

amount at the time the cause of action accrued. Thus the date of injury of death controls, not the date of the award. The rule in *Shockley, supra,* has been cited with approval and followed by the Court in *Riggins v. State, 21 Ill. Ct. Cl. 434, 439 (1953); Shaggs u. State 21 Ill. Ct. Cl. 418, 422 (1953); Wendley u. State, 24 Ill. Ct. Cl. 273, 276 (1961); Burgett v. State, 30 Ill. Ct. Cl. 510, 515 (1975).* There is nothing in the legislation increasing the limit on damages to indicate the General Assembly desired to make the change in the limit retroactive. Therefore, the statutory limits on damages that can be awarded in this case is $25,000.00.

An award is entered in favor of the Claimant, Henry Y. Nishi, Administrator of the Estate of Sofia Nishi, deceased, in the sum of $25,000.00.

(No. 73-CC-0350—Claim denied.)

ACME CARRIER, INC., Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed *July 18,* 1977.

HEYL, ROYSTER, VOELKER & ALLEN, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; STEPHEN A. TAGGE, Special Assistant Attorney General, for Respondent.

NEGLIGENCE—*Burden of* proof. In an action based on negligence, Claimant has burden of proving, by a preponderance of the evidence, that State was negligent, that State's negligence was the proximate cause of Claimant's injury, and that Claimant was free *of* contributory negligence.

SAME—*Contributory* negligence. Claimant was contributorily negligent where evidence indicated he violated two statutes by following a vehicle too closely for conditions present.

POLOS, C.J.

Claimant, Acme Carrier, Inc., has brought this action to recover for damages to its tractor-trailer, sustained on May **26,** 1972, when it collided with a State vehicle.

The facts are not in dispute. On May 26, 1972, employees of the Department of Transportation of the State of Illinois were engaged in emergency patching on the Calumet Expressway at about 100th Street in Chicago, Illinois. It was a moving operation, involving two state vehicles. The first vehicle was a four-ton dump truck which pulled an asphalt heating kettle. The second vehicle, which trailed the first vehicle, was a tandem truck bearing a large sign reading "DO NOT FOLLOW".

Five State employees were involved in the patching. The vehicles had stopped in the center of the three westbound lanes of the Calumet Expressway when the accident occurred. The dump truck was approximately five feet in front of the hole that was being patched, and the tandem truck bearing the warning sign was approximately 30 feet to the rear of the dump truck.

Claimant's truck was being driven by one Alonzo Cummings, its employee. Cummings testified that he had been driving in the center of the three westbound lanes, following an automobile carrier truck. He said that the truck, which completely blocked his vision to the front, suddenly moved to another lane, and he saw the State dump truck stopped in the center lane. He said he did not have enough time to stop his truck, and swerved to the left. The right side of his tractor-trailer struck the state vehicle, skidded and overturned.

Cummings said that he saw no warning signs, flagmen or other indications that work was being done on the highway, and that a vehicle was stopped on the

road. He said that he was traveling about 35 to 40 miles per hour and was about 30 feet behind the automobile carrier when it moved from the center lane. He was 65 to 70 feet from the State truck when he first noticed it.

The State stipulated that Claimant sustained damages in the amount of $6,336.58 as a result of the accident.

Nathaniel Moore and Thomas Hollingsworth, called as witnesses by Respondent, both testified that they were members of the patching crew on the day of the accident. Their testimony established that the crew had a flagman behind the rear truck, who directed traffic to either side of the repair vehicles. Moore also said that the rear truck had a large sign reading "DO NOT FOLLOW," and was equipped with a mars light on the top of the cab and a caution light on the bumper. On both sides of the Mars light there were two flashing red lights.

Claimant contends that Respondent was negligent in failing to give proper warnings to traffic on the Calumet Expressway that State vehicles were stopped upon the highway. Respondent denies that it was negligent, and in turn contends that Claimant's driver was not in the exercise of reasonable care for his own safety at the time of the accident.

The State is not an insurer of the safety of all vehicles which travel upon its highways. However, the State does owe a duty to those upon its highways to maintain the highways in a reasonably safe condition for the purpose for which they are intended. ***Schuck*** *v. State, 25 Ill.Ct.Cl.* **209;** *Emm v. State, 25 Ill. Ct.Cl.* ***213.*** In order to recover in this action, Claimant bears the burden **of** proving, **by** a preponderance of the evidence, that State breached its duty of reasonable care; that the

State's breach of duty was the proximate cause of Claimant's injury; and that Claimant was free of contributory negligence.

We need not reach the issue of whether Respondent provided adequate warning of the patching operation under the circumstances, because we are pursuaded that Claimant, through its employee Alonzo Cummings, was not in the exercise of due care at the time of the accident.

Claimant's own evidence shows that Cummings, driving a tractor trailer at 35 to 40 miles per hour, was following another large truck by only 30 feet, although he was unable to see beyond the truck he was following. Cummings thus admits a violation of Ill.Rev.Stat., Ch. 95 1/2, §11-710(a), which provides:

"(a)The driver of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicles and the traffic upon and the condition of the highway."

In fact, Cummings testified that due to the speed and weight of his vehicle, he could not stop in time to avoid the collision once he saw the State repair vehicles.

It also appears that Cummings violated Ill.Rev. Stat., Ch. 95 1/2, §11-710(b), which provides, in substance, that a vehicle of the type being driven by Cummings may not follow within 300 feet of another vehicle of the same type.

The Court must therefore conclude that Claimant, through its employee Cummings, was not in the exercise of due and reasonable care and caution at the time of the accident, and that this lack of due care contributed to the damage sustained by Claimant.

It is therefore ordered that this claim be, and hereby is, denied.

(No. 74-CC-0058—Claimant awarded $58,750.00.)

DOROTHY TODD, Administratrix of the Estate of RONALD **STEGE** TODD, Claimant, *v.* **STATE** OF ILLINOIS, Respondent.

Opinion filed April *13,* 1978.

EDWIN M. BERMAN, of BERMAN & NEWMAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; RICHARD GROSSMAN, Assistant Attorney General, for Respondent.

NEGLIGENCE—-DULY *of Cure.* **A** hospital is not an insurer of **a** patient's safety, but owes the patient the duty of protection, and must exercise such reasonable care as the patient's known condition may require.

SAME—Medical Malpractice Res Ipsa Loquitur. When an act that has caused an injury is shown to be under the management of the party charged with negligence, and the accident is such that as in the ordinary course would not have happened if those who had management used proper care, the accident: itself affords reasonable evidence, in the absence of an explanation by the parties charged, that it arose from the want of proper care.

HOLDERMAN, J.

This action is based on a claim of negligence resulting in the death of Ronald Stege Todd, on October 9, 1972, at the Madden Center, a State of Illinois facility.

The deceased had noticeable behavior changes after his wife's pregnancy was terminated in 1971 due to the death of the fetus. He sought and received the attention of Dr. Bernard R. Kirk, a psychiatrist, early in 1972. Dr. Kirk signed commitment papers for Ronald Todd on September 28, 1972, and he took two months off work during March and April of 1972, at which time he took weekly treatments.

Todd had previously been working as a meat cutter at Dominick's for approximately six years, with a history of regular attendance at a gross pay of $226.00 per week.

The record indicates that on at least two occasions

he had tried to kill his wife and that there were several suicide attempts.

It is quite evident that for some period of time this man had undergone considerable emotional stress and was acting in a completely irrational manner.

On September 29, 1972, Todd voluntarily committed himself to Madden Center where he was examined by Dr. Rucci, an employee of the facility. Although Dr. Rucci knew of Dr. Kirk's treatment, he never contacted him relative to the treatment given Todd. He continued using the same two drugs Dr. Kirk had given Todd, but removed from him all medication on October 5, 6 and 7 because of side effects.

On October 6, 1972, Dr. Rucci found that Todd was still suicidal and homicidal but did not place him on suicidal precaution. The only thing done, was to place him in a room used for individuals in this condition called a "choir room."

On October 9, 1972, Todd was visited late in the afternoon by his wife who left fairly early in the evening. His disappearance was discovered about 9:00 that evening. His body was discovered the next day at the bottom of a flight of stairs which, according to the meager information in the records, was located some distance from the place where the patient was incarcerated.

The autopsy report showed six milligrams percent alcohol in Todd's blood and an analysis of bile and urine showed the presence of 1.0 mg. percent and 3.0 mg. percent morphine perspectively. There was no explanation as to how the pure morphine was found in the bile.

Following the death of the deceased, a bottle of

vodka was found under the mattress of Todd's bed.

Dr. Alexis Arieff was the Claimant's expert witness. His major disagreement with Dr. Rucci's treatment was that he would have placed Todd in a closed facility that does not have open doors. Madden Center has no such facilities.

After the deceased's disappearance, the individual in charge of the floor stated that a report was made to security forces of his disappearance. There is no report of any kind or character indicating what, if any, search was made by security. There is also no evidence to show when the body was found or whether it was found by security or by chance.

This record relative to the efforts made by the personnel trying to locate the missing individual leaves many questions unanswered.

The record disclosed that the deceased had been granted a pass by Dr. Rucci on October 4,1972, allowing him to walk around the grounds. There is nothing in the record to indicate any change after the finding of Dr. Rucci on October 6,1972, that the deceased was still suicidal and homicidal. The record is void as to any change in treatment of precautions after that date except for the placing of the deceased in the "choir room."

This Court has previously held on many occasions that the State of Illinois is not an insurer of mental patients.

A hospital is not an insurer of a patient's safety, but owes the patient the duty of protection, and must exercise such reasonable care as the patient's known condition may require. ***Karluski v.*** *Board of* ***Trustees, University*** *of* ***Ill. 25 Ill.Ct.Cl.*** *295.*

When an act that has caused an injury is shown to be under the management of the party charged with negligence, and the accident is such as that in the ordinary course would not have happened if those who had management used proper care, the accident itself affords reasonable evidence, in the absence of an explanation by the parties charged, that it arose from the want of proper care. *Hall v. U.S.* 136 FS 187, (La. 1965) Restated in Ill. Law, **36-54** (Professional Malpractice Res Ipsa Loquitur) ***Westschester v. State of Illinois, 27 Ill.Ct.Cl. 327 (1971).***

It has also been held that reasonable caution must be used for the protection of patients on welfare.

After reading the very volumnious record in this case, the Court still has many unanswered questions regarding the precautions, or lack of precautions, taken by the State. The record is completely silent as to whether or not there was more than one search made of the deceased's bed, whether searches were regularly made after the deceased had visitors, whether or not visitors were warned about bringing alcoholic beverages for the patient's use, and it does not indicate whether or not the bed of the deceased was ever searched after he was placed in there and prior to the discovery of the body.

The record does not show what type of search was made for the deceased except for a perfunctory ten minute search by the people in charge of the floor on which he was located and there is a complete lack of evidence showing whether any search was made for him by security and, if so, whether or not the area in which the body was found was searched.

For the above reasons, it is the opinion of the Court that the State was negligent in the care of an individ-

ual who, on the day prior to his death, had been pronounced suicidal and homicidal and yet was not placed on suicidal and homicidal precautions even though these findings were by the institution's own doctor. This lack of precaution, plus the finding of the alcoholic beverage in the bed of the deceased, is very strong evidence to the effect that the State violated its duty to give proper supervision to the deceased and that, as a result thereof, the deceased met his death.

The undisputed medical testimony is to the effect that the deceased was an individual with homicidal tendencies as well as suicidal tendencies. It would appear to the Court that an individual who has homicidal tendencies which could endanger the lives of innocent people would require a very high degree of care and supervision, all of which is completely lacking in the present case. It is indeed fortunate that the suicidal tendencies, if that was the cause of death, prevailed over those of the homicidal tendencies; otherwise we could have had several real tragedies to contend with.

As to damages in this case, there are some real questions raised. The evidence indicates that this man had been a regular worker earning approximately $226.00 per week. **As** to the future employment of this individual, the evidence presented showed that a high percentage of individuals with this type of affliction do regain a normal life.

The record indicates, however, that this individual was deteriorating very rapidly and there is substantial question as to how many years he would have been able to continue in his occupation. The record would indicate, at best, that at the rate of deterioration he was showing at the time of his death, his workable life would be of comparatively short duration.

The Court therefore makes an award in the amount of $58,750.00 to Dorothy Todd, the wife and sole surviving next of kin of the deceased.

(No. 74-CC-0075—Claim dismissed.)

JOHNNIE KENNEDY, Claimant, *v.* STATE OF ILLINOIS and STATE OF ILLINOIS DEPARTMENT OF TRANSPORTATION, Respondent.

Order filed November 23, 1977.

PRACTICE AND PROCEDURE—*Adjudication by another Court of competent jurisdiction.* Where agent *of* State has been found not guilty **of** negligence in another court of competent jurisdiction, his principal, the State, is also not guilty as a matter of law.

HOLDERMAN, J.

This matter comes before the Court on a motion to dismiss filed by Respondent.

The motion to dismiss sets forth the following:

"1) That a cause *of* action entitled *Johnnie M. Kennedy v. Clairmont Transfer Co., Warner Brick and Daniel P. Gleason,* bearing General *No.* 75 L **2923,** and consolidated with the cause of action entitled Cecelia Costanzo, Paul Costanzo, deceased **v.** Steel City Cartage Co., and Johnnie Kennedy, was state of *recently tried in the Circuit Court of Cook County in November, 1976.*

'2) That Paul Costanzo, deceased was the State of Illinois employee, agent and servant present on behalf of the State of Illinois at the time of the occurrence which is the subject matter of this cause of action.

3) That on November 29, 1976, the Honorable Judge James C. Murray: after hearing all the evidence in said cause, directed a verdict in behalf of Cecelia Costanzo, Administrator of the Estate of Paul Costanzo against Steel City Cartage Co. on the issue of contributory negligence on the part of Paul Costanzo, specifically finding that Paul Costanzo was, as a matter of law, not guilty of any (i.e. contributory) negligence."

The motion to dismiss further states that the Steel City Cartage Co. vehicle was operated by the current plaintiff, Johnnie Kennedy, and that during the trial of the consolidated causes of action, a directed verdict was entered on behalf of Clairmont Transfer Company

and Warner Brick against the plaintiff, Johnnie Kennedy.

The motion further sets forth that the Court had determined that Philip Costanzo was not guilty of any negligence and therefore, his principal, the State of Illinois, defendant in this cause, is as a matter of law, also not guilty of any negligence.

The motion further sets forth that since the State of Illinois has in effect been found not guilty by another Court of competent jurisdiction, a finding of not guilty should and must be entered herein on behalf of the State of Illinois and the State of Illinois Department of Transportation.

It appearing to the Court that the motion of Respondent is correct and that the State of Illinois has in effect been found not guilty by a Court of competent jurisdiction, motion to dismiss is hereby granted and said cause is dismissed.

(No. 74-CC-0479—Claimant awarded $36,121.56.)

EGIZII ELECTRIC, INC., Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed March 28, 1978.

STEPEHN TAGGE, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; DOUGLAS OLSON, Assistant Attorney General, for Respondent.

CONTRACTS—***Damages cause by delays by State.*** Where a party hinders **or** delays performance by the other party **of** a contract, the party causing the hindrance or delay has breached the contract and is liable for the increased costs and damages directly and proximately caused by such breach.

POCH, J.

The Claimant, Egizzi Electric, Inc., entered into a contract with the Secretary of State of the State of Illinois to perform electrical work on the State Capitol Building. Claimant's contract with the State was entered into on August 17, 1970. Claimant was to perform electrical contracting work related to the complete furnishing and installation of the rehabilitation of the State Capitol Building. The net contract amount was in the sum of $732,150.00. Claimant seeks an award for damages due to delays caused by Respondent.

Subsequent to Claimant's commencement of work upon the project, the project was changed, both in nature and scope, by decisions of the Illinois State Legislature, the Space Needs Commission, and the Secretary of State. As a result of these changes, much of the project covered under Claimant's contract was done by change order.

Between July 1,1972, and April 3,1973, the approval of change orders was delayed by the office of the Secretary of State pending review of the entire project. Such portions of the contract which could have been completed after July 1, 1972, without change orders were completed by Claimant at the expenditure of 4,158 man hours. Such portions would have been completed by July 1, 1972, except for the changes required by Respondent.

The parties have stipulated and agreed that the proximate damages to Claimant as a result of the above and foregoing circumstances total $36,121.56. This sum includes damages sustained by Claimant as a result of the increase of wages of workmen due to the delays, additional costs in job demobilization and remobilization of Claimant's work force, equipment

and material; demobilization, transportation and loss of productivity on remobilization; continued costs of builders' risk insurance; continued costs to Claimant's foreman; increased material costs; additional cost of tool rental; and additional overhead costs.

Respondent offers no argument or authority in opposition to the claim presented.

If one party hinders or delays the performance by the other party of a contract, the party causing that hindrance or delay has breached the contract. Corbin on Contracts, Section 947.

Where a party to a contract has caused a breach, that party is liable for the increased costs and damages directly and proximately caused by such breach. ***Meyer Machine Inc.*** *v.* ***State,*** *27* ***Ill.Ct.Cl.*** *72, 76 (1970).* ***Tower Communications Co.*** *v.* ***State,*** *26* ***Ill.Ct.Cl.*** *346, 350 (1968).*

The Respondent has stipulated that Claimant's damages were a direct and proximate result of the Respondent's action in causing the delays.

The Court therefore finds that Claimant is entitled to an award for the damages sustained.

Claimant is hereby awarded the sum of $36,121.56.

(No. 74-CC-0584—Claim dismissed.)

EILEEN M. FISHER, Individually as Administratrix of the Estate of KENNETH L. FISHER, Deceased, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed November *10,1977.*

HIGHWAYS—Contributory negligence. Where evidence indicated that Claimant's decedent was intoxicated at time of the accident, decedent was not in the exercise of due care and thus recovery is barred.

HOLDERMAN, J.

Claimant filed a claim against the State of Illinois alleging that on or about March 23, 1972, Claimant's intestate was operating a 1966 Rambler automobile in a southerly direction along and upon Tiskilwa Road at or near the Log Cabin curve in Bureau County, Illinois.

At that point, according to the complaint, the intersection was constructed in such a manner that motorists travelling in **a** southerly direction on Tiskilwa Road on dark nights failed to see that the Tiskilwa Road did not continue in a southerly direction but curved sharply to the west.

The complaint also alleges that prior to the time of the occurrence resulting in the death of the intestate, the Respondent caused and permitted a light pole to be erected alongside said highway in such a position that the southbound motor vehicles leaving the travelled portion of the highway and onto the shoulder thereof would collide therein.

Complaint further alleges that Claimant's intestate was in all respects in the exercise of due care and caution for the safety of his person and property.

This matter comes before the Court on a motion filed by the Respondent to dismiss said complaint. Attached to Respondent's motion for summary judgment is the deposition of Eileen M. Fisher which was taken for the purpose of discovery. Eileen M. Fisher is Administratrix of the Estate of Kenneth L. Fisher, deceased, and is the Complainant in the original complaint, and at such deposition testified under oath.

The deposition discloses that on February 10,1975, in Cause No. 73 L 10, Eileen M. Fisher, individually and as Administratrix of the Estate of ***Kenneth** L.*

Fisher, deceased, v. Merretta Hastings, d/b/a Underground Inn; Grace Lenihan, d/b/a The Oasis Tavern and Lounge; Ronald Moriarity, d/b/a The Clover Club and Mervin E. Hall and Joy Hall, d/b/a The Buffalo Inn, a certain judgment order was entered against said defendants, and each of them, in the sum of $16,000.00, which judgment was fully satisfied on February 10, 1975, based upon a cause of action arising under the "Dram Shop Act" of Illinois.

The deposition of Eileen M. Fisher shows that Kenneth M. Fisher, deceased, was intoxicated at 11:00 p.m. on March 22,1972, having had, since 9:30 p.m. on that day, five or six intoxicating drinks in the presence of Complainant.

In the complaint, Eileen M. Fisher stated that she and her children suffered damage in consequence of the intoxication of her husband, caused by the sale of intoxicants to him by the several defendants named therein.

Resondent bases his motion for summary judgment on the grounds that the decedent was not in the exercise of reasonable care at the time of the collision resulting in his death, and that his intoxication was the sole proximate cause of his death.

The evidence also discloses that the deceased was familiar with the road in question having travelled it for several years.

The question therefore resolves itself as to whether or not the intoxication would prevent recovery on the theory that the deceased was not in the exercise of due care at the time of the accident which resulted in his death.

This Court has taken the position that the State is

not an insurer of every accident occurring on its highways. In *Magnuson u. State of Illinois, 26 Ill. Ct.Cl. 98 (1967),* the Court denied the claim where the evidence disclosed that the Claimant was aware of the condition of the roadway and had knowledge of the defect and with such knowledge did not exercise the degree of care which was required under the circumstances.

The evidence in the case at bar shows that the decedent had travelled the road in question in the presence of Claimant at least once a week for four years prior to the accident.

Respondent contends that the senses, judgment and faculties of Claimant's intestate were affected by the alcohol so that he was unable to use the same degree of care, skill and judgment in the operation **of** an automobile which he otherwise would have exercised.

Respondent's motion also calls the Court's attention to the fact that the Circuit Court of Bureau County found that the decedent's death was caused by his intoxication.

This Court has repeatedly held that before recovery can be had it must be shown that the individual who sustains an injury was in the exercise of due care and that the individual involved in the accident was free from contributory negligence. See *Constance Kumiga u. State of Illinois, 26 Ill.Ct.Cl. 77;* also *Ruby Foreman u. State of Illinois, 26 Ill.Ct.Cl. 299.*

It is the opinion of this Court that decedent was not in the exercise of due care at the time of the accident and that his intoxication was the proximate cause of the accident.

The Court agrees that Claimant is now estopped to assert that the decedent was free from contributory

negligence by reason of the judgment of the Circuit Court of Bureau County.

Motion for summary judgment is hereby granted and said cause is dismissed.

(No. 74-CC-0619—Claim dismissed.)

PAUL BARGAS and **THOMAS ZBORALSKI**, Claimants, *v.* **STATE OF ILLINOIS**, Respondent.

Order filed January 7,1976.

PRISONERS AND INMATES—Duty of State to safeguard Inmates' property from theft by other inmates.

This is one of several actions pending in the Court of Claims wherein inmates of Illinois penal institutions are seeking compensation for items of personal property allegedly lost from their cells. In each such action the Claimant alleges that he possessed certain items of personal property of minimal extrinsic value which he kept in a cell at a penal institution maintained and operated by Respondent. They further allege that the property was taken from their cells while they were elsewhere in the prison, and that the proximate cause of the loss was the failure of the Respondent to safeguard their property. [1]

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[1] This factual situation is to be distinguished from that found in *Doubling v. State of Illinois*, **32** *Ill.Ct.Cl. 1*, wherein an inmate alleged that his personal property was taken from him by prison authorities during his transfer to another institution, and never returned to him.

Respondent has moved to dismiss this action on the ground that the complaint fails to state a cause of action upon which relief can be granted. More specifically, it is Respondent's contention that the State does

not owe a duty to inmates of its penal institutions to safeguard their personal property.

We have previously held that inmates of Illinois penal institutions who possess valid causes of action are not foreclosed from bringing suit in the Court of Claims. *Moore v. State of Illinois, 21 Ill.Ct.Cl. 282* ***(1951).*** The issue which is presented here is whether a cause of action lies against the State where personal property disappears from the cell of an inmate of a penal institution.

Claimants do not contend that agents of Respondent took their property, or acquiesced in its disappearance. Rather, Claimants assert that Respondent should have taken steps to safeguard their property from pilferage by other inmates. Claimants therefore seek to charge Respondent with responsibility for the independent criminal acts of other inmates.

We can find no basis for imposing such a burden upon the State. The State if not an insurer of an inmate's property, and cannot be responsible where other inmates engage in criminal acts directed at that property. Nor can the State in the exercise of reasonable care be expected to prevent isolated acts of pilferage in the environment of a penal institution.

Our conclusion is buttressed by the "Local Government and Governmental Employees Tort Immunity Act," Ill. Rev. Stat. Ch. **35,** Sec. 1-101, et. seq., which provides, in pertinent part:

> **"Neither a local public entity nor a public employee is liable for failure to provide a jail, detention or correctional facility or if such facility is provided, for failure to provide sufficient equipment, personnel or facilities therein."** [§4-103]

The legislative purpose of this statute is clear: the treasuries of public entities are not to be opened to

inmates of penal institutions claiming that they were not afforded adequate facilities or supervision. We are cognizant that the State is not specifically named in this statute, and that Claimants do not directly claim that they were afforded inadequate facilities. However we believe that this statute, directed at an analagous situation, clearly expresses a legislative intention inimical to Claimants' position.

The Court does not deprecate the value to Claimants of their allegedly lost property, but the State of Illinois cannot be held liable for the willful acts of unknown persons which result in pilferage from penal institutions.

The Court has been advised that our prison authorities have a sympathetic understanding of the problem which gave rise to this claim, and that efforts are being made to provide an administrative remedy for all claims of this nature. The Court looks with favor on such efforts, but they are not a factor in our conclusion as to the state's legal liability in this claim.

It is hereby ordered that the Respondent's motion to dismiss this action must be and is hereby granted. This claim is dismissed.

It is further ordered that an identical order of dismissal be entered in each cause pending in the Court of Claims wherein an inmate of a penal institution seeks compensation for property allegedly lost from his cell.

(No. **74-CC-0624—Claim denied.)**

JACK KRIESEL, Father and Next Friend of DONALD L. KRIESEL, a Minor, Claimant, *v.* STATE OF ILLINOIS, Respondent.

***Opinion* filed June** *15, 1978.*

CHARLES KRAUT, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM J. KARAGANIS, Assistant Attorney General, for Respondent.

NEGLIGENCE—*Duty of* cure. State is not a n insurer of the premises over which it has control and unless it has had actual notice or knowledge of the defect complained of, State is not liable.

HOLDERMAN, J.

Claimant in this cause is seeking to collect for injuries sustained while walking on the premises of the Illinois Vehicle Testing Facility at **5301** West Lexington Avenue in Chicago, Illinois. It is the contention of the Claimant that while walking on these premises, he stepped on a piece of broken glass which went through his shoe into the bottom of his foot resulting in the injury.

Claimant, age **17,** on the evening in question went to the Secretary of State, Illinois Vehicle Testing Facility, for the purpose of taking a driver's test at about 6:00 p.m. with his driving instructor. Prior to the taking of the test, the instructor and Claimant walked to the testing course for the purpose of familiarizing Claimant with the course. In the driving area were man-made islands containing dirt and weeds. While walking across one of the islands, the injury occurred.

As a result of the injury, Claimant was required to get five sutures in the bottom of his foot, resulting in scarring. He paid **$43.25** in medical bills, lost shoes which were valued at **$14.00,** and lost **$23.00** in wages.

Respondent produced a supervisor of the testing area, Mr. W. Williams, who testified as to procedures used by the Secretary of State in cleaning the area. His testimony was to the effect that the State employed a

janitorial service for the purpose of maintaining the grounds of the facilities, including debris removal, who performed their work on a daily basis. Mr. Williams denied seeing any broken glass on the facility himself in November, 1973, and denied that any of his employees had reported such information to him.

This Court has held many times that the State is not an insurer of the premises over which it has control and unless it has had actual notice or knowledge of the defect complained of, the State is not liable. The State does have the duty to maintain the premises owned or controlled by it in a reasonably safe condition for the purpose for which they are intended. The Claimant in this case has failed to prove that the State had knowledge or should have had knowledge of the condition causing the injury complained of.

Therefore, in line with 30 Ill.Ct.Cl. 410 and 417, this Court holds that Claimant failed to prove that the State either had notice of knowledge of the defect complained of and therefore the State is not responsible.

Award is hereby denied.

(No. 74-CC-0666—Claim dismissed.)

METAL AIR CORPORATION, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed September 22, 1977.

CONTRACTS—Fraud. Participation of Claimant in bid-rigging scheme contract to obtain State contract constituted fraud and therefor Claimant's claim made pursuant to said contract was barred.

HOLDERMAN, J.

This matter comes before the Court on motion of Respondent to dismiss said cause filed on August 12,

1975, and motion filed by Claimant on March 18,1977, to rule on the August 12,1975, motion of Respondent to dismiss.

It appears to the Court that on February 17,1977, Respondent filed a motion to continue generally.

The Court, being fully advised in the premises, finds:

The motion to dismiss sets forth that in 1964 Metal Air Corporation, along with other various and sundry companies, associations, etc. developed schemes for rigging bids involving their type of work. The purpose of the scheme was to allow a designated bidder to bid upon a particular project and the rest of the contractors would then submit higher bids.

State agency in violation of this Act or the rules and regulations adopted in pursuance of this Act is void and of no effect."

The 1969 Illinois Revised Statutes contains slightly different phraseology in Sections 2 and 10 of the "Illinois Purchasing Act" as follows:

"Sec. 2. It is the purpose of this Act and is hereby declared the policy of this State that the principle of competitive bidding and economical procurement practices shall be applicable to all purchases and contracts for which State funds are expended."

"Sec. 10. Any contract entered into or purchase or expenditure of State funds made in violation of this Act or the rules and regulations adopted in pursuance of this Act is void and of no effect."

Respondent concludes its motion by stating that the Claimant's collusive participation in the bid rigging scheme violates both the letter and the spirit of the "Illinois Purchasing Act" and thereby pursuant to Section 10 of the Act renders the contract upon which this claim is based to be totally null and void.

It appears to the Court that Respondent's motion to dismiss is correct. It is the opinion of the Court that this disposes of all the other matters pending and said cause is hereby dismissed.

(No. 74-CC-0725—Claimant awarded $2,096.18.)

ANTHONY M. PECCARELLI, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed January 9, 1978.

MARK BISCHOFF, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; RICHARD GROSSMAN, WILLIAM KARAGANIS and SAUL R. WEXLER, Assistant Attorneys General, for Respondent.

PRACTICE AND PROCEDURE—Filing of briefs. The fact that a motion based on lack of jurisdiction has not been ruled on when the time for the filing of briefs arrives does not relieve a party of the obligation to file its brief.

SAME—Exhaustion of Remedies. Where a private corporation is acting as an agent of the State, the Court of Claims has jurisdiction and Claimant is not required to pursue remedy against the agent in another court prior to bringing action in the Court of Claims.

JURISDICTION—Private corporations acting as State agents. Court of Claims has jurisdiction over suits against private corporations where the facts establish said entity was acting as an agent of the State.

CONTRACTS—Ambiquities.

POLOS, C.J.

Claimant Anthony M. Peccarelli, an attorney at law, has brought this action to recover the sum of $2,637.68 which he alleges he is due for services rendered to the Illinois State's Attorneys Association. Claimant alleges that in September, 1971 the Illinois Law Enforcement Commission (hereinafter "the Commission") made a grant of money to the Illinois State's Attorneys Association (hereinafter "the Association") for the purpose of conducting public hearings regarding the jurisdiction of the State's Attorneys Office. Claimant entered into a contract with the Association, which called for him to act as a consultant at the rate of $135.00 per day. Claimant contends that he performed all work required under the contract but that he has received only partial payment.

It is Respondent's position that as the Association was not a state agency, Claimant had no contractual relationship with the State and that he has improperly brought suit in the Court of Claims to enforce a liability of the Association. Respondent also disputes Claimant's contention that he is due an additional $2,637.68 for his services.

Before turning to the substantive issues herein involved, we will first discuss the procedural status of the case. After numerous extensions, Claimant's brief was filed on April 14, 1976. On August 19, 1976, Respondent filed a motion for finding for Respondent

in which it contended that this Court did not have subject matter jurisdiction of this claim. On September 27, 1976, Claimant filed a response to Respondent's motion for a finding, on the ground that Respondent had failed to file its brief in accordance with Rule 18 of the Court of Claims. In reply, Respondent contends that it is not required to file its brief before its motion for a finding for Respondent is determined.

We find no basis in the "Court of Claims Act" for the State's contention that it is not required to answer Claimant's brief until its motion for a finding is resolved. Respondent's motion simply raises a jurisdictional argument which should have been incorporated in its brief. The time for filing Respondent's brief has long since expired, and Respondent has not requested an extension.

Accordingly, the Court will consider "Respondent's Motion for a Finding" as its brief in this action, and will decide the jurisdictional issue raised therein during the course of this opinion.

It is Respondent's position, as stated in its "Motion for a Finding," that Claimant had no contractual relationship with the State of Illinois. Respondent asserts that Claimant's contract was with the Illinois State's Attorneys Association, a private corporation, which cannot be sued in the Court of Claims. Respondent further asserts that the Illinois State's Attorneys Association was not acting as an agent of the State of Illinois when it entered into its contract with Claimant. Respondent in particular points to that portion of Section 8 of the "Court of Claims Act," Ill. Rev. Stat., Ch. 37, § 439.8, which provides that this Court has jurisdiction over "all claims against the State founded upon any contract entered into *with* the State of Illinois" (emphasis added).

The second issue to be determined, assuming the Court finds it has jurisdiction over the subject matter of this action, is whether Claimant is entitled to additional compensation for services which he rendered to the Illinois State's Attorneys Association.

As to the first issue, the Court finds that the Claimant has established that at the time he entered into the contract with the Illinois State's Attorneys Association, the Association was acting as the agent of the State of Illinois. Claimant introduced into evidence a letter dated May 17, 1972, from the Illinois Law Enforcement Commission to the Illinois State's Attorneys Association, regarding the grant from the Commission to the Association to fund the Association's study. In that letter the Commission authorized the hiring of Claimant subject to certain contractual provisions. Further, the Executive Director of the Illinois State's Attorneys Association testified that the Association was bound by the Fiscal Guidelines and Regulations of the Commission. In sum, the record establishes that Respondent made a grant of money to the Illinois State's Attorneys Association, authorized the hiring of Claimant as a consultant, and imposed its fiscal guidelines as to the expenditure of the grant. We conclude that the Association was acting on behalf of the State in making its research study and in entering into the contract with Claimant.

Claimant's contract with the Association was signed on June 7, 1972. Prior thereto, on March 24, 1972, Claimant had attended a meeting of the Association's Managing Board, along with one Patrick Delfino, an employee of the Commission. At the meeting it was agreed that Claimant would be paid $135.00 per day for consulting work, but that his fee would not

exceed the sum of $4,050.00. It was further agreed that he would be allowed $950.00 for travel expenses.

During the course of the meeting Claimant raised the question of what constituted a "day" under the terms of the agreement. Mr. Delfino said that a "day" referred to an eight hour working day. Claimant said he would not accept a fee less than $35.00 per hour. The issue was not resolved at the meeting and when the contract was signed on June 12, 1972, the term "day" was not defined. The contract provided, in pertinent part:

> "The project agrees to compensate the consultant at the rate of $135.00 per day for his services, but in no event shall the total amount of compensation paid to the consultant exceed $4,050.00.

After the contract was signed, and after Claimant had substantially performed his services, the fiscal guidelines of the Illinois Law Enforcement Commission were amended to define a "day" as eight hours. If this definition is applied to the contract signed by Claimant, it would mean that he should be compensated at' the rate of $16.87 per hour. The issue is thus whether Claimant should be compensated at the rate of $16.87 per hour, or at the rate of $135.00 per day, for the services which he performed.

Claimant rendered a statement to the Illinois State's Attorneys Association for $4,050.00, the maximum payable under his contract. Claimant's billing was for ***33*** days of work, broken down to 103.1 hours. After the statement was received the Director of the Illinois State's Attorneys Association wrote to the Illinois Law Enforcement Commission, asking an opinion as to the correct rate of compensation in light of the Commission's amended fiscal guidelines. On December **1,** 1972, Claimant was sent a check **by** the Illinois State's Attorneys Association for $1,588.00, which

Claimant cashed. On January 9, 1973, Claimant was sent a check for $327.46, purporting to be his full and final payment for services rendered under the contract. Claimant did not cash the check.

Claimant contends he is entitled to the full $4,050.00 available under the grant, plus an additional $175.68 for travel expenses. Claimant argues he performed services on **33** different days, and is therefore entitled to $135.00 per day, regardless of the amount of time he spent performing duties under the contract on any given day. He therefore claims the additional fees of $2,462.00, plus $175.68 for travel expenses.

Respondent argues that the term "day" as used in Claimant's contract should be interpreted to mean an eight hour day, and that Claimant should therefore be compensated at the rate of $16.87 per hour. Respondent reasons that as Claimant worked a total of 103.1 hours he is entitled to a total of $1,739.78 plus travel expenses, and as he has already been paid $1,588.00, he is due only an additional $327.46, plus his travel expenses.

It is apparent that when the parties entered into their contract, there was no understanding as to the number of hours that would constitute a "day". It would be wholly unreasonable to assume that the parties intended that Claimant should be paid $135.00 for working any part of a day. It would likewise be unfair to impose upon Claimant the amended fiscal guidelines adopted by the Commission after the agreement with Claimant was entered into, and after he had substantially performed his work.

Claimant made clear at the March 24, 1972, meeting with the Association, at which the Commission was represented, that he could not perform the requested services for less than $35.00 per hour. Neither

the Commission nor the Association objected to that rate and it appears that the parties contemplated that Claimant would be compensated at such a rate. Further, Claimant introduced expert testimony establishing that $35.00 per hour was a reasonable rate for the work he performed under the contract.

The Court therefore finds that Claimant is entitled to be compensated for his 103.1 hours of work at the rate of $35.00 per hour, or the sum of $3,608.50. He is also entitled to recover $175.68 for his travel expenses. As Claimant has already been paid the sum of $1,588.00, Claimant is hereby awarded the sum of $2,096.18.

(No. 75-CC-0050—Claim denied.)

ELLEN HEIMANN, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed December 19, 1977

DAVID SHULTZ and **EUGENE PROPP,** for Claimant.

WILLIAM J. SCOTT, Attorney General; **WILLIAM KARAGANIS,** Assistant Attorney General, for Respondent.

NEGLIGENCE—*Burden of proof.* In a negligence action, Claimant bears the burden of establishing by a preponderance of the evidence that State was negligent, that such negligence **was** the proximate cause of the accident, and that Claimant was free from contributory negligence.

SAME—Duty of care. Visitors to State parks are invitees to whom the State owes a duty of reasonable care in maintaining the premises.

POLOS, C.J

Claimant, Ellen Heimann, has brought this action to recover for the fracture of a bone in her right foot, suffered on July **14,1973,** at the **Pere** Marquette Lodge, in Grafton, Illinois. Respondent owned and main-

tained the lodge, and Claimant alleges that her injury was proximately caused by the failure of the Respondent to properly maintain a pedestrian walkway on the premises. Specifically, Claimant contends that Respondent permitted a tunnel-like depression to exist across the entire width of the walkway, and failed to warn of its existence or to properly illuminate the area.

Claimant was the sole witness to testify at the hearing herein, and the parties waived the filing of briefs.

Claimant testified that on July **14,** 1973, she was visiting the Pere Marquette Lodge. At about 9:30 p.m., she was walking along an asphalt path from the lodge to the parking lot with her husband when she stepped into a depression in the walkway. She said her foot went out from under her and she fell, breaking a bone in her right foot.

Claimant said that there was no lighting to illuminate the walkway. She described the depression as "perhaps two inches deep, and maybe six inches wide, and then the width of the whole walk. . ." Claimant introduced into evidence a motion picture film of the walkway, showing that there was a depression, having the approximate dimensions described by Claimant.

This Court has held that the State of Illinois is not an insurer of safety of persons who visit its parks and recreation areas.

Rather, visitors to State parks are invitees to whom the State owes a duty of reasonable care in maintaining the premises. ***Damermuth u. State, 25 Ill.*** *Ct.Cl.* ***353, 356; Kamin u. State, 21 Ill.*** *Ct.Cl.* ***467.***

To recover on her claim, Claimant bears the burden of establishing, by a preponderance of the evidence,

that Respondent breached its duty of reasonable care, that she was free of contributory negligence, and that the negligence of Respondent proximately caused her injury.

The Court finds that Claimant has failed to establish that Respondent was negligent in maintaining the walkway on which she had her accident. Claimant offered no evidence to show that Respondent had actual notice of the defect in the walkway. Nor did Claimant offer any evidence from which the Court could conclude that the State had constructive notice of its existence. Respondent may be charged with constructive notice of a dangerous condition **when,** from all the circumstances in a case, it is determined that Respondent should have been aware of the existence of the condition in the exercise of reasonable care. ***Joyner v. State,*** *22 Ill.Ct.Cl.* ***213,*** 217 (1955). Claimant has offered no evidence of the length of time which the defect in the walk existed, and from examination of the pictures of the walkway the Court finds that the defect was not of so obvious a character as to put the State on notice of its existence.

There being no proof that Respondent was negligent in maintaining the walkway, this claim is hereby denied.

(No. **75-CC-0234—Claim denied.)**

ELLARD LEE DOUGLAS and JUDITH GRACE DOUGLAS, Claimants, *v.* **DEPARTMENT OF CONSERVATION OF THE STATE OF ILLINOIS, , Respondent.**

Order filed October 21, *1977.*

DAMAGES — ***Attorney's fees.*** **Attorney's fees are a proper element of damages recoverable in the Court** of **Claims where they were incurred in**

separate litigation with a third party as a result of Respondent's breach of contract and therefore are in the nature of an expense incurred as a result of the breach.

PER CURIAM.

This matter comes before the Court, by Claimant, on a motion to reconsider, Claimants' motion in opposition to Respondent's motion to reconsider, and Respondent's reply to Claimants' motion in opposition to Respondent's motion to reconsider.

In the original opinion in this case, the Court took the position that it was a breach of contract by the Respondent that caused Claimants to incur the expenses for which they now seek recovery. ***Douglas and Douglas v. State, 31 Ill.Ct.Cl. 499.***

After reviewing all the motions before the Court, the Court finds that the argument that attorney's fees are not recoverable is untenable. The attorney's fees expended by Claimants were incurred in litigation with a third party. The litigation with the third party was brought on as a consequence of the failure of the Respondent to perform as agreed under its contract with Claimants.

Respondent cites ***People v. Redfern, 104 Ill. App. 2d 132, 243 NE2d 252.*** In that case, however, the attorney's fees were incurred in the litigation with the defendant, and the Court held that only when there is statutory authority for assessing attorney's fees are they to be allowed. See, for example, Sec. 41 of the "Civil Practice Act'' Ill. Rev. Stat., Ch. 110, Sec. 41, where it provides that reasonable attorney's fees are allowed where untrue allegation and denials are made without reasonable cause.

Respondent also cites ***O'Hare v. Moniak 110 Ill. App. 2d 327, 249 NE2d 178,*** which is also to the effect

that a statute must authorize the assessment of attorney's fees.

However, in the case before this Court, attorney's fees in the separate litigation with a third party were a result of the Respondent's breach of contract and, hence, are in the nature of an expense incurred as a result of the breach.

In 15IL&P, Damages - Sec. 62, p. **397** and **398,** it is stated:

"...where the natural and proximate consequence of a wrongful act has been to involve the plaintiff in litigation with others, there may be, as a general rule, a recovery in damages against the author of such act of the reasonable expenses incurred in such litigation together with compensation for attorneys fees, and such costs as may have been awarded against the plaintiff." Citing *Standard Oil* Co. *of Ind. v. Daniel,* ***333*** *Ill. App. 338, 77 NE2d 526; Freed v. The Travelers,* ***300*** *F 2d 395.*

Motion to reconsider heretofore filed by the Respondent is denied and the orgiinal opinion is confirmed.

(No. 75-CC-0358—Claim dismissed.)

ILLINI HOSPITAL, Claimant, *v.* **STATE OF ILLINOIS, Respondent.**

Order filed September 29,1977.

PUBLIC **AID** *CODE—Direct payment to vendors.* The provisions of the Public Aid Code authorize payment directly to a firm which supplies goods or services to a recipient of benefits under the Code.

SAME—Jurisdiction. The Court of Claims does not have jurisdiction to review a determination of ineligibility for benefits under the Public **Aid** Code.

POLOS, C.J.

This cause is before the Court for reconsideration of an order of September 2, 1975, in which we denied Respondent's motion to dismiss.

Claimant seeks to recover the sum of $832.99 for hospital and medical services rendered to one Lois G. Taylor. Claimant has alleged that Mrs. Taylor was a "disabled person" within the meaning of Section 3-1 of the Public Aid Code, Ill. Rev. Stat., Ch. 23, §3-1, and that the Illinois Department of Public Aid is therefore liable for the medical services rendered to her by Claimant.

Lois G. Taylor was not a public aid recipient at the time that services were rendered by Claimant, there having been a determination of non-disability by the Illinois Department of Public Aid. Respondent, in moving to dismiss, contends that the finding of the Illinois Department of Public Aid is binding upon Claimant, and that this Court is without jurisdiction to hear a challenge to that finding.

In deciding this issue, the Court is called upon to construe a number of provisions of the Public Aid Code, Ill. Rev. Stat., Ch. 23, § 1, et seq. Claimant relies upon Section 11-13 of the Code, Ill. Rev. Stat., Ch. 23, § 11-13, which provides in pertinent part:

> "Vendors seeking to enforce obligations of a government unit of the Illinois Department for goods and services (1) furnished to or in behalf of recipients and (2) subject to a vendor payment as defined in Section 2-5, shall commence their actions in the appropriate Circuit Court or Court of Claims. . ."

Chapter 23, Sec. 2-5 in turn defines "vendor payment" as "a payment made directly to the person, firm, corporation, association, agency, institution, or other legal entity supplying goods and services to a recipient." "Recipient" is defined by Ill. Rev. Stat., Ch. 23, § 2-9 as "a person who is receiving financial aid under any of the provisions of this Code."

Claimant contends that this statute gives a vendor of services a direct remedy by which it can sue the State

to recover for services rendered to one allegedly eligible for Public Aid benefits. Claimant contends that determination that the person for whom services were rendered was ineligible for benefits, is not binding on a vendor of services.

Respondent, on the other hand, points to Section 11-8 of the Public Aid Code, Ill. Rev. Stat., Ch. 23, § 11-8, which provides that, "Applicants or recipients of aid may, at any time within sixty days. . . appeal a decision denying or terminating aid. . ." Respondent also relies upon Section 11-8.7 of the Code, Ill. Rev. Stat., Ch. 23, § 11-8.7, which states:

> **"The provisions of the 'Administrative Review Act', approved May 8, 1945, as amended, and the rules adopted pursuant thereto, shall apply to and govern all proceedings for the judicial review of final administrative decisions of the Illinois Department on appeals by applicants or recipients..."**

Respondent therefore contends that only an applicant or recipient of Public Aid can challenge a decision denying or terminating aid, and then only under the "Administrative Review Act."

This Court previously held, in *Franciscan Sisters v. State, 31 Ill. Ct. Cl. 58,* that a vendor of services could bring an action in the Court of Claims to recover for services rendered to a Public Aid recipient. In that action, one Charles Hameretnck was a patient at the Claimant hospital from September, 1969, to February, 1970. He had been declared a Public Aid recipient by the Department of Public Aid, retroactive to October 1, 1969, and the Claimant hospital brought suit to recover for services rendered to him as a recipient.

Here we are presented a substantially different situation, for Lois G. Taylor has never been declared a recipient of Public Aid.

Section 11-13 of the Public Aid Code gives vendors the right to enforce obligations of a governmental unit for goods and services furnished "to or in behalf of

recipients" (emphasis supplied). "Recipients" is in turn defined by Section 2-9 of the Code as "a person who is receiving financial aid under any provision of this Code."

We think this language evidences the legislature's intention that a vendor be permitted to maintain an action under Section **11-13** of the Code, only if he has furnished goods and services to or in behalf of one who is already a "recipient" i.e. one who has already been declared eligible for benefits by the Department of Public Aid. Thus a vendor who furnishes goods and services to one who has been determined to be ineligible by the Department of Public Aid, may not bring an action in the Court of Claims to litigate the issue of whether the person for whom the services were rendered was entitled to Public **Aid** benefits.

This Court's order of September 2, 1975, denying Respondent's motion to dismiss, is accordingly vacated. For the above and foregoing reasons, the Respondent's motion to dismiss this cause is hereby granted.

(No. **75-CC-0977—Claimant awarded $748.49.)**

FELIX J. DE STAFANO, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed April *26, 1978.*

ERBACCI, SYRACUSE & CERONE, by ANTHONY ERRACCI, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; JAMES STOLA, Assistant Attorney General, for Respondent.

STATE EMPLOYEES BACK SALARY CLAIMS—**Retroactive termination. Termination of employment becomes effective upon receipt of notice there**of.

HOLDERMAN, J.

Claimant brings this action under his amended complaint for wages alleged to be due him for a **30** day

period starting January 15, 1973, and ending February 15, 1973.

The facts are not controverted. Claimant was appointed to a position as a factory inspector with the Department of Labor, Division of Safety Inspections & Education on July 16, 1972. His pay scale was $668.00 per month and he was paid up to January 15, 1973.

In addition to the wages paid to him, Claimant was entitled to an expense allowance for travel and in fact was paid his expense allowance for the period in question — from January 15, 1973, to February 15, 1973. The voucher was submitted on February 15, 1973, and Claimant was thereafter paid for all but three days during that period, during which three days he was assigned to the office.

Claimant reported to his office for work each work day during the period up to and including February 15, 1973, and performed his assigned work.

On February 17, 1973, Claimant received a letter from the Department of Labor, dated January 23, 1973, and postmarked February 17, 1973, stating that effective as of January 15, 1973, his services had been terminated.

The Personnel Actions Report signed by the Director of Personnel indicates that the severance action was taken and approved on January 29, 1973. It indicated that the type of personnel action taken was "Termination — Temporary Appointment (Non Certified)."

This Court entered an order in this case on September 23, 1976, which, in pertinent part, states as follows:

"Claimant's proposed amendment complaint states that the employment and services for which recovery is sought ended on the 15th day of February, 1973, and that he has been paid for services rendered up to and including the 15th day of January, 1973. This complaint further alleges that

on the 15th day of February, 1973, the Department of Labor mailed to Claimant a letter, dated January 23, 1973, to the effect that as of January 15, 1973 the services of Claimant had been terminated. The complaint further alleged that on the 15th day of January, 1973, Claimant presented his travel voucher to the Department for the month of January, 1973, and it was paid.

It appears to the Court that if the items set forth in the proposed amended complaint are true, this will create an entirely different situation than was presented heretofore, and that if Claimant's contention is correct and he did not receive the letter of termination dated January 23, 1973, until February 15, 1973, then he would be entitled to compensation for the period of January 15, 1973, to February 15, 1973."

In fact, Claimant did substantially prove all of the allegations of his complaint. He is entitled to be paid for the 30 day period for work performed as an employee.

The State contends and cites cases to the effect that any payment made by the State of Illinois must be properly authorized. With this Rule of Law, we agree. However, we cannot agree with the State's contention that the authority to pay ended on January 15, 1973, as evidenced by the Notice of Termination. The Notice of Termination cannot have a retroactive effect. The termination action was not taken until January 29, 1973, and not communicated to the Claimant until on or about February 17, 1973. Thus the authority to pay continued until February 17, 1973. To hold otherwise is to allow the State to retroactively terminate any employee and even to allow the State to recover sums paid to employees after the retroactive date. This, of course, is patently absurd.

The State further contends that a recovery based on quantum meruit cannot be had from the State of Illinois. Again, this Rule of Law is not applicable to the case at hand. Claimant worked as an employee, at a stated wage, and his termination took legal effect at the end of the disputed period of time.

The most serious contention of the State is that

Claimant was hired as a temporary employee and that, according to Section 8b 9 of the Personnel Code, Ill. Rev. Stat. Ch. 127, Para. 62b 108b.9,

> ". . . **Temporary appointments may be made for not more than six months . . . No position in the State service may be filled by temporary appointment for more than six months out of any 12 month period."**

The only evidence in the record that the Claimant was employed as a temporary employee was the "Personnel Action Report'' which terminated the Claimant. We cannot give much credence to this document, in view of the manner of its production, the confusion of dates, and its attempted retroactivity. **As** a further example of its unreliability, this notice indicates that the "pay amount'' was $639.00 per month when, in fact, other documents and the sworn testimony indicates the pay scale was $668.00 per month.

Further, if he was indeed a temporary employee and not allowed to be employed beyond six months, why did the Department approve and pay his travel expenses for the period involved? The State has made no explanation of this most convincing circumstance.

Claimant is thefore entitled to be paid for the final 30 days of his service.

Claimant is hereby awarded the sum of $668.00, plus employer contributions of $80.49.

(No. 75-CC-1020—Claim dismissed.)

MARVIN J. SCHWARZ, M.D., S.C., Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed June 8, 1978.

PRACTICE AND PROCEDURE—claims, based upon the lapsing Of an appropriations, against no more than one department of State agency shall be included in each complaint.

HOLDERMAN, J.

This matter comes before the Court on a motion to dismiss filed by Respondent on April 17, 1978.

As grounds for said motion, Respondent alleges the following:

"1. Respondent brings this motion pursuant to Ill. Rev. Stat. ch. 110, sec. 48, (i), 1977.

2. That the Claimant alleges that he performed psychiatric services for the State of Illinois and billed the Department Of Children and Family Services for $1,500.00.

3. That the Department of Children and Family Services prepared a department report, a copy of which is attached as Exhibit A, which shows that the amount due is the responsibility of the Department of Public Aid and the Department of Children and Family Services.

4. That on December 28, 1976, this office notified Claimant of the department report and agreed to stipulate to the portion of the claim affecting the Department of Children and Family Services, but, to date, Claimant has made no communication concerning any part of this claim.

5. That the present claim is in violation of Rule 5 (d)(3) which limits claims to no more than one department and that this complaint should be dismissed according to Rule 9 of the Court of Claims.''

It appearing to the Court that Respondent's motion to dismiss is correct, said motion is granted and this cause dismissed.

(No. 75-CC-1046—Claim denied.)

P.L. BUTTON COMPANY, Claimant, *v.* STATE OF ILLINOIS, Respondent.

***Opinion filed** May 15, 1978.*

LAWRENCE E. **JOHNSON,** Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **WILLIAM** E. **WEBBER,** Assistant Attorney General, for Respondent.

FRAUD— Bar *to* ***recovery.*** Section **14** of the "Court of Claims Act" (Ill. Rev. Stat., Ch. 37, para. 439.14) provides the "Whenever any fraud against the State of Illinois is practiced or attempted by any Claimant in the proof, statement, establishment, or allowance of any claim or of any part of any claim, the claim or part thereof shall be forever barred from prosecution in the Court."

POCH, J.

This claim arises out of a cancellation of a building maintenance contract between the State of Illinois and the P.L. Button Company. The Respondent refused to pay the Claimant for the last six months of the contract. Claimant contends that it was ready, willing, and able to perform according to the terms of the contract and should be paid for the last six months.

The Respondent contends that the claim should be denied on the basis of fraud and for a failure to adequately prove damages.

Section **14** of the "Court of Claims Act" (Ill. Rev. Stat., Ch. **37,** §439.14), provides as follows:

"Section **14** (Fraud against the State)
Whenever any fraud against the State of Illinois is practiced or attempted by any Claimant in the proof statement, establishment, or allowance of any claim or of any part of any claim, the claim or part thereof shall he forever barred from prosecution in the Court."

The central argument of Respondent is that the four employees on the night shift turned in work cards showing that they had worked four hours when in fact, they had only worked for two or three hours. According

to the testimony of Steven Button, the night shift job should only take about two and one-half to three hours. However, the Claimant estimated it would take four hours when negotiating the contract with the State.

The Court has carefully considered the record of proceedings before the Commissioner of the Court, the briefs submitted by the parties and finds that the Claimant has not proved his entitlement to an award.

Testimony offered by the Respondent, supported by time cards covering the last three months of the contract which during that time services were rendered, a total of $3,861.42 had been overpaid by the Respondent to Claimant.

These calculations were made as a result of comparing the actual hours worked by employees with the hours reported on the time cards kept by said employees.

The Court concurs with the Respondent's position that the records establish clearly, through the testimony of Steven Button, as agent of the Claimant, that the Claimant was aware of the deception being practiced through the use of two sets of time cards and such action constitutes fraud within the meaning of Section 14 of the "Court of Claims Act" which is a bar to Claimant's recovery.

Further, there is a serious question as to the credibility of and the extent of damages which the Claimant attempted to prove and this Court finds that the Claimant did not meet his burden on the issue by a preponderance of evidence.

In view of the above findings, there is not need for this Court to consider the issue of sufficiency of notice to terminate the contract by the Respondent to the Claimant.

Thus, this Court finds that the claim of the Claimant should be denied on the basis of fraudulent conduct of the Claimant acting through his duly authorized agent and employee. The claim of P.L. Button Company is hereby denied.

(No. 75-CC-1475—Claimant awarded $12,000.00.)

JOHN ERNEST LONZO, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed May 16, 1978.

ROLLAND H. STIMSON, Attorney for Claimant.

WILLIAM **J. SCOTT,** Attorney General; RICHARD **J.** GROSSMAN, Assistant Attorney General, , for Respondent.

PRISONERS AND INMATES — Unjust ***imprisonment.*** Before an award will be made for wrongful incarceration, Claimant must prove by a preponderance of the evidence **(1)** that the time served in prison was unjust, (2) that the act for which he was wrongfully imprisoned was not committed; and **(3)** the amount of damages to which he is entitled.

SAME—*Elements of* ***damages for unjust imprisonment.*** Attorneys fees are not a proper element of damages to be considered in assessing **a** claim for unjust imprisonment, but the Court shall fix attorneys fees as a percentage of the award. Furthermore, damages are not limited to lost wages and may include mental suffering.

POLOS, C.J.

Claimant, John Ernest Lonzo, has brought this action to recover damages for time unjustly served in the prisons of this State. The claim arises under Section 8(c) of the "Court of Claims Act" which provides that this Court has jurisdiction to hear and determine:

"All claims against the State for time unjustly served in prisons of this State where the persons imprisoned shall receive a Pardon from the Governor stating that such Pardon is issued on the ground of innocence of the crime for which they were imprisoned; provided, the Court shall make no award in excess of the following amounts:

For imprisonment of five years or less, not more than $15,000.00; for imprisonment of 14 years or less but over five years, not more than $30,000.00; for imprisonment of over 14 years, not more than $35,000.00; and provided, further, the Court shall fix attorneys fees not to exceed 25 percent of the award granted."

The parties stipulated that Claimant was arrested for armed robbery on January 2, 1972; that he was held in the Cook County Jail until January 4, 1972, when he was released on bond; that on October 19, 1972, he was convicted of the offense in the Criminal Court of Cook County and sentenced to imprisonment for a term of not less than six nor more than ten years. It was further stipulated that he was thereafter held in the Cook County Jail until November 17, 1972, when he was transferred to Stateville Correctional Center in Joliet, Illinois. He was imprisoned there from November 17, 1972, to November 15, 1973, when he was transferred to the Pontiac Correctional Center in Pontiac, Illinois, where he was imprisoned until March 6, 1974, when he was released because the Illinois Appellate Court re- versed his conviction.

Thus Claimant was incarcerated in prisons of this State for approximately 17 months following his conviction.

Claimant introduced into evidence a Pardon issued by Governor Daniel Walker, dated June 3, 1975, granted on the grounds of innocence.

By virtue of the stipulation and the Pardon, Claimant has proved by a preponderance of the evidence that he meets the qualifications for recovery under Section 8(c) of the "Court of Claims Act."

With respect to the amount of damages to which Claimant is entitled the evidence showed for the year immediately preceding entitled his arrest, he earned $7,030.89. As he was imprisoned for about 17 months,

his wage loss during that period was approximately $9,000.00.

Claimant also seeks reimbursement for $2,000.00 in attorneys fees expended by him in his ultimately successful defense. We have previously held, however, that this is not a proper element of damage to be considerd in assessing a claim under Section 8(c) of the "Court of Claims Act." The legislature intended to compensate persons for time unjustly served in prison, and attorneys fees necessarily incurred in the defense of criminal cases might more properly be classified as damages for prosecutions unjustly brought. They certainly cannot be considered and have not, in any previous case, been considered as an element of damages.

The Court is not limited, however, to lost wages as an element of damages. This Court must and does consider the anguish and suffering inflicted upon an innocent person obliged to serve time in a prison.

Claimant is hereby awarded the sum of $12,000.00 as compensation for the time which he unjustly served in prison. Pursuant to Section 8(c) of the "Court of Claims Act," this court fixes as attorneys fees, a sum equal to ten percent of the amount of the award.

(No. 76-CC-0093—Claimant awarded $137.05.)

LONNIE ARSBERY, Claimant, *v.* **STATE OF ILLINOIS**, Respondent.

Opinion filed* May *12,1978.

PRISONERS AND INMATES—*Bailments.* **Where prisoner was removed from his cell leaving behind property which remained in the exclusive possession of Respondent, a bailment was created. The loss or damage to property while in possession of bailee raises a presumption of negligence.**

POLOS, C.J.

Claimant, Lonnie Arsberry, an inmate of Stateville Correctional Center has brought this action to recover for damage done to his personal property at the Stateville Correctional Center, Joliet, Illinois.

On April 22, 1975, Claimant was a prisoner at Joliet Penitentiary dormitoried in the west cellhouse. He had in his cell an FM/AM Stereo with Eight Track Tape Player and two speakers, Panasonic model (RE—8134), in working order.

A riot had occurred in the cellhouse rendering the cellhouse uninhabitable, and at approximately 9:30 p.m. on April 22, 1975, all of the prisoners, including Claimant, were evacuated from the cellhouse and transferred to other locations within the institution.

Claimant testified that when he was handcuffed and taken from his cell his stereo was playing and in working order. This was corroborated by a written statement from one Officer Sims and addressed to a Captain Zuck, which was introduced into evidence.

Thereafter no inmates were left in the cellhouse and it was under the exclusive control of Respondent, while a work crew was brought in to make it liveable again.

About three days after the evacuation Claimant's stereo was brought to him by one Lt. Jenkins. It had been extensively damaged during the three day interval. Both the speakers and the headphones had been broken, and it did not operate. It was stipulated by Respondent that Claimant paid $137.05 to have his stereo repaired.

While a bailment is ordinarily a voluntary, contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have

been recognized.

"A constructive bailment can be created between an owner of the property and one in possession thereof." 4A Illinois Law and Practice 550, Bailments, citing ***Chesterfield Sewer & Water, Inc., u. Citizens Insurance*** Co. *of* ***New*** Jersey, ***et al., 57 Ill. App. 2d, 90,207 NEZd 84.***

In ***Chesterfield,*** the Court quoted the following language from *Woodson v.* ***Hare,*** *244* ***Ala.*** *301,1350 2d 172,* ***at*** *174:*

"An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law generally treated **as** bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship." ***Woodson u. Hare, 244 Ala. 301, 13 SoZd 172 at*** page *174.*

When Respondent removed the prisoners from Claimant's cellblock, it took exclusive possession of all property contained therein.

The loss of damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State did not present sufficient evidence to overcome Claimant's testimony that his stereo equipment was in working order when it passed into the control of the State. Further the State presented no testimony of its freedom from negligence with respect to the damage incurred. Claimant's prima facie case stands unrebutted.

Claimant is therefore awarded the sum of $137.05.

(No. 76-CC-0156—Claimant awarded **$153.49.)**

UNITED FIRE AND CASUALTY COMPANY, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed January 25,1978.

MICHAEL B. METNICK, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

PRISONERS AND INMATES—Damage to property by escapees. State is not an insurer against damages caused by escaped inmates, but it is liable for same if it is negligent in allowing the escape.

POCH, J.

This is an action brought by United Fire and Casualty Company, Claimant, as the subrogee of John Larkin, for damages to an automobile owned by John Larkin.

On October 26, 1974, Terry Phillips, an inmate at the Illinois Youth Center in St. Charles, Illinois, escaped from the Center. Allen Strossta, the Assistant Superintendent of the Center, stated that the escape occurred as a result of the failure of the cottage supervisors to communicate with each other as to the whereabouts of Phillips and three other inmates.

Three days after the escape, Phillips was spotted driving a stolen automobile by Deputy Rick **A.** Nelson of the Mercer County Sheriffs Department. In an attempt to elude Deputy Nelson, Phillips drove the stolen vehicle into a 1969, Chevrolet Camero which was lawfully parked. The parked vehicle belonged to Mr. John Larkin of Viola.

The damage to the Larkin vehicle was in the amount of $153.49. This amount was paid to Mr. Larkin by the Claimant. United Fire and Casualty is prosecuting this claim as the subrogee of Joh'nLarkin.

The State of Illinois is not an insurer and is liable for damages caused by an escaped inmate of a State Institution only if negligent in allowing an inmate to escape. *(Dixon Fruit Company, et al., v. State of Illinois, 22 Ill.Ct.Cl. 271; Malloy v. State of Illinois, 18 Ill.Ct.Cl. 137).* The sole issue here is whether the State of Illinois was negligent in allowing Terry Phillips to escape from the Illinois Youth Center in St. Charles, Illinois.

In view of the past record of Terry Phillips, the Respondents should have exercised more restrictive control over the movements of Phillips. Despite the prior escapes of Phillips, the State failed to put Phillips in a higher security situation.

The failure of the cottage supervisors to be aware of Phillips' movements coupled with the history of escapes by Phillips clearly establishes negligence on the part of the Respondent in allowing Terry Phillips to escape from the Illinois Youth Center in St. Charles, Illinois.

It is the opinion of this Court that the evidence offered by the Claimant is sufficient to establish a prima facie case of negligence on the part of the Respondent.

Claimant is hereby awarded the sum of **$153.49.**

(No. 76-CC-0195—Claim denied.)

LINDER D. DEVORE and **IOWA KEMPER INSURANCE COMPANY**, Claimant, *v.* **STATE** OF **ILLINOIS,** Respondent.

*Opinion **filed June** 28, 1978.*

SHEARER, O'**BRIEN**, **BLOOD, AGRELLA** and **BLOSE**, by **MICHAEL** F. O'**BRIEN**, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; BRYAN B. LAVINE, Assistant Attorney General, for Respondent.

PRISONERS AND INMATES—Damage by escapees. Where Claimant was unable to show negligence on the part of the Respondent, mere fact of damage was not sufficient to warrant an award.

POLOS, C.J.

Claimant, Linder D. Devore, has brought this action to recover the value of certain items of personal property stolen from his house on June 30, 1975. It is Claimants theory that the theft from his house was perpetrated by an escaped inmate of the Illinois Youth Center at St. Charles, Illinois, and was proximately caused by the negligence of State employees in permitting his escape.

Iowa Kemper Insurance Company had covered Claimant's loss in the amount of $900.00, and is therefore joined as an additional party.

On June 30, 1975, Linder Devore returned to his home on the outskirts of St. Charles, Illinois at about 3:30 p.m. to discover that the home had been burglarized. An investigator from the St. Charles Police Department discovered a set of tennis shoe prints that lead into a plowed field adjacent to Devore's garage. The prints led across the field until they were lost in the grass of a neighboring subdivision.

A neighbor of Devore had said that she saw a black male wearing white and blue tennis shoes, proceeding through the field on the day in question.

Earlier on June 30, 1975, one Arther Withers, a black youth, had escaped from the Illinois Youth Center at St. Charles. Withers was apprehended by the Chicago Police Department on July 3, 1975, and returned to St. Charles. He denied any knowledge of the burglary, and none of the items stolen were found in his

possession. A print of his blue and white tennis shoes, was compared with photographs taken of the footprints in the muddy field adjacent to Claimant's home. The size, shape and general sole characteristics of his shoes were similar to those in the photograph.

It is Claimant's theory that Arthur Withers perpetrated the burglary of his home, and that employees of the Illinois State Training School For Boys, failed to use reasonable care in preventing an escape.

Even if we were to assume that sufficient evidence has been presented to establish that Arthur Withers indeed committed the burglary, there is a total absence of proof in the record that agents of the State were negligent in permitting his escape. Claimant introduced no testimony as to how Withers escaped, whether the negligence of any of Respondent's employees was a factor in his escape, or whether the escape should have been anticipated by the school officials.

The State may be charged with liability for wrongful acts committed by escaped inmates of its institutions. However this Court has consistently held that to recover on such a theory a Claimant must prove by the preponderance of the evidence that the State was negligent in permitting the escape. *Dixon Fruit Company u. State, 22 Ill. Ct. Cl. 271; Huff u. State, 22 Ill. Ct. Cl. 361; Goldring v. State, 27 Ill. Ct. Cl. 165.*

There being no proof in the record that the State was negligent in supervising Arther Withers and permitting his escape, this claim must be denied.

(No. 76-CC-0195—Claim **denied.**)

LINDER D. DEVORE and IOWA KEMPER INSURANCE COMPANY, Claimants, *v.* **STATE** OF ILLINOIS, Respondent.

Order filed March 2, 1979.

PRISONERS AND INMATES—Theft of property by escaped inmates. State is liable for actions of escaped inmates if it was negligent in allowing the escape.

SAME—*Negligence of State in allowing escapes.* Where it is shown that an inmate of a State correctional facility has escaped, a presumption of negligence arises and it becomes incumbent upon the State to rebut the presumption.

SAME—Liability of State for actions of escaped inmates. Claimant has the burden of proving by the preponderance of the evidence that escapee in fact did the act complained of.

PER CURIAM.

This cause is before the Court on the petition of Claimant for a rehearing.

Claimant had sought to recover the value of certain items of personal property stolen from his house on June 30, 1975, allegedly by an escaped inmate of the Illinois Youth Center at St. Charles, Illinois.

This Court denied the instant claim, on the ground that Claimant had failed to establish negligence by the State in permitting the youth to escape. In petitioning for a rehearing, Claimants refer the Court to *Kendrick u. State,* and *U.S. Fidelity & Guaranty Co. u. State, No. 23 Ill. Ct. Cl.* 188, where the Court held that where it is shown that an inmate of a State correctional facility has escaped, a presumption of negligence arises and it is incumbent upon the State to come forward with evidence to show that it was not negligent in permitting the escape.

We find that the instant case falls within the rule of *Kendrick u. State, supra,* and *U.S. Fidelity & Guaranty* Co. *u. State, supra.,* and that the negligence of the State in permitting the escape of Arthur Withers has been established.

We must then consider whether Claimants have

proven by a preponderance of the evidence that Arthur Withers was guilty of the theft of Devore's property.

The burglary was discovered on June 30, 1975, at about 3:30 p.m. Earlier on that date, Withers had escaped from the Illinois Youth Center at St. Charles.

Maurice Clark, an investigator for the St. Charles Police Department, had investigated the burglary at Mr. Devore's home. He said he discovered that someone had pulled up the garage door, and entered the home through the service door between the home and garage. He said they found a set of tennis shoe prints on Mr. Devore's property adjacent to the point of entry to the house. The prints were fresh at about 2:30 p.m. He said he talked to some neighbors, and one told him that she saw a male black youth in a field adjoining Mr. Devore's home "in a big hurry." The neighbor described the youth as wearing blue and white tennis shoes and blue jeans.

In a report Clark made of his investigation he stated that the witness described the youth as wearing brown pants.

The police report also reflects that two individuals were in Mr. Devore's house on the morning of the burglary, to hang curtain rods.

Clark said he took photographs of the prints in the field, and that when Withers was captured the prints were compared with the tennis shoes he was wearing. He said the size, shape and sole characteristics were similar. Withers was wearing blue and white tennis shoes when captured.

None of the objects allegedly stolen from the home of Mr. Devore were found in Withers' possession when he was captured.

After a careful review of the record, the Court must conclude that Claimant has failed to establish by preponderance of the evidence that Arthur Withers perpetrated the burglary of the Devore residence. Firstly, there is no evidence, circumstantial or otherwise, to place Arthur Withers in **Mr.** Devore's house. The only evidence pending in any way to tie Withers to the burglary is the testimony of a neighbor of Claimant, who said she saw a male, black youth wearing white and blue tennis shoes proceeding through a plowed field adjacent to Devore's house on the day of the burglary.

We note that Withers denied any knowledge of the burglary, and none of the stolen items were found in his possession when he was apprehended four days later.

We also note that while he was wearing blue and white tennis shoes, there was no testimony that the prints of his shoes matched those found in the field. Officer Clark merely said that the prints were "similar" to those in the field.

The Court must conclude that the evidence of Wither's commission of the burglary was not sufficient to meet Claimant's burden of proof.

It is therefore ordered that Claimants' petition for a rehearing **be,** and hereby is denied.

(No. 76-CC-0280—Claim dismissed.)

GILBERT GALL, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed October 21, 1977.

PRACTICE AND ***PROCEDURE—Statute of limitations for cause of action involving personal injury.*** The time within which a complaint for damages bases upon personal injury must be filed is two years from the date of the occurrence.

SAME—*Res Judicata.* Where an agent of the State has been adjudicated not guilty of negligence in another Court of competent jurisdiction, an action against the State, as principal, in the Court of Claims will be dismissed on the theory of res judicata.

SAME—Election of remedies. Where Claimant has elected to proceed in another Court of competent jurisdiction to verdict and judgment, he has elected his remedy and becomes bound thereby.

HOLDERMAN, J.

This matter comes before the Court on Respondent's motion to dismiss the complaint heretofore filed by the Claimant.

Complaint was filed on August 28,1975, for injuries which occurred on August 27, 1973.

On January 3, 1974, Claimant filed suit in the LaSalle County Circuit Court against Garry L. Johnson, which case was At Law No. 74-1-8 L, seeking damages from the defendant, a State Trooper, for injuries received as a consequence of the occurrence of August 27, 1973.

The motion for dismissal, in Count I, moves for dismissal on the grounds that the statute of limitations had not been complied with since the claim was filed more than two years after the date of the accident. In Count II, the motion sets forth as grounds for dismissal the fact that in LaSalle County Circuit Court judgment was entered on June 18,1975,in favor of the defendant. In this Count, Respondent states that this case is res judicata and, therefore, the claim filed in this Court is barred by prior adjudication.

In Count III of Respondent's motion to dismiss, it further states that Claimant has made an election of remedies **by** proceeding to a verdict and judgment in the LaSalle County Circuit Court and accordingly he is barred from prosecuting this claim in the Court of Claims.

It appearing to this Court that all of Respondent's objections are valid, any one being sufficient to sustain the motion to dismiss, said motion to dismiss is hereby granted and said cause is dismissed.

(No. 76-CC-0300—Claimant awarded $32,959.08.)

STEVENS BUSINESS FORMS, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed December 21, 1977.

JEROME M. RUBENSTEIN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*Partial Performance.* A party to a contract, even though it is entire, who has performed part of it according to its terms and is prevented by the other party from performing or completing the contract may recover compensation for the work performed and materials furnished.

HOLDERMAN, J

This matter comes before the Court as a result of a joint stipulation of facts as to issues, which states as follows:

"Come now the parties hereto and stipulate and agree that the following facts may be taken as proven without the necessity of offering any evidence. Said parties further agree that this joint stipulation, together with the Deposition of Charles F. Stephens, Jr., (with attached Exhibits) and Exhibit G, heretofor filed with the Court, state all the facts to be adduced herein and that no additional evidence shall be offered in this action. Each party reserves to itself the right to file briefs herein pursuant to the rules of the Court after the filing of this stipulation. Thereafter, the case may be taken by the Court as submitted.

1. The contract between Claimant and Respondent was for a total of 8,000,000 forms consisting of 5,000,000 RT1s and 3,000,000 RT2s.

2. Except for 100,000 RT1 forms delivered to Springfield, Illinois, none of the unusable forms for which claim is being made were delivered to the State of Illinois.

3. The contract did not specify the ink to be used (other than to specify Face-Blue and Red: Backer-Blue:").

4. The contract did not say that the ink must be "copiable."

5. Stephens Press, Inc., d/b/a Stephens Business Forms, Claimant herein, (hereinafter "Stephens") printed the Regititles, which are the subject matter of this claim, in 1974 (for use in 1975).

6. Stephens had printed similar forms for the State of Illinois in 1974 and in years prior to 1974.

7. Stephens had used what appears to be a similar blue ink on some of the forms it printed for the State of Illinois in 1974 (for use until June 30, 1975) as it used on the Regititles, which are the subject matter of this claim.

8. Stephens did not know that the State of Illinois was going to copy the Regititles on the type of equipment the State ultimately used.

9. The Regititles Stephens printed in 1974 were copiable on most other types of copying machines other than the one the State actually planned to use, and did in fact use, for the forms which are the subject matter of this claim.

10. Neither party was aware that the copying

equipment being used by the State of Illinois would not copy a particular blue ink used by the Claimant on the original printing.

11. Question Number one on the back side of the first sheet of Form RT1 stated: "Use black ballpoint pen or typewriter with dark ribbon." Some of the previous years' forms (also printed by "Stephens" stated on their face: "Print with ***black*** ballpoint pen or typewriter."

12. **A** darker blue ink (blue with black ink added) was substituted on the new printing and was copiable.

13. The **$33,334.08** claimed by the Claimants is their estimated costs (no profits) for producing the forms that had to be destroyed,

14. The paper destroyed had a salvage value of approximately **$375.00."**

The question at issue is whether or not Claimant should be paid for producing the forms that had to be destroyed, minus the salvage value of **$375.00.**

It appears to the Court that Claimant had in the past furnished identical forms printed with the same ink and that it did not have any knowledge that the State of Illinois was going to copy the Regititles on the type of equipment that State ultimately did.

It further appears that the contract entered into by the State of Illinois and Claimant did not specify the type of ink that had to be used. In view of the fact that previous forms had been satisfactory, it is only reasonable to assume that Claimant was of the opinion that the forms furnished would be copiable.

It is unfortunate that neither party was aware that the copying equipment being used by the State had

been changed so that the forms previously furnished were no longer copiable.

It is fortunate that the mistake was discovered before any other forms had been printed.

It appears to the Court that Claimant did perform its portion of the contract and that it did expend money in the amount of **$33,334.08** for producing the forms on behalf of the State, minus the salvage value of the paper which was in the amount of $375.00.

A party to a contract who performs under same is entitled to be compensated for its work thereunder. *17 Am. Jur. 2d Contracts*, **355.** In **382 of** said section, the following rule is laid down:

> "The Rule is well settled that there may be a recovery on the contract for part performance of an entire contract if complete performance has been prevented by the other party. The act of one party to an entire-contract in preventing the completion of the undertaking gives a right of recovery. Expressed otherwise, a party to a contract, even though it is entire, who has performed part of it according to its terms and is prevented by the other party from performing or completing the contract may recover compensation for the work performed and materials furnished. **A** person prevented from continuing his contract by the arbitrary act of the other party may disregard it and recover the value of his services rendered in partial performance of it. . . ."

An award is hereby made in the amount of **$32,959.08.**

(No. 76-CC-0398—Claim denied.)

JOHN T. **HENRY,** Claimant, *v.* **STATE** OF **ILLINOIS,** Respondent.

Order filed April 17, 1978.

STATUTE **OF** LIMITATIONS.
EQUITY — Laches.

PER CURIAM.

This matter comes before the Court upon Respondent's objections to Claimant's submission of travel regulations.

The original claim and the amendment to said original claim was for wages, interest thereon, meals and lodging, interest thereon, and attorney fees, which expenses were allegedly incurred by Claimant after being demoted from the rank of assistant superintendent, otherwise known as "major" of the Illinois State Police, to the rank of Captain.

This demotion took place on July 1,1965. On June 30,1970, Claimant sought relief by way of a mandamus action in the Sixth Judicial Circuit of DeWitt County. In that case, the Judge ordered Claimant to be reinstated to the rank of major as of July 1, 1965, and he was paid the difference in pay for the period of July 1, 1974, through April 30,1975, by the Department.

In September of 1975, Claimant filed his claim in the Court of Claims seeking to receive his rights and benefits from July 1, 1965, to July 1, 1974.

The Brief in support of Resondent's motions and the supplemental Brief set forth that this claim should be dismissed or denied on two grounds: (1) that Claimant was guilty of laches inasmuch as he did not file any action from July 1965 until September 1975; and (2) that this claim is barred by the statute of limitations as set forth in Ch. 37, para. 439.22(f).

The Court finds that the grounds for denial of this claim as set forth by Respondent are correct.

This claim is denied.

(No. 76-CC-0418—Claimant awarded $2,500.00.)

CLARENCE HOUSTON, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion ***filed December*** *19,1977.*

PHILLIP A. MONTALVO, Attorney for Claimant

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

NEGLIGENCE—***Injuries by fellow mental patient.*** Respondent has a duty to exercise reasonable care in restraining and controlling dangerous insane persons committed to its custody so that they will not have the opportunity to inflict a foreseeable injury upon others.

POCH, J.

Neither party in this case filed briefs with the Court.

The Claimant in this action asked for money damages that resulted from injuries he received while a patient at Alton State Hospital, Alton, Illinois.

On or about February 10,1975, Clarence Houston was admitted as a patient at the Alton State Hospital, Alton, Illinois, and was being treated for an alcoholic condition in a section of the Alton State Hospital known as Linden Cottage. At the time of admission the Claimant was 52 years of age and unemployed. Special damages were not pleaded in the Complaint.

On February 13, 1975, Claimant was severely beaten and injured by John Cook, a fellow patient at Linden Cottage. After receiving medical treatment at the Emergency Room for the injuries received, petitioner was once again returned to Linden Cottage, against his will, where he was placed on a cot, under sedation.

At approximately 4:15 a.m. on the morning of February 14,1975, Claimant was once again attacked and

severely beaten and injured by the same patient, John Cook.

Claimant alleges that the employees, agents, supervisory personnel and staff of the Alton State Hospital negligently failed to provide adequate surveillance, supervision and security to protect petitioner from attacks by other patients and to insure his safety and well-being, in spite of the fact that he had already been attacked once on the evening in question, thus putting said employees, agents, supervisory personnel and staff on notice of the hostile and violent propensitites of the patient, John Cook.

This Court has long held that it is the duty of Respondent to exercise reasonable care in restraining and controlling dangerous insane persons committed to its custody, so that they will not have the opportunity to inflict a foreseeable injury upon others. *Hazel Rubinson, Executrix u. State of Illinois, 25 Ill. Ct. Cl. 67 at page 74. Callbeck u. State of Illinois, 22 Ill. Ct. Cl. 722.* To recover for his injury, therefore, Claimant must prove Respondent breached their duty owed him; that he was free of contributory negligence; and that Respondent's breach was the proximate cause of his injury.

From the testimony it is not clear what steps were taken to secure the patient, John Cook, and prevent him from further assaulting the Claimant in this case. There were indications that certain measures were taken to secure the patient, John Cook, but that he had freed himself from these security measures. There was indication in the testimony also that there was insufficient staff to control the situation. This testimony was offered primarily by a mental health technician.

The Court finds that sufficient testimony was

presented to show that there was insufficient staff on the grounds and that improper methods of controlling the patients were utilized.

There are also clear indications from the testimony presented that the Claimant himself followed a course of conduct that very likely played some factor in provoking the conduct of the patient John Cook. The testimony indicated that Claimant on numerous occasions had made racial comments and slurs against the black patients in the different wards. The Claimant's assailant, John Cook, was a black man. The Claimant's conduct in degrading the black individuals in the hospital was insufficient as a contributing factor to his eventual assault to bar recovery.

The Court finds that the Claimant has carried his burden of proof in showing that Respondent was negligent in failing to fulfill its standard of care to the Claimant and the conduct of the Claimant was not a sufficient factor to eventual assault by John Cook to bar recovery.

From the evidence in this case there has been no permanent injury established.

Consequently, we hold that the Claimant is entitled under the law to recover damages in this action. In view of the injuries that the Claimant sustained, the Court believes that $2,500.00 is a fair and just award.

It is ordered that the Claim should be and is hereby allowed in the sum of $2,500.00.

(No. 76-CC-0555—Claim denied.)

BYRON NEAL ELLISTON, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Order filed June 12,1978.

PRACTICE AND *PROCEDURE—Notice requirement for personal injury claims.* There is no provision for waiver of the notice requirements of the "Court of Claims Act" for personal injury claims on the grounds that insurance covering the injury existed.

POLOS, C.J.

This cause is before the Court on Claimant's motion to vacate an order of December 19, 1977, dismissing this cause, for failure of Claimant to comply with Section 22-1 of the "Court of Claims Act," Ill. Rev. Stat. Ch. 37, 9439.22-1.

The Court has carefully considered the memorandum of the Claimant in support of his motion, and the authorities cited therein. In particular, the Court has considered Claimant's contention that ***Housewright u. City of LaHarpe, 282 N.E.2d 437,*** is authority for the proposition that since Claimant has alleged that the State was protected by liability insurance in this matter, it has waived the notice requirements contained in Section 22-1 of the "Court of Claims Act."

The Court finds that ***Housewright u. City of LaHarpe*** is inapplicable to the instant action. That case involved construction of the "Local Governmental and Governmental Employees Tort Immunity Act," Ill. Rev. Stat. Ch. 85, paras. 8-102 ***et seq.,*** while the instant case in governed by the "Court of Claims Act," Ill. Rev. Stat. Ch. 37, para. 439.22-1 ***et seq.*** In the case of a municipality such as the City of LaHarpe, there is no common law immunity from suits. The legislature granted limited immunity to municipalities in the form of the "Local Governmental and Governmental Employees Tort Immunity Act,'' and contained in that law was a provision which the Supreme Court construed in ***Housewright*** to be a waiver of certain of the

immunities set forth in that Act in the event the local entity obtained liability insurance.

Here the State of Illinois, as a sovereign entity, is immune from suits by its citizens. The State has partially waived its immunity to the extent set forth in the "Court of Claims Act." However compliance with the "Court of Claims Act" is required if the State of Illinois is to be sued. There is no provision in the "Court of Claims Act" analagous to that section of the "Local Governmental and Governmental Employees Tort Immunity Act" which was construed in ***Housewright,*** to waive certain immunities if insurance was obtained. Accordingly, the Court finds no basis on which to conclude that the State waived any of the conditions contained in the "Court of Claims Act,'' even, if, as alleged by Claimant, it did procure insurance which would cover its liability in the instant action.

For the foregoing reasons, Claimant's motion to vacate this Court's order of December 19, 1977, dismissing this cause is hereby denied.

(No. 76-CC-0564—Claimant awarded $10,000.00.)

MELVIN MCKIBBEN, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed Nouember 23, 1977.

SILVERSTEIN & STEIN by **MICHAEL WEXLER,** Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **JAMES O. STOLA,** Assistant Attorney General, for Respondent.

PRISONERS AND INMATES—*Unjust imprisonment.* Before an award will be made for wrongful incarceration, Claimant must prove by preponderance of the evidence (1) that the time served in prison was unjust; (2) that the act for which he was wrongfully imprisoned was not committed; and (3) the amount of damages to which he is entitled.

SAME—Elements of damages for unjust imprisonment. In computing an award for time unjustly served in a prison, the Court considers monetary loss, mental anguish suffered by Claimant by reason of such imprisonment, and the length of the imprisonment.

SAME—Time unjustly served in prison. Time served in a county jail while awaiting trial is not compensible under the Act.

POLOS, C.J.

Claimant, Melvin McKibben, seeks to recover the sum of $15,000.00 as damages for time unjustly served in the Illinois State Penitentiary.

This action arises under Section 8(c) of the "Court of Claims Act" which grants this Court jurisdiction to hear and determine:

"c. All claims against the state for time unjustly served in prisons of this State where the persons imprisoned shall receive a pardon from the governor stating that such pardon is issued on the ground of innocence of the crime for which they were imprisoned; provided, the Court shall make no award in excess of the following amounts: for imprisonment of five years or less, not more than $15,000.00; for imprisonment of 14 years or less but over five years, not more than $30,000.00; for imprisonment of over 14 years, not more than $35,000.00; and provided further, the court shall fix attorneys fees not to exceed 25 percent of the award granted."

The record herein establishes that the Claimant was indicted by the Cook County Grand Jury for the crime of murder and was arrested pursuant thereto on November 10,1971. Upon his arrest he was placed in the Cook County Jail where he was confined continuously until his trial. He was found guilty on April 17, 1972, and was sentenced to a term of imprisonment in the Illinois State Penitentiary for not less than 20 nor more than 30 years.

On January 17, 1975, the Appellate Court of Illinois reversed Claimant's conviction stating:

"We conclude therefore, that the State's evidence in this case is so unsatisfactory that it raises a reasonable doubt of defendant's guilt."

The Claimant was released from custody on January 17, 1975, and on July 23, 1976, Governor Daniel

Walker issued a pardon to Claimant on the ground of innocence.

The issue in this case is the amount of damages to which the Claimant is entitled. Claimant worked as a barber prior to his conviction. He proved by his testimony and that of his employer that his earnings prior to his conviction were between $95.00 and $100.00 per week.

Claimant seeks compensation for imprisonment from the time of his arrest to the time of his release — a period of three years and two months — which includes incarceration in the Cook County Jail awaiting trial.

Respondent contends that time served awaiting trial is not "time unjustly served in prisons of this state" and that such time should not be included in computing the compensable period. Respondent thus urges that Claimant spent only two years and nine months unjustly imprisoned in a prison of this State.

This precise question was decided by this Court in ***Coffey v. State***, *31* ***Ill. Ct.*** *Cl.* ***350*** *(1977),* where the Court held that time served in a county jail awaiting trial is not compensable under the Act.

In computing an award for time unjustly served in a prison of this state, the Court must consider monetary loss, the anguish necessarily suffered by a Claimant be reason of the loss of his liberty, and the length of the incarceration in a prison of this State.

On consideration of the record in this case, the Court finds that Claimant should be awrded the sum of $10,000.00 for his unjust imprisonment in a prison of this State.

It is therefore ordered that Claimant be and hereby is awarded the sum of $10,000.00.

(No. 76-CC-0675—Claim dismissed.)

IRVING WEISSMAN, M.D., Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed April 18, 1978.

PRACTICE AND PROCEDURE—Statute of limitations for vendors under the Medical Assistance Program of the Department of Public Aid.

PER CURIAM.

On November 6, 1975, Claimant filed his complaint seeking $4,361.00 for medical services rendered to Public Aid recipients under the Medical Assistance Program during the year 1969.

On September 21,1977, Respondent moved to dismiss citing Ill. Rev. Stat. Ch. 23, Section 11-13, 1975, which provides as follows:

"Vendors seeking to enforce obligation of a governmental unit or the Illinois Department for goods or services (1)furnished to or in behalf of recipients and (2) subject to a vendor payment as defined in Section 2-5, shall commence their actions in the appropriate Circuit Court or the Court of Claims as the case may require, within one year next after the cause of action accrued."

The State further cites *Weissman v. State of Illinois, 31 Ill. Ct. Cl.* 506,577, to the effect that Department regulations entitled "State of Illinois, Department of Public Aid, Medical Assistance Program, Handbook for Physicians'' Section 141, provides that billing for services must be made within six months, otherwise no payment will be made.

The Claimant has failed to reply to the motion.

Complaint is dismissed for failure to comply with the one year time limitation period.

(No. 76-CC-0809—Claim denied.)

BURDITT & CALKINS, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed June 23, 1978.

CONTRACTS—*In excess of appropriations.* Contracts entered into by State agencies, in excess of appropriations are null and void.

POLOS, C.J.

The law firm of Burditt & Calkins has brought this action to recover the sum of $19,799.72 which it alleges it is due for legal services rendered to the State of Illinois. Claimant contends the State of Illinois is obligated to pay its billing for representing the State Board of Elections, or the officers thereof, in the litigation entitled *Franklin J. Lunding v. Daniel Walker, and Socialist Workers Party v. State Board of Elections, Et Al.*

At issue is whether the State of Illinois may be charged for the services rendered by Claimant in each of the aforesaid cases.

Franklin J. Lunding was the only witness to testify in this proceeding. He said that the matter of *Lunding v. Walker* arose out of the attempt by former Governor Walker to remove him from the State Board of Elections. Lunding said he initiated the litigation in the Circuit Court of Cook County, in order to prevent his removal. He said that he had conferred with a representative of the Attorney General of Illinois with respect to whether or not that office would represent him in that litigation, and that he determined from his conversation that the Attorney General's office would represent Governor Walker. Lunding said that the Attorney General's office voiced no objection to his obtaining outside counsel to represent him.

Lunding said that Burditt & Calkins was hired to represent the State Board of Elections in the Socialist Workers Party case, because the Office of the Attorney

General refused to represent the State Board of Elections. That action arose after a complaint was filed with the State Board of Elections against the Illinois Socialist Workers Party campaign fund under the "Campaign Financing Act." The Socialist Worker's Party filed suit in the United States District Court for the Northern District of Illinois, challenging the constitutionality of the "Campaign Financing Act." The members of the State Board of Elections were sued in their individual and official capacities, along with the State's Attorney of Cook County, and the Attorney General of Illinois.

Respondent argues that the State is not responsible for the legal fees incurred by the State Board of Elections in these matters. Respondent asserts that the lawsuit brought by Franklin Lunding was his personal litigation, in which the people of the State of Illinois were not the real parties in interest. The State further argues that the Attorney General was the sole legal officer authorized to represent the State Board of Elections in the Socialist Party Workers case, and that the Board was without authority to contract for outside legal counsel.

We find that we do not need to reach these issues, however. In support of their claim, Claimants have submitted the affidavits of Franklin Lunding and Michael E. Lavelle, both of whom were members of the State of Illinois Board of Elections at the times in question. Those affidavits state that at the time the Board contracted for the legal services of Burditt & Calkins, sufficient monies had not been appropriated to the State Board of Elections to cover those expenses.

The Illinois Constitution of 1970, as did its predecessors, vests the power to authorize the expenditure of

State funds exclusively in the General Assembly. Article 8, Section 2, provides:

"The General Assembly by law shall make appropriation for all expenditures of public funds by the State. . . .appropriations for a fiscal year shall not exceed funds estimated by the General Assembly to be available during that year."

Further, Ill. Rev. Stat., Ch. 127. Sec. 166, states:

"No officer, institution, department, board or commission shall contract any indebtedness on behalf of the State, nor assume to bind the State in an amount in excess of the money appropriated, unless expressly authorized by law."

Thus it has long been held that contracts entered into by state agencies, in excess of appropriations, are null and void. ***See,*** *Fergus u. Brady, 277 Ill. 272; Schutte and Koerting Company, et al., v. State, 22 Ill. Ct. Cl. 591; Sears, et al. u. State, 24 Ill. Ct. Cl. 452.*

On the record before this Court, it appears that the State Board of Elections contracted for outside legal services in the absence of an unencumbered appropriation. This Court is therefore without power to make an award in this matter, for to do so would be to usurp the exclusive power of the legislature to determine 'the limits on the amount of public funds that **may** be expended.

It is therefore ordered that this claim is denied.

(No. 76-CC-0884—Claim denied.)

DONNA K. **OSTER,** a minor, by **WARREN CHARLES OSTER,** her father and next friend, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

*Opinion **filed February** 27, 1978.*

BERKSON, GOROV, & LEVIN, LTD., Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; JAMES O. STOLA, Assistant Attorney General, for Respondent.

NEGLIGENCE— Re *Ipsa Locquitur.* In order for the doctrine of res ipsa locquitur to apply, the Claimant must show: (1) the accident was that of a kind which ordinarily does not occur in the absence of somebody's negligence, (2) the accident was caused by an agency or instrumentality within the exclusive control of the Respondent, and (3) the accident must not have been due to any voluntary action on the part of the Claimant.

SAME—*Hospitals and Institutions.* A hospital is not an insurer of a patient's safety, but it owes the patient the duty of protection, and it must exercise such reasonable care as the patient's known condition may require.

POCH, J.

This is a claim for personal injuries suffered by Donna K. Oster, a minor, while she was a patient at the Elizabeth Ludeman Center, which is operated and maintained by the Respondent, State of Illinois. The claim is brought by her father and next friend, Warren Charles Oster, on her behalf.

The cause was assigned to a Commissioner of the Court for presentation of evidence. The parties entered into certain stipulations wherein documentary evidence, consisting of X-rays, photographs, hospital records and various reports and logs prepared by the employees of the Respondent were admitted into evidence in lieu of oral testimony.

The evidence admitted pursuant to stipulation is summarized as follows: the Ludeman Center houses its patients in small residential units, each accommodating about eight children. During the patients' waking hours two staff members are on duty at each unit. One staff member is on duty at night. The housing unit consists of a family room, dining room, bathrooms and four twin bedrooms, plus a kitchen. As a part of the effort to treat the children as normal individuals, they are allowed free access to all parts of the dwelling unit. As a result of this policy they are not under direct obser-

vation of a staff member at all times of the day. The children are also taken out of the home, under staff supervision, to the snack shop and the playground on the premises of the center.

Each residential unit is cleaned two to three times daily. Staff members are told to see that dangerous items are not left for the patients to pick up.

The Claimant, age ten, was admitted to Ludeman Center in 1974, suffering from severe mental retardation and severe visual loss. The Ludeman Center is maintained by the Respondent to treat such children.

The Claimant's parents were allowed to visit Donna at the center and did so on 11 occasions in 1975 prior to July 31, 1975, when it was discovered by the use of X-rays that she had swallowed two bobby pins which had lodged in her intestine. During the times the Claimant's parents visited her they had the opportunity to take her from the grounds of the center. These visits lasted from one and one-half hours to five hours and fifteen minutes, during which time Donna was in the exclusive custody of her parents. The record does not contain any evidence that her parents took Donna from the grounds during these visitation periods.

On July 31, 1975, X-rays were taken, showing that the Claimant had two bobby pins lodged in her bowel. She was taken to Children's Memorial Hospital where surgery was performed to successfully remove them. The surgeon, Dr. Joseph O. Sherman, would have stated, if called, that it was impossible to determine the date of ingestion, which indicated that they could have been swallowed at any time since the Claimant's last X-ray which had occurred at some time before January 1, 1975.

Subsequent to Claimant's hospitalization due to this incident, the Respondent conducted an investigation to try and determine how the Claimant obtained the bobby pins. The Departmental report, admitted by stipulation, indicated that no staff member allowed Claimant to swallow bobby pins or even obtain them. The staff also took every reasonable step to make sure potentially dangerous items were not available to patients. The supervisor of the home in which Claimant resided, Debbie Corbin, if called, would have stated that the only person she ever observed in the home wearing bobby pins was the Claimant's mother, Mrs. Warren Oster. None of the staff or volunteers working at the home used bobby pins.

The parties also stipulated to the extent of the medical treatment to the Claimant and the cost **of** such treatment.

In her complaint the Claimant alleges that the Respondent committed several specific acts of negligence. In her brief the Claimant asks that the Court apply the doctrine of res ipsa loquitur to the facts, thus trying to shift the burden of going forward to the Respondent, without proof of specific acts of negligence.

In order for the doctrine of res ipsa loquitur to apply the Claimant must show:

"...1) the accident must be of a kind which ordinarily does not occur in the absence of somebody's negligence; **2)** it must be caused by an agency **or** instrumentality within the exclusive control of the Defendant; **3)** it must not have been due to any voluntary action on the part of the plaintiff." ***Karluski v. Board of Trustees of the University of Illinois, 25 Ill.Ct.Cl. 295 at 298 (1966).***

cf. ***Wells u. State, 31 Ill.Ct.Cl. 375*** *and McMahon* ***u. State, 26 Ill.Ct.Cl. 476, 479.***

Applying these rules of law to the instant case

leaves no doubt that the doctrine has no application to these facts. Ingestion of foreign objects by children often occurs in the absence of another's negligence. In addition there is no evidence that the two bobby pins were in the exclusive control of the Respondent. On many occasions the Claimant was in the custody of her mother who was observed wearing bobby pins in her hair. Therefore, the Claimant could have found the bobby pins at any time despite Respondent's actions to keep the premises safe and clean. Lastly, there is no evidence to show any staff member or volunteer used bobby pins. Because the Respondent did not have exclusive control and management over the Claimant or the bobby pins during all the time they could have been ingested this Court finds that as a matter of law, the doctrine of res ipsa loquitur is inapplicable to the facts.

Even without the application of the doctrine of res ipsa loquitur to this case the evidence leaves no doubt that the Claimant has not met her burden of proof in order to be entitled to an award. It is well settled that a Claimant must prove that the State was negligent, that such negligence was the proximate cause of the injury and that the Claimant was in the exercise of due care and caution for his or her own safety. ***Simmons u. State,*** *26 Ill.Ct.Cl. 351,354 (1968).* The evidence, admitted by stipulation, which has been summarized above shows that the Respondent exercised due care for the Claimant. There is no evidence that the Claimant ever tried to ingest foreign objects on previous occasions. The Respondent was under no notice, therefore under no duty, to take any special precautions to observe the Claimant's behavior. The Court in ***Kurluski u. Board*** *of* ***Trustees*** *of* ***the University*** *of* ***Illinois, supra,*** *25 Ill.Ct. Cl. 295 (1966)* said:

"(The) hospital is not an insurer of a patient's safety, but owes the patient the duty of protection, and must exercise such reasonable care as the patient's known condition may require." Id at 298.

"...this rule is limited by the rule that no one is required to guard against or take measures to avert that which a reasonable person under the circumstances would not anticipate as likely to happen." Id at 299.

The evidence shows that the Respondent exercised the amount of care as the Claimant's known condition required. Under the known circumstances no reasonable person would anticipate the Claimant would swallow two bobby pins, especially where no staff member used them and that the premises were maintained as they were. The only way to avoid such injury to those such as Claimant would be to restrict them to constant surveillance and under isolation. This would defeat the purposes of institutional care and do more harm than good. See ***Hanvey v. State, 22 Ill.Ct.Cl. 513,519 (1957).***

The Respondent was not negligent in the care and supervision of Donna Oster. While it is unfortunate that the Claimant was injured she has not proved by a preponderance of the evidence that the Respondent was guilty of negligence. In the absence of such proof her claim must be denied.

The claim of Donna K. Oster is hereby denied.

(No. 76-CC-0967—Claimant awarded **$134.51.)**

STATE EMPLOYEES' RETIREMENT SYSTEM OF ILLINOIS, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed August 24, 1977.

APPROPRIATIONS—***Expenditures exceeding the amounts appropriated.*** Payments of State contributions to social security (FICA) are expressly required by law and therefore such payments may be made even though they exceed the sums appropriated by the legislature therefor.

POLOS, C.J.

The record in this cause indicates the purpose for which this claim was filed was for the payment of the State contribution to Social Security (FICA) for the period June 15, 1975, to June **30,** 1975, on payroll voucher #24, in accordance with schedules authorized and determined by law and that the Attorney General has submitted a stipulation by Respondent based upon information forwarded to his office by said department, as evidenced by the departmental report attached to the stipulation by Respondent.

Accordingly, this Court finds that this was a properly authorized expenditure by the State of Illinois, Department of Business and Economic Development. No part of this expenditure has been paid and the total outstanding is $134.51. Money was appropriated under appropriation and fund #001-53601-1170-0000 of which appropriation there were insufficient funds from which to pay these contributions.

The "Social Security Enabling Act," Ill. Rev. Stat. Ch. 108H, paras. 21-101 et **seq.,** generally and paras. 21-123 specifically provides that:

"Each political subdivision or instrumentality as to which a plan has been approved under 'the 1951 Act' or this article shall pay into the Social Security Contribution Fund, with respect to wages at such time or times as the State Agency may by regulation prescribe, contributions in the amount and at the rate specified in the applicable agreement entered into by the State Agency."

The Constitution of 1970 provides in Article VIII, Sec. 1 that:

"Section 1. General Provisions

(a) Public funds, property or credit shall be used only for public purposes.

(b) The State, units of local government and school districts shall incur obligations for payment or make payments from public funds only as authorized by law or ordinance."

The General Assembly, realizing that budgetary problems would arise from time to time authorized the

binding of the State in excess of moneys appropriated as follows:

"No officer, institution, department, board or commission shall contract any indebtedness on behalf of the State, nor assume to bind the State in an amount in excess of the money appropriated, unless expressly authorized by law."

Accordingly, this Court finds that the expenditures for which claim is made was an obligation "Expressly Authorized by Law."

It is hereby ordered that the Claimant be awarded in full satisfaction of any and all claims presented to the State of Illinois under the above captioned cause the sum of **$134.51.**

This award is not to be paid out of the Court of Claims Fund.

(No. 76-CC-1070—Claimant awarded $1,952.62.)

ST. JOHN'S HOSPITAL OF THE HOSPITAL SISTERS OF THE THIRD ORDER OF ST. FRANCIS, an Illinois **not-for-profit Corporation,** Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed January 25, 1978.

GRAHAM & GRAHAM, Attorneys for Claimant.

WILLIAM J. **SCOTT,** Attorney General; WILLIAM E. WEBBER and LAWRENCE W. **REISCH, JR.,** Assistant Attorneys General, for Respondent.

PRISONERS AND INMATES—Medical expenses incurred by juvenile parollee. Where a juvenile who is in legal custody of the Department of Corrections but who is on parole to his parents incurs necessary medical expenses, said expenses should be paid by the State.

HOLDERMAN, **J.**

This matter comes before the Court on a claim filed by Claimant for services rendered to one David W. Landers.

David W. Landers was a resident of Springfield Township, Sangamon County, Illinois, and at the time of his hospitalization was in the legal custody of the Juvenile Division, Department of Corrections of the State of Illinois.

David W. Landers was injured in an automobile accident and was taken by emergency vehicle to a hospital where the emergency treatment was rendered for which Claimant now seeks to recover.

This claim was previously presented to the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois, Cause No. 75-LM-808. In that cause, Claimant sought relief against two townships, they being the area in which the parents of the injured party lived at the time of the accident.

At the time of the accident, David W. Landers was on parole to his parents' home.

The Circuit Court of Sangamon County entered an order, filed December 18,1975,in which the plaintiff's cause of action was dismissed without prejudice. The order stated that the Director of Juvenile Division, Department of Corrections, was legally liable to pay for such hospital services and that since Landers was not indigent, the two townships could not be held liable. The Court further held that the claim must be pursued in the Court of Claims.

Respondent denies liability on the theory that the injured party was not in the actual physical custody and control of the State at the time of the accident in question.

The hospital finds itself in the unenviable position of being compelled by law to furnish services to each and every individual who is brought to its doors and

then finds that no one cares to assume the responsibility of paying for treatment rendered.

It is not denied by any party herein that the treatment was necessary, that it was furnished, and that the amount claimed is fair and reasonable.

Claimant contends that Ill. Rev. Stat., Ch. **38,** paras. **1003-14-3** provides that the Department can purchase "necessary services" for a parolee and Claimant further contends that medical treatment was a necessary service.

Respondent's theory is that the statute merely authorizes the department to purchase the services and does not require it to.

There was also some question raised as to whether the Department of Public Aid or the Department of Corrections was the proper department. This seems rather immaterial because in either instance, the State is held liable.

It is the opinion of this Court that Claimant was in the legal custody of the Department of Corrections at the time the services were rendered and that said services should be paid for by the State.

An award is hereby made to Claimant in the amount of **$1,952.62.**

(No. 76-CC-1325—Claimant awarded $9,537.34.)

ALFRED A. TAVOLETTI, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

***Opinion filed** May **4**, 1978.*

DONALD W. COHEN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; JAMES O. STOLA, Assistant Attorney General, for Respondent.

STATE EMPLOYEES BACK SALARY CLAIMS—Reinstatement following termination. Where settlement agreement in wrongful discharge case provided for reinstatement "with all benefits intact" said agreement included back pay for the period of discharge.

SAME—Damages. Overtime pay may be a proper element of damages under proper circumstances in a wrongful discharge claim.

SAME—*Same.* Earnings from part-time employment which Claimant had prior to wrongful discharge and continued to have after said discharge are not to be used as a set off in mitigation of losses.

POLOS, C.J.

Claimant, Alfred A. Tavoletti, seeks to recover back pay and benefits during a period of time in which he was laid off and terminated from his employement with the State of Illinois Department of Transportation.

The parties stipulated that the Claimant was employed by the Department of Transportation of the State of Illinois continuously from 1969 to July 29, 1974. On that date he received a 30 day disciplinary layoff, and on August 23, 1974, was terminated. Claimant thereafter was reinstated by the Department of Transportation on March 24, 1975. At the time of Claimant's disciplinary layoff, he was receiving a monthly salary of $1,080.00, and because of overtime, had earned $9,377.46 during the period from January 1, 1974, to July 29, 1974. Claimant seeks to recover his salary for the period of his layoff and termination.

When Claimant was reinstated, there was pending in the Circuit Court of Cook County, a complaint for administrative review which had been filed on his behalf seeking review of the order terminating him. On May 28, 1975, this complaint was dismissed on motion of the State of Illinois, which motion recited that the

Claimant had reached a settlement agreement whereby Claimant had been reinstated to his former job "with all benefits intact."

The first issue to be determined is whether the settlement agreement reinstating Claimant "with all benefits intact" included back pay.

The record indicates that protracted settlement negotiations led to Claimant's reinstatement and the dismissal of his action for administrative review.

At one point, Claimant rejected the State's offer to reinstate and pay him the sum of $4,300.00 in back pay. It appears that throughout the negotiations there was never any real issue as to reinstatement, and the primary dispute between the parties was the cash amount of benefits to be received by Claimant upon his reinstatement.

The State contends that the words "with all benefits intact" do not indicate an agreement to pay back salary. However, the fact that during the negotiations the State offered $4,300.00 in addition to reinstatement indicates that the parties were negotiating on the basis that Claimant was to receive some back pay. The Court therefore concludes that it was the intention of the parties that the words "benefits intact" referred to back pay.

The remaining issues concern the basis on which back pay should be calculated, and the amounts of the set-offs, if any, to which the State is entitled.

On the first question, the evidence was that the Claimant earned $1,080.00 per month. During the first seven months of 1974, due to overtime performed in snow removal from State highways, he earned $9,377.46. Claimant contends that his full earnings,

including overtime, should be used as the basis of his back pay claim.

We cannot agree with the State's contention that including overtime in the total of back pay lost is speculative. While the amount of overtime required by the State for snow plowing and salting may vary from time to time, the Court takes judicial notice of the fact that in the climate of Illinois, there will be some need for highway work related to snow and ice, and that a fair and reasonable basis for calculating a future amount of required overtime would be a past record of required overtime wages. Claimant testified that there was substantial overtime work on a recurring basis, in each year of his employment during the months of October to April. We therefore find that the total wages lost by Claimant totalled $10,700.00, including the overtime which he reasonably could have expected to earn.

As to the issue of set offs, Claimant worked for Alpha Construction Company and Burnside Construction Company during the period of his discharge, earning the sum of **$2,352.48.** It is not contested that the State is entitled to set off these amounts.

What is contested, however, is whether the State is also entitled to **a** set off of amounts Claimant earned from H-B Services and Savoia's, for whom he also worked on a part-time basis during the period of his discharge. The evidence indicates that Claimant was employed by both H-B Services and Savoia's on a part-time basis prior to his discharge, and while employed by the Department of Transportation. This work was performed at night, and did not interfere with the performance of his duties for the Department of Transportation. After his discharge, Claimant's work for those employers was similarly done on a part-time basis at night.

***People** v. Johnson, 32 Ill. 2d 324, 2 05 N.E.2d 470,* the Supreme Court said:

"The theory underlining a suit for back salary is to make the employee whole — to compensate him to the extent that the wrongful deprivation of salary has resulted in financial loss. For that reason, the amount recoverable is to be reduced by his other earnings during the period of separation insofar as such income would have been incompatible with performance of his duties to his erring employer. But this does not necessitate mitigation of the recoverable salary by earnings compatible with and being received during the employment from which the employee is wrongfully discharged. There is in this record no hint of incompatibility with relator's liquor store employment and his obligation to the municipality, either in the form of regulatory proscriptions or conflicting hours or duties. In fact, relator held both jobs for a substantial period of time prior to his wrongful discharge. As was aptly observed by the Appellate Court, the industrious holder of two compatible jobs who was wrongfully discharged from one should not be penalized by permitting the wrongdoer to deduct from the damages for which he is liable, the earnings of the second job during the period of wrongful discharge."

On the basis of the holding in the *Johnson* case, it is clear that the State has no right of set off as to the income from Claimant's part time employments.

Accordingly, this Court finds the Claimant is entitled to recover $10,700.00 less $2,352.48 in set offs, or a total of $8,347.52.

It is hereby ordered that the Claimant, Alfred A. Tavoletti, be, and hereby is, awarded the total sum of $8,347.52, plus employer contributions of $1,189.82.

(No. 76-CC-1460—Claim dismissed.)

CONNIE ARMSTRONG, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Order filed January 31,1978.

APPROPRIATIONS—*Absence* of funding. Where the Legislature refused to fund an agency, any attempt to staff that agency with salaried employees constituted ultra vires act and was null and void.

STATE EMPLOYEES BACK SALARY CLAIMS—Unfunded position. Where Claimant was acting with full knowledge that there were no funds available for her salary, the time she actually worked constituted a gravity.

DAMAGES—Quantum meruit. Where a contract was prohibited by law there could be no recovery on a quantum meruit basis.

HOLDERMAN, J.

Claimant filed suit against the state of Illinois seeking recovery of $1,062.49 for services rendered to the office of the governor of the state of Illinois.

In her complaint, Claimant alleges that payment was refused on the grounds that funds appropriated for the office for such payments had lapsed.

Respondent filed a motion to dismiss alleging that the Governor's Action Office was not funded by the legislature and this necessitated placing individuals on the payroll of the department that their services impacted. Claimant in this instance worked on Public Aid matters.

The motion to dismiss sets forth the following information from the Department of Public Aid:

"(a) Answer one of their report states that "IDPA has available no basis or method for determining the facts in support of this claim."

(b) Answer to question two relates that "IDPA has no record that Claimant was ever on its payroll. We thus have no information indicating that this department has a salary obligation to her, nor is there any record that Claimant has ever asserted such an obligation."

(c) In answer to question 11 the report states "Claimant reports (complaint Exhibit "A") being advised by the Director, Governor's Action Office, that funding was being sought for an $8,500.00 annual salary for her; we have no information which would support this expectation."

(d) In answer to question no. 12 the report states "Nothing presented in the complaint, referenced correspondence or IDPA records suggest that any laibility of this Department exists in Claimant's favor. Claimant does not even assert a claim against IDPA, but rather bases her alleged employment on expressions of hoped-for funding originating outside of IDPA."

4. Pursuant to Rule **14** of this Court the departmental reports are prima facie evidence of the facts set forth therein.

5. The departmental reports state facts, which until disputed, establish a prima facie case that the

Governor's Action Office was never funded and therefore any attempt to staff said office constituted ultra vires acts by those so attempting. The attempt to plant these "ghost employees" on the payrolls of other departments would violate the intent of the appropriations made to the various other departments and would also therefore constitute an ultra vires act by those persons so attempting.

6. The actions of the Claimant as portrayed by the facts set forth in the complaint clearly establish that the Claimant was acting with full knowledge of the fact that there were no funds available for the payment of her salary and therefore any time which she put in consitutes a gratuity.

7. There being no appropriation for the employment of staff personnel for said Governor's Action Office the attempted contracts of employment would be prohibited by law and where a contract is prohibited by law, there can be no recovery on a quantum meruit basis, ***Schutte et al v. State, 22 Ill.Ct.Cl. 591."***

It appears to the Court that the Governor's Action Office was never funded and therefore any attempt to staff said office constituted ultra vires acts by those so attempting and to place these employees in other departments would violate the intent of the appropriations made to the departments where the individuals were placed.

The case found in 22 Ill.Ct.Cl. 592, lays down the rule that whoever deals with municipalities does so with a limitation on itself or its agent's powers and when contracts or portions of a contract were let when appropriations were exhausted, claims based on these contracts would be denied. It further states that every claim or contract, if not within the amount of the

appropriation already made, is void.

It is abundantly clear in the present case that appropriations were never made for the Governor's Action Office; therefore, an attempt to hire individuals such as Claimant was illegal.

Motion to dismiss is heareby granted and said cause is dismissed.

(No. 76-CC-1554—Claimant awarded $886.47.)

ROCK ISLAND FRANCISCAN HOSPITAL, Claimant, *v.* STATE OF ILLINOIS and ILLINOIS **DEPARTMENT** OF PUBLIC AID, Respondent.

Opinion filed December 19, 1977.

JAMES J. GENDE, Attorney for Claimant.

WILLIAM **J. SCOTT,** Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

PUBLIC AID BENEFITS—Notice to ***State of terminatton of Medicare benefits.*** In absence of formal procedure for notification, informal means of notice will suffice.

POLOS, C.J.

This is a claim by the Rock Island Franciscan Hospital against the Illinois Department of Public Aid, to recover the sum of $886.47, being the balance due for medical'goods and services provided to one Charles Smith during the period May 17,1974,to June 18,1974.

Prior to June 18, Charles Smith was a patient at the Claimant hospital. On May 14, 1974, the Utilization Review Committee of the Claimant hospital determined that Charles Smith should be discharged on May 17,1974. The decision of the committee resulted in Smith's medicare benefits being terminated as of that date.

It appears that Smith's condition was such that he could not return home, but rather that it was necessary to place him in a nursing home. In such instances, it is the usual procedure for an application for Public Aid benefits to be submitted to the Department of Public Aid to cover the period from the termination of medicare benefits to placement in the nursing home. This application was completed by Claimant on behalf of Mr. Smith on May 17, 1974, and was received at the Department of Public Aid on May 20. The document recited that Mr. Smith's estimated hospital stay was "until nursing home placement."

Although the Department of Public Aid finally accepted Mr. Smith's application for Public Aid benefits on July 14, 1976, retroactive to April 19, 1974, it refused responsibility for any expense incurred between May 16, 1974, the effective date of the decision of the Utilization Review Committee, and June 18, 1974, the date on which Mr. Smith was placed in a nursing care center. Respondent contends that it did not receive proper notification of the decision of the Utilization Review Committee so as to make it responsible for the expenses incurred during this period.

Thus the sole issue in this action is whether the Department of Public Aid received proper notice from the Claimant of the decision of the Utilization Review Committee, so as to permit the Department to make a decision on eligibility and take the necessary steps for placement.

The Court finds that Claimant established, by a preponderance of the evidence, that the Department of Public Aid was given timely notice of the decision terminating Mr. Smith's medicare benefits. Certain of Claimant's business records which were introduced into evidence indicated several contacts between

Claimant's social workers and the Department of Public Aid in May, **1974,** relating to Mr. Smith's situation. A witness for Claimant further testified that there had been numerous conversations between agents of the Claimant and employees of the Department of Public Aid in May, **1974,** which would show an awareness of the decision of the Utilization Review Committee.

Although Respondent contends that the notice given by Claimant was improper, it is unable to cite any rule or regulation establishing a contrary, formal procedure for such notification. In fact, Respondent's own witnesses agreed that the usual system of notification was informal.

In conclusion, the evidence shows that the Respondent did have timely notice of the decision of the Utilization Review Committee, and that the notice was given in the usual and customary manner.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of **$886.47.**

(No. 76-CC-1631—Claim **dismissed.)**

JEFFERIES PERRY, Claimant, *v.* **STATE OF ILLINOIS, Respondent.**

Order filed April 14, 1978.

PRISONERS AND INMATES—*Bailments.*

PER CURIAM.

This is a claim by an inmate of an Illinois correctional facility for reimbursement for 200 books which he alleges were stored for him by the Department of Corrections while he was incarcerated, and have now disappeared.

Respondent has moved to dismiss this action, on the basis of a report of the Department of Corrections, which states that **60** of Claimant's books were issued to him while he was incarcerated, and that he donated the remainder to the prison library.

Rule **14** of the Court of Claims provides that a departmental report is prima facie evidence of the facts set forth therein. Claimant has not responded to the motion to dismiss, and the departmental report submitted by the Department of Corrections is therefore uncontradicted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. *76-CC-1716—Claimant awarded $4,368.50.)*

IBM CORPORATION, Claimant, *v.* **STATE OF ILLINOIS, Respondent.**

Order filed December** 2, **1977.

CONTRACTS—Liquidated damages for early termination.

PER CURIAM.

This matter comes before the Court on a joint'stipulation entered into between the attorney for the Claimant and attorney for Respondent.

In said stipulation, it is agreed between the parties that the amount of **$4,368.50** represents the liquidated damage amount Respondent owes Claimant for early termination of the agreements.

Parties hereto have agreed and stipulated that the amount above set forth is correct and an award is hereby entered in the amount of **$4,368.50** in favor of Claimant.

(76-CC-1903—Claimant awarded $1,308.45.)

ROCK ISLAND FRANCISCAN HOSPITAL, Claimant, *v.* **STATE OF ILLINOIS** and **ILLINOIS DEPARTMENT** of **PUBLIC AID,** Respondent.

Opinion filed April 7, 1978.

JAMES L. GENDE, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **WILLIAM** E. **WEBBER,** Assistant Attorney General, for Respondent.

PUBLIC AID *BENEFITS—Notice to State of termination of Medicare benefits.* In absence of formal procedure for notification, informal means of notice will suffice.

***SAME—Discharge of Public Aid recipient from hospital.* Upon notification that a Public Aid recipient has been admitted to a hospital, Public Aid Regulations create on affirmative duty of Respondent to initiate plans for recipient's post-discharge care.**

POLOS, C.J.

This is a claim for **$1,308.45** by Franciscan Hospital against the Department of Public Aid for medical goods and services provided to one Alice M. Pomeroy. On February 21, 1971, Alice Pomeroy, a Public Aid recipient, was admitted to Franciscan Hospital. On April **6,** 1971, the hospital's Utilization Review Committee met and decided that she should be discharged on April 9,1971, and sent to a nursing home. Before the nursing home placement was implemented, Alice Pomeroy died.

At issue is whether the Department of Public Aid is responsible for services rendered to Alice Pomeroy after the date of the decision of the Utilization Review Committee.

Respondent contends that it is not so liable, because it was never properly notified of the decision of the Utilization Review Committee.

Claimant contends that it notified Respondent on

various occasions of its intention to discharge the patient, and of its belief that a nursing home placement was necessary. The Respondent does not deny these facts, but contends that they are insufficient to give proper notice to make the Respondent responsible for any expense after the date of the decision of the Utilization Review Committee.

Thus, the sole issue is whether the Respondent received proper notice so as to be responsible for the medical goods and services provided by Claimant subsequent to the date of the decision of the Utilization Review Committee.

Susan Crawford, a witness for Claimant, testified that on February 22, 1971, a notice of the patient's admission to the hospital was sent to the Respondent. The relevant Department of Public Aid Regulations provides:

> "Plan For Care After Discharge: Upon notification of a recipient's admission to the hospital, local staff is to determine in consultation with the physician, and is to initiate plans for such case as may be needed to that any necessary arrangements will be made by the time the patient is ready for discharge."

Thus, upon notification that a recipient of Public Aid had been admitted to a hospital, the Respondent has an affirmative duty to initiate plans for the recipient's post-discharge care.

Through its business records admitted into evidence without objection by Respondent, Claimant demonstrated that Respondent had notice of the Utilization Review Committee's decision. Susan Crawford also testified to several conversations between Claimant and representatives of the Department of Public Aid concerning the decision to discharge Alice Pomeroy.

Although Respondent contends that the notice

given it by Claimant was improper, it has not cited any regulation or provision establishing a formal procedure to be followed in such instances.

The Court therefore finds that Respondent received sufficient notice of the patient's hospitalization and the decision of the Utilization Review Committee, so as to charge Respondent with responsibility for all medical goods and services provided to Alice Pomeroy after the decision of Utilization Review Committee.

Claimant is therefore awarded the sum of **$1,308.45.**

(Nos. 76-CC-1934 and 76-CC-1936, Consolidated — Claimant awarded $15,759.31.)

PEKIN AND LA MARSH DRAINAGE AND LEVEE DISTRICT, Claimant, *v.* **STATE OF ILLINOIS, Respondent.**

Opinion filed November 2, 1977.

EDWARD C. MOEHLE, Attorneys for Claimant.

WILLIAM J. *SCOTT,* Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

DAMAGES—*Stipulation.*

PER CURIAM.

The facts in this case are stipulated to by both parties and are found in both the complaint and the departmental report. The facts as set forth in the record reveal that the Pekin and La Marsh Drainage and Levee District is a duly organized and existing drainage and levee district under the provisions of Ill. Rev. Stat., Ch. **42.** The district is comprised of approximately **2,600** acres in Peoria County, Illinois. The State of Illinois, Department of Transportation, drilled a test

hole or boring into the ground at a location approximately 50 feet northerly of Route **9** and approximately 500 feet westerly of the Pekin Highway Bridge, this being within the boundaries of the drainage and levee district. The test hole or boring was drilled for the purpose of gathering information on the subsurface at that particular location. On or about June 2, **1974,** a water boil or artesian well developed in the test hole. The water boil developed because of the failure of the State of Illinois, Department of Transportation, to seal the test hole. The Respondent in their departmental report admit that the test holes which were bored in September, **1972,** were not plugged and it was known by the State that by the later part of **1972** the test holes had become small artesian wells. However, prior to the first week of June, **1974,** the record indicates that the water flowing from the test holes was minimum and did not cause damage to any property. However, the State admits in their report that they were aware of the underground water pressure and that standard engineering practices would have dictated the sealing of these test holes.

On June **3, 1974,** the district was informed of the water boil and immediately informed the State, the Department of Transportation. The State then inserted a tube or pipe and other materials into the water boil in such a manner that caused a flow of water from the water boil to increase in volume and to carry with it sand and silt from the subsurface. On subsequent dates the State of Illinois further inserted other materials into the boil which material further opened the channel for the flow of water, again causing the great increase in the flow of water from the boil which carried with it additional sand and silt from the subsurface. This sand and silt flowed into the drainage ditch of the

district and was thereafter pumped from the district into the Illinois River by pumps operated and owned by the district. The increased flow undermined the subsurface causing the surrounding area to sink which in turn caused a secondary boil or artesian well to develop which again in turn caused **a** secondary levee in the district to subside and in general created an emergency flood condition within the district. The flow of water, sand and silt continued until about July **15,1974,** when the State of Illinois managed to control the flow. In the Fall of **1974,** the State sealed the hole from which the water had flowed.

The State in their departmental report admit that by reason of the water, sand and silt flowing into the drainage ditch of the district, the district was compelled to remove same from the district by pumping into the Illinois River in order to avoid flooding in the district. The Claimant submitted invoices for labor, material and services totalling **$41,274.29.** Of this amount **$20,638.85** was paid by the State. The remaining **$20,635.44** was rejected for lack of verification. The Claimant subsequently submitted additional verification to the State of Illinois and it was agreed by the parties in the joint stipulation that the verifications substantiates additional expenses of **$15,759.31.**

It is hereby ordered that the Claimant be awarded in full satisfaction of any and all claims presented to the State of Illinois under the above captioned cause the sum of **$15,759.31.**

(No. 76-CC-1994—Claimant awarded $9,375.00; Claimant's Attorneys $3,125.00.)

HARRY HARLING, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed November 23,1977.

O'MALLY & ROYCE, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **RICHARD GROSSMAN,** Assistant Attorney General, for Respondent.

WRONGFUL INCARCERATION—*Compulation of damages.* LOSS of earnings is one factor to be considered in computation of damages in wrongful incarceration claim.

SAME—Attorneys' fees. The legislature did not intend that attorneys' fees be awarded above and beyond the amount of award granted in a wrongful incarceration claim, but that said fees be payable from the award itself.

POLOS, C.J.

This is a claim for the unjust imprisonment of Harry Harling, brought pursuant to Section 8(c) of the **"Court of Claims Act," Ill. Rev. Stat. Ch. 37,** § 439.8(c), which provides that this Court has jurisdiction over:

"all claims against the State for time unjustly served in prisons of this State where the persons imprisoned shall receive a pardon from the governor stating that such pardon is issued on the ground of innocence of the crime for which they were imprisoned. . ."

Claimant had been convicted of involuntary manslaughter in the Circuit Court of Cook County, and on November **16, 1973,** was sentenced to a term of from three to nine years in the Illinois State Penitentiary. **The** conviction was appealed, and was reversed on June **16, 1975,** by the Illinois Appellate Court. Thereafter, on May **14,1976,** Claimant received a pardon on the ground of innocence from Daniel Walker, the Governor of Illinois.

Claimant was incarcerated in the Illinois State Penitentiary from November **19,1973,** to September **4, 1975,** a period of approximately twenty-two months. However, from December **23, 1974,** to his release on September **4, 1975,** he was enrolled in a work release

program, which enabled him to work for his previous employer.

Claimant was steadily employed prior to his incarceration. W-2 forms introduced into evidence show that in 1971 he had earned $8,329; that in 1972 he had earned $7,960; that in 1973 he had earned $4,332; and that in 1975 he had earned $9,428.

Claimant contends that, based upon his prior earnings, he suffered a loss of earnings of approximately $14,000. Claimant also contends that he should be awarded attorneys fees.

Section 8(c) of the "Court of Claims Act" limits the amount of recovery that may be had for unjust imprisonment of a period less than five years, to $15,000. In computing the award to be made hereunder, the amount of lost earnings incurred by an individual is only one of the factors to be considered. It should be noted that while Claimant's gross earnings may have been reduced by the amount he claims, his living expenses were also reduced during the period of his imprisonment, Claimant's net economic loss as a result of his imprisonment thus cannot be fairly measured by his gross loss of earnings. However, loss of earnings is certainly one factor to be considered in assessing the amount of an award for one unjustly imprisoned.

With respect to the additional claim for attorneys fees, this Court has held in ***Anderson v. State, 26 Ill.Ct.Cl. 119,*** that the legislature did not intend that an additional award of attorneys fees be made, but that attorneys fees be paid out of funds awarded to a Claimant.

On consideration of the record in this case, the Court finds that Claimant should be awarded the sum

of $12,500.00 for his unjust imprisonment in a prison of this State. On consideration of the time expended by the attorney for the Claimant in prosecuting this action, the Court fixes attorneys fees at $3,125.00 pursuant to Section 8(c) of the Act.

It is therfore ordered that Claimant be and hereby is awarded the sum of $12,500.00 to be disbursed as follows:

$9,375.00 to Harry Harling, the Claimant herein;
$3,125.00 to O'Malley & Royce, Claimant's attorneys.

(No. **76-CC-2155—Claimant awarded $5,414.58.)**

GRITSCHKE AND CLOKE, INC., Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed February 3, 1978.

WINSTON & STRAWN, by **GREGORY S. MURRAY,** Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **SAUL R. WEXLER,** Assistant Attorney General, for Respondent.

APPROPRIATIONS—*Lapsed appropriations.* **Where the appropriation from which payment of a claim should have been made has lapsed, the Court will enter an award accordingly.**

Potos, C.J.

This is a claim for the sum of $5,414.58 which Claimant alleges it is due for engineering services performed for the State of Illinois.

On January 8, 1968, the engineering firm of Neiler, Rich & Balden, Inc. entered into a contract with the Department of Public Works and Buildings of the State of Illinois, for electrical engineering work at the Manteno State Hospital. Claimant is the successor in interest and assignee of Neiler, Rich & Balden, Inc.

The total compensation due under the contract was $65,985.81. At the hearing herein Claimant established that it performed all work required under the contract, and that it was still due a balance of $5,414.58.

Respondent does not dispute that said sum is due and owing Claimant, and indicated that the monies had remained unpaid because the original appropriation for the expenditure had lapsed.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of $5,414.58 in full satisfaction of its claim herein.

(No. 76-CC-2202—Claim dismissed.)

DIXIE LYNN NAY, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed June 28, 1979.

NEGLIGENCE—state parks and recreation areas.

PER CURIAM.

This matter comes before the Court on motion of Respondent to dismiss said cause.

Respondent's motion is based upon the case of *Vaughn, et al v. State of Illinois.*

The present case is based upon a snake bite received by a child on her right ankle at Cave-In-Rock State Park in Hardin County, Illinois on July 5, 1975.

This park being a nature area, it appears the incident occurred is one of the natural hazards of the park.

It is hereby ordered that Respondent's motion to dismiss be, and the same is, hereby granted.

(No. 76-CC-2210—Claimant awarded $40.00.)

SAM STEWART, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed *May 25,* 1978.

PRISONERS AND INMATES—*Bailments.* State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

POLOS, C.J.

Claimant, Sam Steward, an inmate of Stateville Correctional Center, has brought this action to recover for the loss of certain items of personal property allegedly valued at $49.93.

At a hearing held in this cause, Claimant established by a preponderance of the evidence that on April 6, 1976, he was a prisoner in the Joliet Correctional Center, Joliet, Illinois. He was ordered transferred to the Stateville Branch, and prior to his transfer, his personal property was inventoried by a guard, put in a bag for transfer, and a copy of the inventory was given to Claimant.

When Claimant arrived at Stateville, the prison authorities there turned over to him the bag containing his property. On checking the contents of the bag against the inventory, Claimant found that certain items of property were missing. Claimant introduced into evidence a copy of the inventory made upon his leaving the Joliet Correctional Center, and introduced sufficient evidence to support his contention that the lost items of property had a fair cash market value of $40.00 at the time of their loss.

This Court held in *Doubling v. State, 32 Ill. Ct. Cl. 1,* decided that the State has a duty to exercise reasonable care to safeguard and return an inmate's property

when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

> "A constructive bailment can be created between an owner of the property and one in possession thereof." **4A** Illinois Law and Practice 550, Bailments, citing ***Chesterfield Sewer & Water, Znc., v. Citizens Insurance*** Co. *of* ***New Jersey, et al., 57 Ill.*** *App. 12d,* ***90,207*** *NE2d 84.*

In ***Chesterfield,*** the Court quotes from *Woodson v.* ***Hare, 244 Ala.*** *301, 13 So2d. 172, at 174,* as follows:

> "An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law, generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and presented no testimony of its freedom from negligence. Claimant's prima facie case, therefore, stands unrebutted.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of $40.00.

(No. 76-CC-2315—Claimant awarded $100.00.)

ELMORE JORDAN, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed November 30, 1977.

PRISONERS AND INMATES—*Conversion of* prisoner's property. Where prisoner owned and possessed property in his cell for which he had a permit to possess such property in cell and guard wrongly confiscated such property and never returned it, such wrongful deprivation of property constitutes a conversion.

POLOS, C.J.

This is a claim brought by Elmore Jordan, an inmate of Stateville Correctional Center, for the conversion of a radio of the alleged value of $125.00.

At the hearing of this cause, Claimant established by a preponderance of the evidence that on February 9, 1976, prison authorities conducted a shakedown inspection of the cells in Claimant's cell block. While the inmates stood on the "flag" or floor of the cell block, guards searched the tiers of cells for contraband items. From where he was standing on the flag, Claimant could watch the search conducted in his cell on the third tier. At the conclusion of the search, as Claimant was walking up the stairs to his cell, he met the guard who had searched his cell coming down stairs with Claimant's radio in his arms — an AM/FM Panasonic Radio & Eight Track Player. He asked the guard to give him his radio. The guard replied that Claimant could have his radio if he could produce a permit for it. Claimant told the guard he had a permit. He ran upstairs to his cell to get the permit, but the cell was in disorder because of the search, and a short time elapsed before he could find the permit. The permit was introduced into evidence by Claimant. While Claimant was looking for his permit the guards were putting the items taken from the cells onto wagons to be hauled from the

cell block. By the time Claimant ran back downstairs to the flag, his radio had already been hauled out of the building on one of the wagons. He met a Lieutenant, showed him his permit, and the Lieutenant assured him that his radio would be returned to him. However, the radio has never been located.

The radio had been purchased from the Goldblatt Department Store, Joliet, Illinois, on April 9, 1975, for $139.45. It was in good working order on the date of the loss. The Court finds that the value of the radio on February 9,1976, was $100.00.

Claimant's case is dissimilar to the class of cases where an inmate, being transferred from one institution to another, surrenders his personal property to prison authorities so that it can be transferred from the old institution to the new. In such cases there is a type of bailment, and proof of negligence on the part of the bailee is part of Claimant's case.

The facts in this case establish an outright conversion of plaintiffs property. Claimant had a permit to have the radio in his cell. By taking it from him and then failing to return it, Respondent was guilty of a conversion of his property:

> "The gist of a conversion has been declared to be not the acquisition of the property by the wrongdoer, but the wrongful deprivation of a person of property to the possession of which he is entitled. A conversion consists of an act in derogation of the plaintiffs possessory rights, and any wrongful exercise or assumption of authority over another's goods, depriving him of the possession, permanently or for an indefinite time, is a conversion." ***53 Am. Jur. Trover and Conversion 822.***

Respondent acknowledged its liability to Claimant for the conversion of his radio in two interoffice memorandums prepared by officials at Stateville, which were introduced into evidence.

One such memorandum from Robert J. Kapture,

Assistant Warden-Operations to Elmer Maxwell, Personal Property Control Officer; stated in part:

"Please provide me with an estimate of the approximate value of the above named resident's Panasonic eight-track tape player. We will have to replace it."

The second memorandum, from Marvin Reed, Chief of Advocacy Services, to Ernest E. Morris, Warden, Stateville Correctional Center; provided in part:

"During an interview with Mr. Jordan, he expressed concern about the replacement of his radio, which was confiscated during a shakedown of his cell. At the time the resident was advised to produce a permit for same and the property would be returned. Upon complying with the officer's request his radio could not be located."

"Attached are memorandums which clearly indicate the responsibility for the loss rests with the institution . . . ."

It is therefore ordered that Claimant be awarded the sum of $100.00.

(No. 76-CC-2404—Claimant awarded $208.84.)

AMERICAN NATIONAL BANK & TRUST COMPANY of **CHICAGO**, as Trustee under Trust No. 13571, Claimant, *v.* **STATE** OF **ILLINOIS**, Respondent.

Opinion filed December 19, 1977.

DAMAGES—Stipulation. Where Claimant and Respondent stipulate to facts and damages, an award will be entered accordingly.

PER CURIAM.

This cause coming on to be heard on the motion of Respondent to dismiss the complaint.

And the parties having stipulated to the entry of an award in the amount of $208.84 with respect to a portion of the claim.

And the parties having further stipulated that the complaint be stricken with respect to the remainder of the claim, and that Respondent be granted 30 days

thereafter in which to file an amended complaint with respect to that portion of the claim which has been stricken.

And the Court being fully advised in the premises.

It is hereby ordered that Claimant be, and hereby is, awarded the sum of $208.84 for the expenditures shown as items Numbers 4 and 5 in Exhibit A to the complaint herein.

It is further ordered that the complaint be stricken with respect to items 1, 2 and 3 as shown on Exhibit A to the complaint, and that Claimant file a First Amended complaint with respect to the items stricken, within 30 days of the date of this order.

(No. 76-CC-2490—Claimant awarded $20.00.)

EDGAR SHORTER, Claimant, *v.* **STATE OF** ILLINOIS, Respondent.

Opinion filed November 30,1977.

PRISONERS *AND* ***INMATES—Conversion of prisoner's property.*** Where prisoner was wrongfully deprived of possession of property to which he is entitled, a conversion **has** been perpetrated.

POLOS, C.J.

This is a claim by Edgar Shorter, an inmate of Stateville Correctional Center, for the conversion of a General Electric Radio.

At the hearing of this cause the Claimant established that on February 9, 1976, the subject radio was confiscated from Claimant's cell during a shakedown inspection of the cells at Stateville. The occurrence is summarized in a report from the Stateville Inquiry Board to Warden David H. Brierton, dated March 10, 1976, which was introduced into evidence:

"The Stateville Inquiry Board interviewed Resident Shorter #69771 on March 4,1976 regarding a grievance concerning a radio. Resident Shorter received a disciplinary report on February 9,1976 for having the radio that could possibly have been stolen. However, resident Shorter stated that the radio has his Pontiac institutional number on it, #31814 and that is why the institution felt that the radio was stolen. On February **12,** 1976 Mr. Shorter was told by the Adjustment Committee that the radio would be returned to him after his Stateville number was inscribed on the radio. Resident Shorter stated that he has yet to receive the radio. He is requesting that the radio be returned to him as soon as possible since the ticket was dropped by the Adjustment Committee.. ."

"It is the recommendation of this committee that the radio be returned to resident Shorter as soon as possible at the completion of the processing procedures."

The radio has never been found or returned to Claimant, although on various occasions Claimant was told by institution authorities that the radio was being processed and would be returned to him. Respondent offered no testimony to explain the disappearance **of** Claimant's radio.

It appears that at the time of its loss the radio had a value of $20.00.

The facts in this case establish a conversion of Claimant's property.

"The gist of a conversion has been declared to be not the acquisition of the property by the wrongdoer, but the wrongful deprivation of a person of property to the possession of which he is entitled. A conversion consists of an act in derogation of the plaintiffs possessory rights, and any wrongful exercise or assumption of authority over another's goods, depriving him of the possession, permanently or for an indefinite time, is a conversion." ***53 Am. Jur. Trover and Conversion 822.***

It is therefore ordered that Claimant be awarded the sum of $20.00.

(No. 76-CC-2501—Claimant awarded $17.90.)

HERBERT DAILEY, Claimant, *v.* STATE **OF ILLINOIS,** Respondent.

Opinion filed November 30,1977.

PRISONERS AND INMATES—*Bailments.* State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of a transfer of an inmate between penal institutions.

POLOS, C.J.

This is a claim brought by Herbert Dailey of Stateville Correctional Center, for the loss of certain items of persorial property **of** the alleged value of $17.90.

At the hearing of this cause, Claimant established by the preponderance of the evidence that on April 28, 1976, Claimant, a prisoner in the Illinois State Penitentiary, Menard branch, was ordered transferred to the Stateville branch. On the day in question he was the owner of and had in his possession in his cell at Menard various items of personal property, such as cigarettes, shaving materials, shampoo, a cigarette roller, and notebooks. In transferring Claimant's personal propety from Menard to Stateville, prison officials had Claimant hand each item of his personal property through the bars of his cell to a guard, who listed the same on a multi-copy inventory form, and who put the items in two cardboard cartons. At the conclusion of the inventorying of Claimant's property, the guard gave Claimant a copy of the inventory and removed the cardboard cartons for shipment to Stateville.

Approximately one week after he arrived at Stateville, the prison authorities at Stateville turned over to Claimant the two cardboard cartons containing his personal property. Upon checking the contents of the cartons against the inventory, Claimant found that certain items were missing. Claimant testified as to which items were missing, and his copy of the Inventory was introduced into evidence as Claimant's Exhibit 1. Sufficient evidence was produced to establish

that the lost items had a fair cash market value of $17.90 at the time of their loss.

Claimant duly filed a grievance with the Stateville Inquiry Board concerning the missing items of personal property, but the missing property was never found.

This Court has held in ***Doubling v. State of Illinois 32 Ill.Ct.Cl.1, (75-CC-833),*** decided that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of an inmate's transfer between penal institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized by the Courts:

> **"A** constructive bailment can be created between an owner of the property and one in possession thereof." **4A** Illinois Law and Practice 550, Bailments, citing ***Chesterfield Sewer & Water, Inc., v. Citizens Insurance Company of New Jersey, et al., 57 Ill. App. 2d 90, 207 NE2d 84.***

In ***Chesterfield,*** the Court quoted the following language from ***Woodson v. Hare, 244 Ala. 301, 13 So2d 172, at 174:***

> "An acutal contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law, generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship." ***Woodson v. Hare, 244 Ala. 301, 13 So2d 172 ut page 174.***

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate

burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and presented no testimony of its freedom from negligence. Claimant's prima facie case, therefore, stands unrebutted.

It is therefore ordered that Claimant be awarded the sum of $17.90.

(No. **76-CC-2837—Claim dismissed.)**

WINZELER TRUCKING COMPANY, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed February 15,1978.

JURISDICTION—*Review of Constitutionality of a statute.*

***CONTRACTS—statenot aparty*. Where State was not a party to a contract it could not be held liable thereunder.**

POLOS, C.J.

This cause is before the Court following oral argument on the cross motions of the parties for summary judgment.

The claim herein arises out of a contract which Claimant entered into in 1974 with the Martin Marietta Corporation, to provide truck transportation for road building supplies to the site of a State highway construction project. The Rock Roads Construction Company was the primary contractor on the job, and it had subcontracted certain work to Martin Marietta Corporation, which in turn has entered into the aforesaid contract with Claimant.

Claimant alleges that it lost substantial sums on the contract because it contracted much of its trucking with other firms, and had to pay increased rates to them when the Illinois Commerce Commission authorized a number of increases in freight rates during the course of the contract. Claimant further alleges that it was unable to pass on the increased rates because of Section 109.20 of the Department of Transporation Standard Specifications for Road and Bridge Construction, which allows increases in rates for railroad and barges to be passed on to the State, while not providing for such increases to be passed on from trucking firms.

Claimant alleges that Section 109.20 violates the due process and equal protection clauses of the Federal Constitution, and seeks damages in the amount of his losses under the contract.

On consideration of the cross motions for summary judgment filed herein, the memorandums of the parties in support of and in opposition to those motions, and the oral arguments had in this cause, the Court finds that there are no disputed issues of material fact.

The Court further finds that as a matter of law, Claimant has no cause of action against the State of Illinois for his losses under his contract with Martin Marietta Corporation, as the State of Illinois was not a party to that contract.

The Court further finds that as a matter of law, it has no jurisdiction to determine whether Section 109.20 of the Department of Transporation Standard Specifications for Road and Bridge Construction is unconstitutional.

It is therefore ordered that Claimant's motion for summary judgment be, and hereby is denied, and

Respondent's motion for summary judgment be, and hereby is, granted, and this cause is accordingly dismissed.

(No. 76-CC-2974—Claimant awarded $125.00.)

ARMANDO ARLES, Claimant, *v.* **STATE OF ILLINOIS, Respondent.**

Opinion ***filed April 20,*** *1978.*

JANET KELEHER and CATHLEEN COHEN, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; RICHARD GROSSMAN and JAMES STOLA, Assistant Attorneys General, for Respondent.

PRISONERS AND INMATES—*Bailments.* State has a duty to exercise reasonable care to safeguard a prisoner's property when it takes actual physical possession of such property and holds it for pickup by a relative.

POLOS, C.J.

This is a claim brought by Armando Arles, an inmate of Stateville Correctional Center, for the conversion of a watch of the alleged value of $125.00.

On April 6, 1976, Claimant was ordered to be transferred from the Joliet Branch to the Stateville Branch of the Illinois penitentiary system.

Prior to his transfer his personal property including the watch in question, was inventoried by a guard at Joliet on the form used for that purpose. Claimant was permitted to keep on his person his watch, rosary, and his belt, but the other items of personal property were transported separately from Joliet to Statevilleby truck.

Upon his arrival at Stateville, Claimant was ordered to surrender his watch, rosary and belt to one

Officer Maxwell. He was given a receipt for the watch and told that any member of his family could pick it up. His wife came to Stateville to pick up the watch, but it could not be found. After he filed a grievance, the rosary was returned to him, but he was told that the belt and watch were lost.

Claimant testified that his wife bought the watch in April, 1975, from Lustig Jewelers, in Chicago, Illinois for $125.00.

Respondent's defense consists of correspondence and memorandums from officials at the Joliet Branch to the effect that Joliet records did not show that Claimant had a watch while at Joliet, and if he did he had no permit for it and it was, therefore, contraband.

This negative heresay testimony does not overcome the effect of the official inventory form prepared by a guard at Joliet prior to Claimant's transfer from Joliet, placed in his master record file in Stateville on his arrival at Stateville, and showing that he had a watch. While the watch may have been contraband in Joliet — if he wore it there without permission — the issue is irrelevant, because it never became contraband in Stateville. He surrendered it immediately on arrival, to be picked up **by** a member of his family.

This Court held in *Doubling v. State of Illinois, 32 Ill. Ct. Cl. 1,* that the State has a duty to safeguard and return property which it has taken from an inmate in the course of a transfer. In the present case, Respondent had made admissions, pursuant to Illinois Supreme Court Rule 216, as to the genuineness of four documents which indicate that authorities at the Joliet Branch listed Claimant's watch as an item of his personal property which was being transferred to the Stateville Branch; that authorities at the Stateville

Stateville did not issue a permit for said watch. These documents demonstrate that Claimant's watch was in fact delivered to agents of the Respondent and that it was not returned to him.

Respondent's failure to return Claimant's watch after it was taken from him by Stateville authorities creates a presumption of negligence. ***Clark** v. **Field,*** **37** *Ill. 2d 583,299 N.E.2d* 676 (1967). Since Respondent at no time has offered evidence of its freedom from negligence, this presumption has not been rebutted. Therefore, Claimant has established that Respondent failed to utilize reasonable care in insuring the return of his watch.

It is therefore ordered that Claimant be and hereby is awarded the sum of $125.00.

(No. 77-CC-0080—Claim dismissed.)

LARRY MEYER, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

***Order filed March** 20,1978.*

PRISONERS AND INMATES—*Bailment.* Complaint failed to state cause of action where there was no allegation that Claimant's property was delivered to **the** possession **of** Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of

his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas u. State, 32 Ill.Ct.Cl.* , this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling v. State, 32 Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas v. State supra,* and *Doubling v. State supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-0232—Claim dismissed.)

FLOYD WALLACE, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Order filed March 20,1978.

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of

certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas u. State, 32 Ill. Ct. Cl.* , this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling v. State, 32 Ill. Ct. Cl. 1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas* v. *State, supra,* and *Doubling u. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and the same is hereby dismissed.

(No. 77-CC-0233—Claimant awarded $5,772.00.)

LEON MORRIS, Claimant, *v.* **STATE OF ILLINOIS, Respondent.**

Opinion **filed December** *19, 1977.*

LAND OF LINCOLN LEGAL ASSISTANCE FOUNDATION, INC., Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

FAIR EMPLOYMENT PRACTICES COMMISSION—*Settlements.* The Fair Employment Practices Commission is empowered by statute to approve settlements entered into between parties to a dispute, said settlements having been entered into as a result of conciliation meetings between parties to a dispute. Once the F.E.P.C. has made a determination that there was adequate proof of a fair employment practices violation, it is the responsibility of the Court of Claims to determine the merits of a claim for monetary relief and to recommend or not recommend to the Legislature that such claim be paid or not paid.

PER CURIAM.

This claim comes before this Court following a settlement agreement between the Claimant and the Department of Corrections which was entered into and approved by the Fair Employment Practices Commission under statutory authority granted in Ill. Rev. Stat., Ch. 48, para. 858. The Claimant is a 23 year old black, male, high school graduate who on October 2, 1973, completed an application for employment as a prison guard and took an oral examination at Menard State Penitentiary. The Claimant received a grade of "B" on the examination but was not immediately hired. On May 7,1974, the Claimant was interviewed orally by the Warden, a guard major and two other male personnel of the Menard State Penitentiary at Chester, Illinois. Although having received the grade of "B" on the examination, the Claimant was notified that he was ineligible for appointment as guard following the oral interview. The record does not reflect the reason for the ineligibility.

The Claimant in filing his complaint before the Fair Employment Practices Commission (F.E.P.C.) alleged that certain white persons were hired as guards and that it was his belief that he was denied eligibility because of his race.

The parties through the Office of the Attorney General entered into a joint stipulation of facts with reference to the claim before this Court. That stipulation has attached thereto as exhibits **A,** B, and C the Order of Dismissal, Terms of Settlement, and Agreement and the recommended Order and Decision of the F.E.P.C.

It is the function of the F.E.P.C. to hear the complaints and determine the facts relative to the alleged unfair employment practices and determine the merits of the allegations. The statute creating the F.E.P.C. encourages settlements by providing for conciliation sessions and authorizing the F.E.P.C. to approve or reject settlements entered into by the parties as a result of the conciliation efforts. Once the F.E.P.C. has made their determination or has approved the settlement, it is not for this Court to look behind the determination or settlement and second guess the Commission as to whether or not fair employment practices were violated. However, it is this Court and not the F.E.P.C. that is charged with the responsibility of determining the merits of a claim for monetary recovery and recommending or not recommending to the Legislature that a given claim be paid or not paid. It is in the fulfillment of this responsibility that this Court would be remiss if it did not scrutinize the dollar amount agreed to, to determine whether or not the Claimant had properly mitigated his damages. It is this sole question to which this Court will address itself once the F.E.P.C. has determined by hearing, or agreement, that there was adequate proof of a fair employment practices violation. This Court does not believe that the Legislature intended that this Court merely rubber stamps the amount agreed to between the parties or recommended by the F.E.P.C. Had this been the intent

of the Legislature, there would have been no need to come to this Court. The Legislature could have provided simply that the Claimant take his agreement or F.E.P.C. ruling directly to the Comptroller for payment.

As set forth in the joint stipulation of the parties and as confirmed by the Office of the Attorney General through the Department of Personnel, the gross earnings of the Claimant for the period in question, February 8, 1974, through September 9, 1975, had the Claimant been employed on February 8, 1974, as a prison guard, would have amounted to approximately $15,640.00. The record reflects that the Claimant was employed at various tasks throughout the period of time for which claim is being made and had gross earnings for that period of time in the amount of $9,868.00. In the joint stipulation of the parties, the parties have waived their right to a hearing except as the Court may direct. This Court finds that the record sufficiently establishes the fact that the Claimant made a reasonable effort to mitigate his losses. No further hearing is therefore ordered. The record establishes that the difference between what the Claimant was able to earn through his mitigating efforts and the amount he would have earned had he been employed as a prison guard on February 8, 1974, amounted to $5,772.00 which sum is hereby awarded.

(No. 77-CC-0514—Claimant awarded $4,098.22.)

GEORGE S. GRAYNED, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed April 13, 1978.

SORLING, NORTHRUP, HANNA, CULLEN & COCHRAN, by MICHAEL MEYERS, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; **WILLIAM** E. **WEBBER,** Assistant Attorney General, for Respondent.

STATE EMPLOYEES BACK SALARY CASES— ***Wrongful*** discharge. One who is wrongfully discharged is entitled to collect his full salary covering the period of wrongful discharge less any amounts earned by him during said period from other employment.

SAME—Damages. Statute providing for "full compensation" to be paid to a State employee for any period during which he was suspended pending the investigation of charges against him by the Civil Service Commission does not bar application of the rule concerning set-offs.

HOLDERMAN, J.

This matter comes before the Court on a petition filed by Claimant for wages allegedly due him as a result of a layoff which was approved by the Director of the Department of Personnel of the State of Illinois. He held the position of Corrections Community Consultant with the Commission on Delinquency Prevention.

Subsequent to said layoff, Claimant requested a layoff reconsideration hearing pursuant to Rule 2-596 but the Director of the Department of Personnel upheld the layoff. **A** petition was then filed with the Illinois Civil Service Commission alleging that a new employee had been hired subsequent to Claimant's layoff with the Commission on Delinquency Prevention and that the new employee was doing similar or identical work to that being performed by Claimant at the time of the layoff.

On January 21, 1977, the Director of the Department of Personnel rescinded prior approval of the layoff because of violations of the Department of Personnel Rules and ordered the Claimant reinstated to work.

There has also been filed in this case a joint stipulation as to Facts by Respondent and Claimant which is attached hereto as an appendix to this opinion.

In addition, a letter was sent by certified mail to Robert S. O'Shea, Deputy Clerk of the Illinois Court of Claims, dated June 2, 1977, from Sorling, Northrup, Hanna, Cullen and Cochran, Ltd., Attorneys at Law, and signed by Michael Myers, a member of the firm, which letter claimed an attorney's lien under Ill. Rev. Stat., Ch. 13, Sec. 14, 1978, in the amount of $556.20.

This Court has on many occasions considered the question of reimbursement to an employee for an unlawful discharge. A well-written opinion was rendered by this Court in the case of ***Burke v. State of Illinois, 26 Ill.Ct.Cl. 9, which states in part:***

"Since the decision of the Supreme Court of Illinois in ***Kelly u. Chicago Park District, 409, Ill. 91,*** it has been the rule of the Courts of Illinois that one who is wrongfully discharged is entitled to collect his full salary covering the period of wrongful discharge with the exception that any amounts earned by the individual from other employment during the period of discharge are to be used as a set-off. Claimant urges that this rule has been changed by an amendment to Sec. 62B-111 of Ill. Rev. Stat. Ch. 127. The amendment was added a few months after the decision was announced in the ***Kelly*** case, and the Statute now provides that an officer or employee shall receive "full compensation" for any period during which he was suspended pending the investigation by the Civil Service Commission of charges against him. It is Claimant's contention that the words "full compensation" evinces legislative intent to abrogate the rule concerning set-off.

Since the decision in the ***Kelly*** case, the Courts of Illinois have had occasion to reexamine the rules of set-off in cases involving Civil Service employees who were wrongfully discharged. The following cases all reaffirm the rule set forth in the ***Kelly*** case:

Murray v. City of Chicago, 171 N.E.2d 492, 28 Ill. App. 395;

People ex rel. Krich u. Hurley, 169 N.E.2d 107, 19 Ill. 2d 548,

People ex rel. Borne v. Johnson, 48 Ill. App. 2d 307, 199 N.E.2d 68.

The Court of Claims has consistently followed the rule decided in the ***Kelly*** case, and it appears conclusive that any award to Claimant for salary loss between March ***3,*** 1961, and June ***30,*** 1961, must be offset by any earning **he** received from other employment during that period."

This Court has consistently followed the rule in Volume 26, at pages 117, 326 and 502, and in Volume 25 at pages 87, 89, 195, 198, 201 and 205.

This Court, in the case of ***Randolph, Inc. v. State of***

Illinois, 28 Ill.Ct.Cl. 279, considered the matter of stipulations.

It appearing to the Court that Claimant was illegally discharged, the Court finds he is entitled to an award.

We find Claimant is entitled to back salary in a gross amount of $6,588.00, less the deductions for offsetting income in the sum of $4,243.90, and, in addition, the sum of $1,110.62 for 16 1/2 days of unpaid vacation at the time of resignation. This makes a total gross of $3,454.72 due Claimant.

We further find that there is due as employer's contributions the sum of $643.50, making a total award of $4,098.22, to be disbursed as follows:

The sum of $441.40 to State Employees Retirement System as State contribution.

The sum of $202.10 to State Employees Retirement System as State's share of FICA.

The sum of $202.10 to FICA, as Claimant's share.

The sum of $86.37 to Illinois Department of Revenue, State Withholding Tax.

The sum of $690.94 to Illinois Department of Revenue, Claimant's Federal Withholding Tax.

The sum of $2,475.31 to Claimant — net after deductions from gross sum of $3,454.72.

It is ordered that Claimant is hereby awarded total employee benefits of $4,098.22 (which includes employer contributions of $643.50) and that said amount be disbursed and credited in accordance with our above finding.

It is further ordered that the net sum payable to Claimant is subject to an attorney's lien of $556.20 in favor of Sorling, Northrup, Hanna, Cullen & Cochran, Ltd., attorneys for Claimant.

(No. 77-CC-0517—Claim dismissed.)

STEVEN T. DAVIS, Claimant, *v.* STATE OF ILLINOIS; and ILLINOIS DEPARTMENT OF TRANSPORTATION, Respondent.

Order filed April 17, 1978.

HIGHWAYS—***Duty to maintain.*** Summary judgment in favor of Respondent was proper in negligence action involving alleged failure to maintain maintenance of said highway.

HOLDERMAN, J.

This matter comes before the Court on a motion for summary judgment filed by Respondent.

Claimants filed a complaint alleging that an accident occurred on the Frontage Road for Route 83, located approximately 300 yards south of the intersection of said Frontage Road and Avery Street, in DuPage County.

Motion for summary judgment sets forth that the Claimants had heretofore filed a notice of injury with the city of Elmhurst involving the same accident. The motion further states that Claimants have filed in the Circuit Court of DuPage County a lawsuit against the city of Elmhurst, which complaint alleges that at the time of the occurrence, the city of Elmhurst "kept, maintained, supervised, operated and controlled the public streets and highways in said city for use of the public, including the Route 83 Frontage Road approximately 300 feet south of intersection (sic) of said road and Verrett Street in said city."

It further appears that after the completion of the construction of the new Route 83, which completion was several years prior to the date of the accident alleged in Claimants' complaint, the duty to maintain, repair and control the roadway where the accident allegedly took place was that of the city of Elmhurst and not the State of Illinois.

Motion for summary judgment is hereby granted and this cause is dismissed.

(No. 77-CC-0562—Claimant awarded $12,108.09.)

JOHNNIE TOOMBS, Claimant, *v.* STATE OF ILLINOIS, Respondent.

***Opinion* filed November** *18,1977.*

STATE EMPLOYEES BACK SALARY CASES—**Duty** *to* **mitigate losses.**

DAMAGES—*Interest* **on awards. Interest is not a proper element of damages in the Court of Claims where there is no statutory provision for such.**

POLOS, C.J.

Claimant was laid off when the State closed the Illinois Youth Center at Hanna City which was being used by the State for the housing of youthful female offenders. When the center was closed in September, 1971, the Claimant was laid off. When the center reopened in June, 1972, as an institution for the housing of youthful male offenders, Mrs. Toombs applied for re-employment as a counselor and was refused because the State indicated that they were hiring only male counselors.

Mrs. Toombs filed a complaint with the Fair Employment Practices Commission, and, after a hearing on the merits, the Commission found for the Complainant and ordered the State of Illinois to re-employ Mrs. Toombs as a counselor in the male detention tenter. This claim is for the difference in salary Mrs. Toombs actually earned from the time male employees were hired in June, 1972, until Mrs. Toombs was finally placed back on the payroll in February, 1977.

A question of first magnitude in a case of this type is the determination as to the reasonableness of the

Claimant's efforts to mitigate her losses. Claimant's efforts to mitigate her loss are reflected in the amounts that she actually earned throughout this period. Had Mrs. Toombs been immediately employed upon her application for re-employment she would have had a gross salary for the period of time in question of $49,826.00. (This differs somewhat from the joint stipulation of the parties inasmuch as their stipulation was based on the departmental report which proved to be in error.) Her actual earnings at various other employment during this period of time were $35,940.96. We find that the efforts of Mrs. Toombs to mitigate her losses were reasonable.

In her complaint Mrs. Toombs asks the Court to grant an award for interest. The Illinois Supreme Court in the case of ***Lake Front Realty Corporation*** *v.* ***Lorenz,*** *19* ***Ill.*** *2d* ***415,*** stated that interest on tax free funds is recoverable only if authorized by statute. In ***People*** *v.* ***Meyerowitz, 61*** *Ill. 2d 200, 211,* the Court stated that "we hold that the defendants are entitled to the fines and costs they have paid as a result of their void convictions. No interest is due for the reason that the fines and costs were collected in good faith, and there is no statutory provision for interest in this situation." Inasmuch as there is no statutory provision for interest in the case before this Court, this portion of the claim is denied.

The Claimant by her attorney and the Respondent through the Attorney General entered into a joint stipulation which, with attachments, sets forth in detail the several deductions and set-offs applicable to this claim. Because of the complexities of the calculations, we incorporate the figures into this Opinion by reference rather than to burden the reader.

In summary we find that Claimant is entitled to back salary in the gross amount of **$49,826.00** less the mitigated actual earnings of **$35,940.96,** less salary paid on supplemental payroll of **$1,316.25** less ten vacation days paid and returned to her credit of **$460.70** for an adjusted salary of **$12,108.09** which should be disbursed by the Comptroller and credited as follows:

To the State Employees' Retirement System as follows:

The sum of $1,993.04 for employee's contribution to State Employees' Retirement System.

The sum of $3,172.11 for the State's contribution to State Employees' Retirement System.

To the Illinois State Treasurer to be remitted to the Internal Revenue Service:

The sum of $2,630.42 for Claimant's Federal Income Tax withholding for current taxable year.

To Claimant:

The sum of $7,155.83 for Claimant's net salary after all of the above contributions and withholdings have been deducted from the total employee benefit.

It is therefore ordered that Claimant be and is hereby awarded **$12,108.09** plus the State's contribution to Retirement to be disbursed and credited in accordance with our above finding.

(No. 77-CC-0643—Claimant awarded $98.00.)

CYRILLA M. HEALY, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed September 16,1977.

DAMAGES—*Stipulation.* **Where Claimant and Respondent stipulate to facts and damages, an award will be granted accordingly.**

PER CURIAM.

This cause coming on to be heard on the joint stipulation of the parties hereto and the Court being fully advised in the premises.

This Court finds that this claim is for reimbursement of medical bills incurred and damages sustained to Claimant, Cyrilla M. Healy, while a visitor at the W. A. Howe Development Center of the Illinois Department of Mental Health.

On January 23, 1977, Cyrilla Healy attended a parent's meeting in House 202 of the facility. After the meeting, Dwight McCall, a resident in House 202 started to tantrum. He threw a living room table which struck Claimant on the left leg.

The Unit Nurse on duty, LPN Lorraine Scherdin, applied ice to the leg which was swollen. The nurse also called the Dispensary and made arrangements for Claimant to be taken there to have the leg checked.

Claimant was told to go either to an emergency room or to a private physician for further treatment. Pursuant to these instructions, Ms. Healy obtained outside treatment and incurred medical bills in the amount of $98.00. The evidence further shows that Claimant was not insured against this loss.

Respondent has admitted that the amount of $98.00 is due and owing to Claimant for the injuries sustained as alleged in her complaint.

It appears that all matters in controversy between Claimant and the Respondent, State of Illinois, have been adjusted, to the mutual satisfaction of the parties, based on Respondent's Departmental Report.

Claimant is hereby awarded the sum of $98.00, in full satisfaction of any and all claims presented to the State of Illinois under the above captioned claim.

(No. 77-CC-0661—Claim denied.)

IMAGE RESPONSE, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Order filed April 7, 1978.

PRACTICE AND PROCEDURE—*Form of complaint.* Claim dismissed for failure to attach a copy of contract to complaint and the joining of two separate agencies in violation of Rules 5(c) and 5(d)(3) of the Rules of the Court of Claims.

PER CURIAM.

This cause having come before the Court on the motion of Respondent, and Claimant having failed to respond, and the Court being fully advised in the premises, find that the Claimant, as set forth in Respondent's motion to dismiss, failed to attach the contract for services and the joining of two separate agencies in the same complaint is in violation of Rule 5(c) and Rule 5(d)(3) respectively, therefore, this claim should be dismissed according to Rule **9** of the Court of Claims.

It is therefore ordered that this claim be, and the same is hereby denied.

(No. 77-CC-0667—Claimant awarded $1,289.34.)

PHYLLIS LIDDELL, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed April 28, 1978.

STATE EMPLOYEES BACK SALARY CASES—*Fair Employment Practices Commission.* Determination of an unfair employment practice by the F.E.P.C. stands as unrefuted prima facie evidence of such violation before the Court of Claims and will not be reviewed by this Court.

SAME—Damages. Following finding of the F.E.P.C. in favor of the Claimant, the Court of Claims determines the amount of damages to be awarded and issues of mitigation.

DAMAGES—*Interest on* ***awards.*** State is not liable for interest penalties unless such is specifically authorized by statute, regardless **of** settlement agreement entered into between parties in an F.E.P.C. case.

PER CURIAM.

Claimant, Phyllis Liddell, seeks from the Respondent a sum of **$1,289.34** in damages as a result of the refusal of the State of Illinois to hire the Claimant as a corrections officer at Jubilee Lodge, a male correctional institution located near Peoria, Illinois, for the sole reason, as determined by the Fair Employment Practices Commission (F.E.P.C.), that she was a female. The F.E.P.C. found that the State was not justified in hiring males exclusively inasmuch as there were openings whose functions could be fulfilled by female correctional officers as well as male correctional officers, even though the institution was one housing males exclusively. The F.E.P.C. found in fact that there was discrimination based upon the sex of the applicant and subsequently approved a settlement as attached to the stipulation of the parties as Exhibit "D". The settlement reached, included interest at six percent compounded annually over a period of four years. Inasmuch as the State of Illinois is not liable for interest penalties unless specifically authorized by statute, this Court has consistently refused to grant claims awarding interest penalties. It is the position of this Court that the determination of an unfair employment practice as determined by the F.E.P.C. will not be reviewed by this Court. **A** finding of unfair employment practices by the F.E.P.C. stands as unrefuted prima facie evidence of such violation before this Court and we are here only concerned with the amount of the damages to be awarded and the question of mit-

igation. We have reviewed the damages as submitted by the parties and find that the Claimant would have earned a total of $3,834.50 for the period of time from June 19, 1972, until September 15, 1972, the period for which claim is made herein, and that the Claimant's actual earnings for that period of time amounted to $2,545.16 leaving unmitigated damages of $1,289.34.

Having reviewed the findings of the F.E.P.C. along with the terms of settlement and agreement and the interrogatories to Claimant and supplemental interrogatories to Claimant it is the opinion of this Court that the Claimant made a reasonable effort to mitigate her losses and that she is entitled to and is hereby awarded the sum of $1,289.34.

(No. 77-CC-0855—Claim dismissed.)

CHARLES JUSTICE, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed August 15, 1977.

PRISONERS AND INMATES—Bailment, Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas v. State, 32 Ill.Ct.Cl.* , this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling v. State, 32 Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas u. State, supra,* and *Doubling u. State, supra,* **the complaint herein fails to state a claim upon which** relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-0860—Declaratory judgment in favor of Claimant.)

HARTFORD ACCIDENT & INDEMNITY COMPANY, Claimant, *v.* **STATE OF ILLINOIS, Respondent.**

Opinion filed June *15,* 1978.

CHARLES W. HENDRIX, Attorney for Claimant.

WILLIAM **J. SCOTT,** Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

JURISDICTION—*Contracts.* The "Court of Claims Act" provides that the Court shall have exclusive jurisdiction to determine all claims against the State founded upon any contract entered into by the State. This provision was interpreted to include jurisdiction to construe terms of an insurance policy entered into by Claimant and State.

CONTRACTS—Insurance Policies. State is bound by the terms of insurance contract it entered into, including a provision requiring reasonable notice of possible claims.

SAME — Notice. Where State had duty under insurance contract to give reasonable notice **of** occurrences or suits to insurer but did not notify insurer of an accident until approximately two years and nine months after State received its notice, insurer is relieved of liability on policy regardless of showing of prejudice suffered as a result of tardy notice.

HOLDERMAN, J.

Claimant, Hartford Accident & Indemnity Company, is an insurance corporation which is authorized to transact insurance business in the State of Illinois. Claimant issued a certain liability insurance policy to the State of Illinois, Department of Transportation, which provided in general for liability insurance coverage for the State of Illinois, Department of Transportation, arising out of the negligence of the Department or its employees. A copy of the casualty insurance policy has been submitted by Claimant in partial support of the complaint filed herein.

While the insurance policy was in effect, and specifically on April 9,1974, Daniel Hodge was involved in an automobile accident upon State Highway #10 just west of Route One in the State of Illinois. As a result of this accident, Hodge allegedly suffered injury, for which he filed a complaint against the State of Illinois in the Court of Claims. Hodge had given notice of personal injury to the State of Illinois in June of 1974, and had attached a copy of that notice to his complaint filed November 24,1975, with the Court of Claims.

Hartford Accident and Indemnity Company was not notified of the claim of Hodge until March 15,1977. The notification received by Hartford Accident and Indemnity Company was approximately 'two years and nine months after the first notice given to the Department of Transportation, and approximately one year and four months after the filing of the complaint in the Court of Claims. At the time the notice was given

to Hartford Accident and Indemnity Company, the complaint by Hodge was set for hearing before the Court of Claims Commissioner to whom the file had been assigned.

The policy of insurance in question provided in pertinent part that the insured shall notify the insurer in the event of an occurrence as soon as practicable; further, it was provided in said policy that if a suit is filed, said suit shall be forwarded to the insurer immediately. The above appears under paragraph four of the conditions of said policy.

The Hartford Accident and Indemnity Company seeks "a writ of injunction" against Claimant Daniel Hodge, from prosecuting his personal injury action until a final determination is made in this case and further "that the Court (Court of Claims) may construe the policy of the plaintiff and declare the rights of the parties." In effect, Claimant, Hartford Accident and Indemnity Company, seeks from this Court a declaration of rights under the policy of insurance and more particularly a declaration that, due to the absence of proper notice, the Hartford Accident and Indemnity Company owes no obligation to defend or indemnify the State of Illinois in connection with ***Hodge v. State of Illinois.***

The issues before this Court are as follows:

1. Does the Court of Claims have jurisdiction to "construe" the policy of insurance to either require the Hartford to defend and indemnity the State on the one hand, or releasing the Hartford from any obligation to defend or indemnify the State on the other?

2. Is the policy provision of the Hartford's casualty policy, requiring notice under certain circumstances,

enforceable against its contracting party, the State of Illinois?

3. Did the State of Illinois comply with the contract of insurance to which it was a party?

Respondent argues that this Court does not have jurisdiction to grant declaratory relief. Further, Respondent points out that any opinion or order of this Court is "enforceable" only to the extent that the legislature grants money for the payment of claims awarded by this Court. Respondent points out that Claimant may not have remedy in this case, nothwithstanding the provisions of the Illinois Constitution of 1970, which provides in general that for every wrong there shall be a remedy.

The "Court of Claims Act" (Section 8b) provides that the Court shall have exclusive jurisdiction to determine all claims against the State founded upon any contract entered into with the State of Illinois. Respondent argues that this legislative grant of exclusive jurisdiction should be interpreted to exclude jurisdiction of all claims which cannot be resolved by awarding or denying monetary relief. If the legislature had intended such a result, it would seem that the grant of jurisdiction to decide "claims against the State founded upon any contract" would have been expressed in a much more restrictive manner.

Such a limited interpretation as that urged by Respondent does not appear to have been the legislative intent. No one suggests that enforcement of an order of this Court to the effect that the Hartford should not escape responsibility to defend and indemnify the State of Illinois for the reasons propounded in the Hartford's complaint could not be enforced by the State in a separate proceeding in the appropriate Circuit

Courts of the State of Illinois. Conversely, if this Court should determine that the Hartford does not owe a duty to defend or indemnify, then no problem of enforcement is encountered. In ***Struve u. State of Illinois, Department of Conservation, 303 N.E.2d 32,*** the Court stated:

> **"Regardless of the relief sought, the Plaintiff has made claim against the State, founded on a contract. These claims should be resolved in the Court of Claims and, therefore, the Trial Court properly granted the defendant's motion to dismiss the plaintiffs complaint, and accordingly, we affirm the action of the Circuit Court of Rock Island County."**

In the case of ***G. H. Sternberg and Company u. Bond, 333 N.E.2d 261,*** an interlocutory appeal was taken from an order of the Circuit Court of Madison County, which temporarily enjoined the defendant from enforcing contract rights against the plaintiff under a construction contract entered into between the plaintiff under a construction contract entered into between the plaintiff and the State. The Appellate Court for the Fifth District reversed the Circuit Court order, dissolved the injunction, and dismissed the case for want of jurisdiction. The Appellate Court held that the Circuit Court was without jurisdiction to entertain the suit or issue the injunction, and that the case should have been brought in the Court of Claims.

In the present case, the Hartford has chosen this forum to present the issue of whether or not the Hartford should be bound to defend and indemnify the State of Illinois in the case of ***Daniel Hodge u. State.*** A determination of those issues must necessarily involve and be determined by an interpretation of the applicable provisions of the policy of insurance to which the State is a party. It therefore appears that the claim of the Hartford is founded upon a contract. Therefore, this Court should decide the issue presented.

In paragraph 4(a) of the terms and conditions of said policy (located on page 4 of the policy), it is provided as follows:

> "In the event of an occurrence, written notice containing particulars sufficient to identify the insured and also reasonably obtainable information with respect to the time, place and circumstances thereof, and the names and addresses of the injured and of available witnesses, shall be given by or for the insured to the company or any of its authorized agents as soon as practicable."

Paragraph 4(b) of the same section provides as follows:

> "If claim is made or suit is brought against the insured, the insured shall immediately forward to the company every demand, notice, summons or other process received by him or his representative."

It was stipulated by the parties that the notice of injury filed by Daniel Hodge was received at the Attorney General's office on June 7, 1974, in Springfield, Illinois. On November 24, 1975, Daniel Hodge filed a suit against the State of Illinois in the Court of Claims.

On March 15, 1977, the State of Illinois, Department of Transportation, for the first time, mailed a notice of this occurrence to the Hartford Accident and Indemnity Company at its office in Peoria, Illinois. Representatives of the Hartford began an investigation of the claim and occurrence on April 5, 1977, *(McGuire* deposition, page *8)*. The Hartford's investigators were not able to physically inspect Claimant's vehicle after the accident and were not able to find any witnesses who might have confirmed the allegation that Claimant had been drinking excessively on the evening of the accident, and was not able to examine the roadway for a possible dropoff soon after the accident (McGuire deposition, page 55).

In *City of Chicago v. United States Fire Insurance Co. 260 N.E.2d 276 at page 278,* it was revealed that the *City of Chicago* contended that late notice of a claim to

an insurance company did not relieve the insurance company of its obligation to furnish a defense for three reasons: First, because the policy was issued to protect a municipality in the discharge of a governmental function and was therefore subject to the public policy of conserving public assets. Second, the delay was excusable under the circumstances, since the policy had not been filed in the appropriate municipality office. And third, because the insurance company was not prejudiced by the delay, since there had been an extensive investigation of the accident by other insurance companies as well as the employer of the injured man, the injured man's lawyers and the City of Chicago itself.

The Court, in the *City of Chicago* case, supra, set forth the following at page 278:

> "As to the first contention, contrary to the City's position, we deem it of no significance that the insured in this case is a municipal corporation. The City's argument misapprehends the issue in this case. The City of Chicago, to the extent that it is a named insured under a liability policy, is a contracting party."

The Court went on to say:

> "The City entered into an insurance contract containing several commonly used and clearly understood clauses. The insurance company, as a part of its insurance contract, was entitled to insist on notice of an accident "as soon as practicable" and notice of claim or suit "immediately."

The Court then went on to state, "The City argues, however, that these contract terms do not apply to it since they operate to violate the principle of conserving public assets." After further comment, the Court concluded at pa'ge279, "The City must be bound by the contract and grant it has made, and had authority to make, the same as would an individual." The Court then went on to state, at page 279, "Appellant's second contention that the delay was excusable under the circumstances, since the policy was misfiled, is likewise without merit. The fact of the matter is that the policy

was filed with the Engineering Department. Whether this constitutes misfiling is a matter of conjecture." The Court then went on to state: "There is nothing to indicate that the policy was stolen or lost; nor is there any explanation or excuse offered as to why the policy was with the Engineering Department instead of the Comptroller's Office. If the policy was merely filed with the wrong department and if no search was made for it beyond a routine inquiry with the Comptroller's Office, the fault, if any, lies with the City." Finally, at page 280, the Court states: "Appellant's third contention that the Trial Court should not have found for the defendant without a showing **by** the defendant that it was prejudiced by the delay is not supported by any cases which have been called to our attention."

The last part of the policy of insurance above quoted specifically makes compliance with the terms of the policy a condition precedent to the right to maintain an action against the company. In such cases where the giving of notice and forwarding of suit papers have specifically been made conditions precedent to a right of action against the insurer, "We find the authorities overwhelmingly in favor of giving full recognition to such provision, in which case the presence or absence of prejudice resulting from a delay in giving notice becomes immaterial." Citing *State Farm Mutual Auto Ins. Co. u. Cassinello, Nev. 227,216 P.2d 606, 18 A.L.R.2d 471, 441 (1950).*

"The issue is not whether the insured has been prejudiced but, rather, whether reasonable notice has been given." Citing *Country Mutual Casualty Co. v. VanDuzen, 351, Ill. App. 113,113 N.E.2d 852; Simmon u. Iowa Mutual Casualty* Co., *3* ***Ill.*** *2d,* ***318;*** *Allstate Insurance* Co. *u. Hoffman,21 Ill. App. 2d, 314.*

Obviously, there is no requirement that an insurer show prejudice because of late notice, although in the instant case prejudice has been shown. Further, the delay of almost three years in giving notice in itself would be obvious prejudice.

Numerous other cases support the position of plaintiff in this declaratory judgment action that it be relieved of any obligation to the State of Illinois relative to the Hodge suit. In ***Greater Chicago Auction, Inc.*** *u.* ***Abram*** *u.* ***Travelers Indemnity Co.,25 Ill. App. 3d 67; 323 N.E.2d 818,*** the Court at 820 in referring to a notice provision containing the words "as soon as practicable" stated: "A notice provision is clear and unambiguous and clearly imposes a duty on the insurer to notify the insured." It then went on to quote from ***International Harvester Co. v. Continental Casualty Co., 33 Ill. App. 2d 467*** and stated: "A notice provision such as this is not to be considered as a technical requirement included in policies merely for the convenience of the insurance company. Rather it is a matter of substance imposing a valid prerequisite to coverage. Upon the happening of an accident, a prompt, as distinguished from a delayed, investigation of the facts of the occurrence can so greatly affect the efficiency of the defense as to change the very character of the risk insured. It follows, therefore, that the notice requirements of a policy apply not only to the named insured but also to the unnamed additional insureds under an omnibus clause."

In ***Sowinski*** *u.* ***Ramey, 36 Ill. App. 3d 690; 344 N.E.2d 635,*** the Court stated at page **638** of its opinion: "An insurance policy is a contract, and where the provisions of that contract are clear and unambiguous and neither illegal nor against public policy, they should be enforced by the Courts. The provisions of the

policy in the instant case accord with all these criteria. It is abundantly clear from the record that the defendant did not provide the notice or the assistance that he was contractually obliged to provide to the garnishee."

Finally, in ***Walsh u. State Farm Mutual Insurance*** Co., ***91 Ill. App. 2d 156,234 N.E.2d 394,*** the Court concluded that the trial judge could reasonably conclude from the evidence adduced that the plaintiff had, under all circumstances, acted in a reasonable manner in notifying the company of the accident when she did, which was one month after the accident. The Court concluded that 30 days could, under the circumstances there adduced, be termed reasonable. The Court further stated, however, at page 399 that: "This phrase was construed by the Court in ***London Guarantee & Accident*** Co. *u.* ***Shafter,*** 35 F. Supp. **647** to mean that notice of the accident must be given to the insurer within a reasonable time; and whether notice was given within a reasonable time is dependent upon all the facts and circumstances of the particular case. The purpose of such notice requirement in an insurance policy is to provide the insurance company with an adequate opportunity to investigate the accident and prepare its defense."

Respondent argues that the State should not be prejudiced by the mistakes of its employees, and that the State enjoys a special position which should render it immune from the effect of Claimant's argument. The Respondent cites the example that the State is never estopped due to apparent authority of its agents ***Dement u. Rokker, 126 Ill. 174,199, Schoenig*** *u.* ***State, 11 Ill.Ct.Cl. 634, 639).*** Also, the statute of limitations need not be specially pleaded by the State inasmuch as not even the Attorney General has the power to waive or arrest the statute ***McChesney*** *u.* ***Becker, 4 Ill.Ct.Cl.5).***

Respondent argues that public policy and the propensity of Courts to construe insurance policy coverage questions against the insurer should relieve the State of its obligation to defend itself in the present case. We do not find Respondent's arguments convincing on the issues at bar.

It is clear that the State violated the contractual provision which bound it to give reasonable notice of occurrences or suits to its insurer. Further, the record demonstrates that the State's insurer was prejudiced by the lack of notice to which it would otherwise have been entitled (see deposition of ***McGuire.)*** Therefore, the Hartford should be relieved of its obligation to defend or indemnify the State of Illinois in *Daniel* ***Hodge v. State of Illinois.***

The Court of Claims has exclusive jurisdiction to hear and determine all claims against the State founded upon any contract entered into with the State of Illinois. The insurance policy in question is a contract between the Hartford and the State of Illinois. The claims of the Hartford are based upon its contract and the particular provisions thereof. The Court of Claims does have jurisdiction to declare the rights of the parties in the present case under the terms of the contract between the Hartford and the State of Illinois.

The insurance policy in question requires that notice be given by the insured (State of Illinois) of occurrences coming under the terms of the liability coverage and further that notice of suit be given immediately by the State to its insurer. The State wholly failed in its contractual obligation to give the notices required by the contract of insurance to the Hartford Insurance Company.

This Court is of the opinion that the obligation on the part of the State to notify the Hartford Insurance Company was completely ignored and that by such act in failing to notify the insurance company as required by the policy, the Hartford Accident and Indemnity Company has no obligation to defend or indemnify the State of Illinois, and that said insurance company is relieved of any liability as a result of the failure of the State to comply with its obligations under said policy.

(No. 77-CC-0872—Claimant awarded $180.60.)

ANTHONY BEST, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed May 25, 1978.

PRISONERS AND INMATES—*Bailments.* State has a duty to exercise reasonable care to safeguard when it takes actual physical possession of such property and undertakes to return such property by mail to such person as prisoner designates.

POLOS, C.J.

Claimant, Anthony Best, formerly an inmate of the Joliet Correctional Center at Joliet, Illinois, has brought this action to recover the value of certain items of personal property which he alleges were lost during the course of its transfer from the Cook County Jail to the Joliet Correctional Center.

On February 4,1977, Claimant was confined at the Cook County Jail in Chicago, Illinois, prior to transfer to the Joliet Correctional Center at Joliet, Illinois. He had in his possession certain items of personal property including a watch, wallet, credit cards, personal papers, a small amount of cash, and a necklace.

Immediately prior to his beginning his journey to Joliet, these items were put in a personal property enve-

lope and carried on a bus, along with Claimant, to the diagnostic depot at Joliet. An officer of the Illinois Department of Corrections had custody of Claimant's personal property during the bus trip to Joliet.

On arrival at Joliet, Claimant requested that his personal property be sent home. Claimant has attached as an exhibit to his Complaint an "Official Receipt" issued by the Joliet Correctional Center for his watch and wallet. The receipt indicates that the watch and wallet were to be mailed to a relative of Claimant in Chicago, and the receipt was signed by Claimant and an officer of the Department of Corrections.

Claimant's Aunt received his wallet, but not his watch.

Claimant purchased the watch at Simon's Jewelry Store in Omaha, Nebraska for $180.60. He said that on February 4,1977, it was in good working order.

This Court held in Doubling *v.* State, 32 Ill.Ct.Cl.1, (No. 75-CC-833), decided November 7, 1977, that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

"A constructive bailment can be created between an owner of the property and one in possession thereof." 4A Illinois Law and Practice 550, Bailments, citing *Chesterfield Sewer & Water, Inc., v. Citizens Insurance Co. of New Jersey, et al., 57 Ill. App. 2d 90,207 NE2d 84.*

In ***Chesterfield,*** the Court quotes from *Woodson v. Hare, 244 Ala. 301, 13 So2d. 172, at 174,* as follows:

"An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law, generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and presented no testimony of its freedom from negligence.

Claimant's prima facie case, therefore, stands unrebutted.

It is therefore ordered, that Claimant be, and hereby is, awarded the sum of $180.60.

(No. 77-CC-0921—Claim dismissed.)

MICHAEL SMITH, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed August *15,1977.*

PRISONERS AND INMATES—Bailment. Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas u. State,* ***32*** *Ill.Ct.Cl.* , this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling u. State,* ***32*** *Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas u. State, supra,* and *Doubling v. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-0935—Claim dismissed.)

MARK LEWELLEN, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed August 19, 1977.

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas v. State,* ***32*** *Ill.Ct.Cl.*__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling u. State, 32 Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas v. State, supra,* and *Doubling u. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1013—Claim dismissed.)

EADIE E. SKAGGS, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed August 15,1977.

PRISONERS AND INMATES — Bailment. Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas u. State, 32 Ill.Ct.Cl.*—, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling u. State, 32 Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas u. State, supra,* and *Doubling u. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1016—Claim dismissed.)

ELLIS K. HENDERSON, Claimant, *v.* **STATE OF ILLINOIS**, Respondent.

Order filed August 19,1977.

PRISONERS *AND INMATES—Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois,

In *Bargas v.* ***State, 32*** *Ill.Ct.Cl.*__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of ***Doubling v. State, 32*** *Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was

damaged in Claimant's cell. Under our reasoning in *Bargas u. State, supra,* and *Doubling v. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1020—Claim dismissed.)

FLOYD LUCKIE, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed August *15,* 1977.

PRISONERS AND INMATES — Bailment. Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas u. State, 32 Ill. Ct.Cl.*—, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling v. State, 32 Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas u. State, supra,* and *Doubling u. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1076—Claim dismissed.)

MARVIN **CARTER, JR., Claimant,** *v.* **STATE** OF ILLINOIS, **Respondent.**

Order filed May 24, 1978.

DAMAGES — *Statutory limitation.*

PER CURIAM.

This cause coming to be heard on the motion of the Respondent to dismiss, due notice being given, and the Court being fully advised;

Finds that the Claimant has received an amount in excess of the statutory limit on damages allowable in this Court on the basis of a loan agreement executed by a joint tortfeasor in favor of the Claimant. The Claimant is entitled to one satisfaction and the recovery of an amount in excess of the statutory limit on damages in this Court is a bar to further recovery of damages in this Court. See, *Powers u. State, 28 Ill.Ct. Cl. 130, 131 (1972); William u. State, 25 Ill.Ct.Cl. 249, 255 (1965);* and *Laboda u. State, 24 Ill.Ct.Cl. 172, 176 (1961).*

It is hereby ordered that the motion of the Respon-

dent to dismiss be, and the same is hereby granted and the cause is dismissed.

(No. 77-CC-1162—Claim dismissed.)

ALFRED L. MARTIN, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed September 7,1977.

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In ***Bargas u. State, 32 Ill.Ct.Cl.***__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of ***Doubling u. State, 32 Ill.Ct.Cl.1,*** we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared **or** was

damaged in Claimant's cell. Under our reasoning in *Bargas u. State, supra,* and *Doubling u. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1213—Claim dismissed.)

LEON MILES, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Order filed October 5, 1977.

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State **of** Illinois.

In *Bargas u. State, 32 Ill.Ct.Cl.*—, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling u. State, 32 Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in ***Bargas u. State, supra,*** and ***Doubling v. State, supra,*** the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1245—Claim dismissed.)

CHARLES WASHINGTON, Claimant, *v.* STATE OF ILLINOIS, Respondent.

***Order filed September 28,* 1977.**

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In ***Bargas u. State, 32 Ill.Ct.Cl.***—, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of ***Doubling v. State, 32 Ill.Ct.Cl.1,*** we further held that only where the State takes actual physical possession

of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in ***Bargas u. State, supra,*** and *Doubling* ***u. State, supra,*** the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1246—Claim dismissed.)

STEPEHN A. JOHNSON, Claimant, *v.* **STATE OF ILLINOIS, Respondent.**

Order filed September 28, 1977.

PRISONERS AND INMATES—Bailment. **Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.**

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In ***Bargas v. State, 32 Ill. Ct. Cl.***__, this Court held that the State of Illinois does not owe a duty to inmates

of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling u. State,* ***32*** *Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas v. State, supra,* and *Doubling u. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1265—Claim dismissed.)

PERCY ANDERSON, Claimant, ***v.*** **STATE OF ILLINOIS, Re**spondent.

Order filed September 28, *1977.*

PRISONERS AND INMATES—Bailment. Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of

his property was proximately caused by the negligence of employees of the State of Illinois.

In ***Bargas u. State, 32 Ill.Ct.Cl.***__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of ***Doubling u. State, 32 Ill.Ct.Cl.1,*** we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in ***Bargas u. State, supra,*** and ***Doubling u. State, supra,*** the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1298—Claimant awarded $123.61.)

CATHY YEAMAN, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed December 27, 1977

DAMAGES—*Stipulation.* Where Claimant and Respondent stipulate as to facts and damages, an award will be entered accordingly.

PER CURIAM.

This cause coming on to be heard on the joint stipulation of the parties and the Court being fully advised in the premises find that the evidence, as presented by

the Record, although circumstantial, indicates that the Claimant's automobile was damaged by a tractor belonging to the State of Illinois while the Claimant's automobile was parked in a designated parking area.

It is therefore ordered that the Claimant be awarded the sum of $123.61.

(No. 77-CC-1413—Claim dismissed.)

ANGEL CALDERON, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed September 7,1977.

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas v.* ***State, 32 Ill.Ct.Cl.***__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling v. State,* ***32 Ill.Ct.Cl.1,*** we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell, Under our reasoning in *Bargas u. State, supra,* and *Doubling u. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1487—Claim dismissed.)

JOHN TEBBENS, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed April 17, 1978

LAPSED APPROPRIATIONS—Insufficient lapse *of* funds.

HOLDERMAN, J.

This matter comes before the Court on a motion filed by Respondent to dismiss said cause.

The complaint seeks to recover travel expenses which were incurred in fiscal year 1975, from May through June 1975, in the amount of $894.84. Claimant submitted a voucher for this amount on July 30, 1975, by which time the amount left in the travel appropriation was only $486.52, causing Claimant's reimbursement to be $408.32 less than his request.

The remaining amount of the claim, $743.95, was part of a request for travel expenses totalling $1,454.66, submitted for travel during fiscal year 1976. Of the total amount, $743.95 was determined by the Commission to be in excess of the allowable maximum. On December 8, 1976, the Commission reconsidered its decision and allowed Claimant the $743.95. By this

time, the travel expense appropriation had not only lapsed but had been depleted as well.

Therefore, in regard to the amount of **$408.32,** the travel fund's total depletion for the fiscal year of **1975** prevented payment; in regard to the amount of **$743.95,** payment was denied not only because of depletion of funds for fiscal year **1976,** but because the funds had lapsed, as shown by the departmental report.

The Respondent cited the case of ***Fergus v. Brady, 277 Ill. 272,*** and the case of ***Schutte & Koerting*** Co., ***et al v. State of Illinois, 22 Ill. Ct. Cl. 591,*** in which this Court held that "the legislature was expressly enjoined by Sec. 19 of Art. IV of the Illinois Constitution from appropriating a sum of money to pay a claim previously incurred in excess of an appropriation."

The Court also cited the case of ***Fergus v. Russell, 277 Ill. 20 at page 25:***

"The Court of Claims is a statutory body not provided for in the Constitution, and its action can have no effect upon the power of the legislature **to** pay claims against the State. If the legislature has no such power in any case, favorable action by the Court of Claims would not give the legislature power to pay such claim by making appropriations therefor."

Motion to dismiss is hereby granted and this cause is dismissed.

(No. 77-CC-1494—Claim dismissed.)

ROBERT BRADY, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Order filed September 28, 1977.

PRISONERS AND *INMATES—Administrative regulations in State prisons.* The Court of Claims will not interfere with administrative regulations of State prisons.

JURISDICTION—*Administrative regulations in State prisons.* The Court of Claims lacks jurisdiction to review an administrative regulation of State prisons.

POLOS, C.J.

Claimant, an inmate of an Illinois correctional facility, has brought this action to recover the value of certain items of property, of which Claimant alleges he is being deprived by officials of the Illinois Department of Corrections. The complaint herein alleges that when Claimant was transferred to a new institution he "was then told by prison officials that certain items in his property (sic) was not allowed in this institution, and that it would be stored in the personal property room and returned to me upon my release from the institution."

Claimant does not allege that Respondent converted his property, or was negligent in safeguarding it. Rather, Claimant complains about an administrative regulation of the institution in which he is incarcerated, and this Court clearly is without jurisdiction to interfere in such matters.

The Court therefore finds that the complaint herein fails to state a cause upon which relief can be granted, and is accordingly dismissed.

(No. 77-CC-1504—Claim dismissed.)

CHESTER L. GRIZZLE, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed September 28, 1977.

PRISONERS AND INMATES — Bailment. Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of

certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas u. State*, **32** *Ill.Ct.Cl.*__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling v. State*, **32** *Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas u. State, supra,* and *Doubling v. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1511—Claim dismissed.)

ROBERT K. SHELTON, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed September 28, 1977.

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas u. State,* ***32*** *Ill.Ct.Cl.*—, this Court held that the State of Illinois does not owe a duty to inmates **of** its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling u. State,* ***32*** *Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents **of** the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas v. State, supra,* and *Doubling u. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1537—Claim dismissed.)

RICE (BENNEY) GIBSON, Claimant, *v.* **STATE** OF ILLINOIS, Respondent.

Order filed September *28,1977.*

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas u. State, 32 Ill. Ct. Cl.*__, this Court held that the State of Illinois does not owe **a** duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling u. State, 32 Ill. Ct. Cl. 1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas v. State, supra,* and *Doubling v. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1538—Claim dismissed.)

JAMES JONES, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed September 28, 1977.

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In ***Bargas*** *u.* ***State,*** *32* ***Ill.Ct.Cl.***__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of ***Doubling*** *u.* ***State,*** *32 Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas v.* ***State, supra,*** and ***Doubling*** *u.* ***State, supra,*** the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1582—Claim dismissed.)

STANLEY J. HICKS, Claimant, *v.* STATE OF ILLINOIS, Respondent.

***Order** filed September 28, 1977.*

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas u. State,* ***32 Ill.Ct.Cl.***__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling u. State, 32 Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was

damaged in Claimant's cell. Under our reasoning in *Bargas u. State, supra,* and *Doubling v. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1602—Claim dismissed.)

CHARLES WASHINGTON, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed *September 28, 1977.*

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas u. State, 32 Ill.Ct.Cl.*—, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling v. State, 32 Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas v. State, supra,* and *Doubling u. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1636—Claim dismissed.)

STEPHAN A. JOHNSON, Claimant, *v.* **STATE** *OF* ILLINOIS, Respondent.

Order filed September 28, 1977.

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas u. State, 32 Ill.Ct.Cl.*__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling u. State, 32 Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession

of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas v. State, supra,* and *Doubling v. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1642—Claim dismissed.)

EARL ROBINSON, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed April 14, 1978.

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas v. State, 32 Ill. Ct. Cl.* __, this Court held

that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling v. State, 32 Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas u. State, supra,* and *Doubling u. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1653—Claim dismissed.)

STEVE MORRIS, Claimant, *v.* STATE *OF* ILLINOIS, Respondent.

Order filed October 5,1977.

PRISONERS AND INMATES — Bailment, Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or

destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas* **u.** *State,* ***32*** *Ill.Ct.Cl.*—, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling* **u.** *State, 32 Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas* **u.** *State, supra,* and *Doubling* **u.** *State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1602—Claim dismissed.)

CHARLES WASHINGTON, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed September 28,1977.

PRISONERS AND INMATES—Bailment. Complaint failed to state a cause **of** action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institu-

tion, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In ***Bargas*** *v.* ***State, 32 Ill.Ct.Cl.***__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of ***Doubling*** *v.* ***State, 32*** *Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in ***Bargas*** *v.* ***State, supra,*** and ***Doubling*** *v.* ***State, supra,*** the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1689—Claim dismissed.)

JUAN A. CARRASQUILLO, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Order filed October 5, 1977.

PRISONERS *AND INMATES—Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas u. State,* ***32*** *Ill.Ct.Cl.*—, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling u. State,* ***32*** *Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas v. State, supra,* and *Doubling u. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1691—Claim dismissed.)

DONALD D. BUTTRAM, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed October *27, 1977.*

PRISONERS AND INMATES — Bailment. Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas u. State, 32 Ill.Ct.Cl.*__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling v. State, 32 Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared **or** was damaged in Claimant's cell. Under our reasoning in *Bargas u. State, supra,* and ***Doubling*** *v. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1696—Claim dismissed.)

KENNETH SHANNON, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed October 27, 1977.

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas u. State, 32 Ill.Ct.Cl.*—, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling v. State, 32 Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas u. State, supra,* and *Doubling u. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1697—Claim dismissed.)

ERICK JAMERS JELINEK, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed October 27, 1977.

PRISONERS AND INMATES—Bailment. Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the propertywas stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas u. State, 32 Ill.Ct.Cl.*—, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling u. State, 32 Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was

damaged in Claimant's cell. Under our reasoning in ***Bargas u. State, supra,*** and ***Doubling u. State, supra,*** the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1719—Summary judgment granted.)

ALBERTA ROGERS, Claimant, *v.* STATE OF ILLINOIS, **Respondent.**

Order filed** May **20,1978.

NEGLIGENCE—Damage caused by wards** of **State. State is not liable for damages caused by its minor wards based upon exclusion of liability under the "Parental Responsibility Act."

POCH, J.

This cause coming to be heard on the motion of the Respondent for summary judgment, due notice being given and the Court being fully advised:

Finds that complaint seeks recovery for damages caused by minor wards placed with the Claimant by the Department of Children and Family Services. Such recovery is barred because the Department of Children and Family Services is not subject to the provisions of Ill. Rev. Stat., Ch. 70, Sec. 52(1), 1975, excluding liability under the Parental Responsibility Law where the minor is under custody order under the "Juvenile Court Act." See, Vallery *v.* State, 31 Ill.Ct.Cl. 187.

Based on this, it is hereby ordered that the motion of the Respondent for summary judgment, be and the same is hereby granted.

(No. 77-CC-1742—Claim dismissed.)

JAMES G. BROWN, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

***Order filed October** 27, 1977.*

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss **of** his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas u. State, 32 Ill. Ct.Cl.*—, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling u. State, 32 Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession property of the of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas u. State, supra,* and *Doubling u. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1749—Claim dismissed.)

TERRENCE MOORE, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Order filed October *27, 1977.*

PRISONERS AND INMATES—Bailment. Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas v.* ***State,*** **32** *Ill.Ct.Cl.*__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling v.* ***State,*** **32** *Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was

damaged in Claimant's cell. Under our reasoning in ***Bargas*** *v.* ***State, supra,*** and ***Doubling*** *v.* ***State, supra,*** the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1773—Claim dismissed.)

ROBERT BROWLEY, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed October 27, 1977.

PRISONERS AND *INMATES—Bailment.* **Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.**

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In ***Bargas*** *v.* ***State, 32 Ill.Ct.Cl.***, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of ***Doubling*** *v.* ***State, 32 Ill.Ct.Cl.,*** we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise

to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell, Under our reasoning in *Bargas v. State, supra,* and *Doubling v. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore grdered that this cause be, and hereby is, dismissed.

(No. 77-CC-1809—Claimant awarded $29.47.)

LORA J. SVANIGA, Claimant, *v.* **STATE** OF ILLINOIS, Respondent.

Opinion filed April 20, 1978.

PER CURIAM.

Claimant filed a claim in the amount of $29.47 for court reporting services rendered by her on May 1, 1974.

The record discloses that the law firm of Sidley and Austin hired Claimant to report the deposition of Donald F. Carey in the matter of *Environmental Protection Agency of the State of Illinois v. Illinois Nitrogen Corporation.* The record also discloses that an Assistant Attorney General in the Environmental Control Divison of the Attorney General's office ordered a copy of the transcript from Claimant.

The Attorney General's office forwarded the bill received from Claimant to the Illinois Environmental Protection Agency which refused to pay on the grounds

that the Agency did not order nor receive the transcript.

The record is silent as to why the Attorney General's office has not paid the bill despite the fact that the Assistant Attorney General, acting in his official capacity, ordered and received the transcript.

It is hereby ordered that the sum of $29.47 be paid to claimant.

(No. 77-CC-1851—Claim dismissed.)

CLYDE E. DICKERSON, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed October** 27, **1977.

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession **of** Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas* ***u. State, 32 Ill.Ct.Cl.***__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of ***Doubling u. State, 32 Ill.Ct.Cl.1,*** we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his

transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in ***Bargas u. State, supra,*** and ***Doubling u. State, supra,*** the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby **is,** dismissed.

(No. 77-CC-1852—Claim dismissed.)

BEMON GARTLEY, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed October 27, ***1977.***

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause **of** action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State **of** Illinois.

In ***Bargas*** *v.* ***State,*** *32 Ill.Ct.Cl.,* this ***Court*** held that the State of Illinois does not owe a duty to inmates

of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of ***Doubling v. State, 32 Ill.Ct.Cl.,*** we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in ***Bargas v. State, supra,*** and ***Doubling v. State, supra,*** the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1856—Claim dismissed.)

LAVON MILLIE PEALS, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed October 27, 1977.

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of

his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas u. State, 32 Ill.Ct.Cl.*—, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling u. State, 32 Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas u. State, supra,* and *Doubling v. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1868—Claim dismissed.)

LARRY F. GOODEN, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed October 27, 1977.

PRISONERS AND INMATES—*Bailment.* **Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.**

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of

certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas u. State, 32 Ill. Ct. Cl.*__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling u. State, 32 Ill. Ct. Cl. 1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas v. State, supra,* and *Doubling u. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-1911—Claim dismissed.)

GERALD N. LIPINSKI and STEVEN J. ISAACSON, **Claimants,** *v.* STATE OF ILLINOIS, **Respondent.**

Order filed December 13, 1977.

PRISONERS AND INMATES—Bailment. Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas u. State,* ***32*** *Ill.Ct.Cl.,* this Court held that the State of Illinois does not owe a duty to inmates of **its** penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling u. State,* ***32*** *Ill.Ct.Cl.,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas v. State, supra,* and *Doubling v. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-2245—**Claim dismissed.)**

JAMES F. VAUGHN, Claimant, *v.* **STATE OF** ILLINOIS, Respondent.

Order filed December *19,1977.*

PRISONERS AND *INMATES—Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession. of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas u. State,* ***32*** *Ill.Ct.Cl.*__, this Court held that the State of Illinois does not owe a duty to inmates of its **penal** institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling v. State,* ***32*** *Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas u. State, supra,* and *Doubling u. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-2417—Claim dismissed.)

SUE SWANSON, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed ***January*** 9, ***1978.***

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, **but** alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant **con**tends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas v. State,* ***32*** *Ill.Ct.Cl.*—, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling v. State,* ***32 Ill.Ct.Cl.1,*** we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas v. State, supra,* and *Doubling v. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 77-CC-2449—Claim dismissed.)

JAMES JONES and **DANIEL HARRY,** Claimants, *v.* **STATE OF ILLINOIS,** Respondent.

Order filed June 8, 1978.

JURISDICTION—suits against Illinois State Toll Highway Authority. Where statute authorized the bringing of civil suits against the Illinois State Toll Highway Authorize in Circuit Court, the Court of Claims lacks jurisdiction over similar action filed therein.

HOLDERMAN, **J.**

This matter comes before the Court on a motion of Respondent to dismiss **and** Claimants' objections to said motion.

The complaint in this matter complains of alleged negligent actions on the part of Mauro Nicoletti, individually and as agent, servant and employee of the Illinois State Toll Highway Authority. Respondent's motion cites Ill. Rev. Stat. Ch. 121, para. 100-31, as amended by P.A. 79-1366, Section **45,** eff. October 1, 1976, which provided in part:

"The State of Illinois hereby consents to suits against the Authority solely **as** in this section provided:

(a)...

(b) Any person or persons may bring a civil action to recover damages for injury to his person or property caused **by** any act **of** the Authority or by any act of any of its officers, agents, or employees done under its direction."

The motion to dismiss also takes the position that the State of Illinois, through the legislature, having provided a remedy for the type of injuries complained of in the instant claim by way of a civil action against the Illinois State Toll Highway Authority, the legal inference must be indulged in that the Claimants

herein must pursue this remedy through a civil action brought in a competent Circuit Court as distinguished from the filing of a claim in the Court of Claims of Illinois.

Claimants, in their objection to Respondent's motion, deny that Ill. Rev. Stat., Ch. 121, para. 100-31, has exclusive jurisdiction in the Circuit Courts of Illinois in actions where damages are sought from the Illinois State Tollway Authority or any of its officers, agents or employees, and state that said section does not expressly state that the Circuit Court shall have exclusive jurisdiction in such actions.

If the theory of Claimants is correct, then the legislature has provided an additional remedy to people who are injured by acts of employees of the Illinois State Tollway Authority as against all other Claimants who have been injured by acts of other employees of the State of Illinois. This would result in giving a favored position as far as recovery from the State to those injured by acts of employees of the Illinois State Tollway Authority by giving them a double remedy, one against the State in the Court of Claims and another in the Circuit Courts of the State of Illinois.

It appears to the Court that it was the State's intention to give individuals injured on the Illinois State Tollway Authority a choice of remedies — not an additional remedy.

The Court therefore holds that Respondent's motion to dismiss is proper.

Motion to dismiss is hereby granted and said cause is dismissed.

(No. 77-CC-2451—Claim dismissed.)

ERNEST J. JOHNSON, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed January 9, 1978.

PRISONERS AND INMATES—Bailment. Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In ***Bargas u. State, 32 Ill.Ct.Cl.***__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of ***Doubling u. State, 32 Ill.Ct.Cl.1,*** we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in ***Bargas u. State, supra,*** and ***Doubling u. State, supra,*** the complaint herein fails to state a claim upon which relief can be granted.

retroactive pay for the period of the layoff. It is further clear that after the discharges, Claimants would have been required to mitigate their damages by attempting to obtain other employment. Claimant in effect mitigated their damages by taking lower paying jobs with the State, and they cannot be foreclosed from recovering the salary differential by virtue of that fact.

This Court has many times granted relief to Claimants who were found to have been unlawfully discharged, and this Court has many times granted retroactive pay in those instances. That the Civil Service Commission has the authority to reinstate persons unlawfully discharged cannot seriously be questioned.

The facts in this case are no different than in such cases, except for the use of a State job in mitigation rather than a job in the private sector. That difference does not subject the facts in this case to the rule of Section **145.**

Therefore, Claimant, Fred Peters, is hereby awarded the sum of $2,014.00 and Claimant, Solly **S.** Vaccaro, is hereby awarded the sum of $2,905.00 as adjusted by the appropriate deductions and contributions for Federal and State taxes and F.I.C.A. and Retirement Fund.

(No. 77-CC-0598—Claimant awarded $98.00.)

MARKET PLACE CURRENCY EXCHANGE, Claimant, *v.* **STATE OF ILLINOIS, Respondent.**

Opinion ***filed November*** *29,* ***1978.***

This matter comes before the Court upon Respondent's motion to dismiss and Claimant's objections to said motion.

Motion to dismiss is hereby denied and an award is entered in the amount of $98.00 on behalf of Claimant.

(No. 77-CC-0808—Claimantawarded $387.45.)

WERNER F. ROUPP, Claimant, *v.* **STATE** OF **ILLINOIS,** Respondent.

Opinion filed November 2,1978.

PRISONERS AND INMATES—*Bailments.* **State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.**

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

The record herein establishes without contradiction that on March **2,1977,** a Sony portable color television set, costing **$387.45** was delivered to Stateville Correctional Center by Polk Brothers of Joliet, Illinois, for delivery to Claimant. The television set was received by one Sgt. Adams at the gate of the institution, but disappeared before it was delivered to Claimant.

Respondent has conceded liability for the loss of the set.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of **$387.45.**

(No, 77-CC-0811—Claimant awarded $1,760.00.)

THE COUNTY **OF** WILL, Claimant, *v.* **STATE** OF **ILLINOIS,** Respondent.

Opinion filed November 30,1978.

KENNETH A. GRNACEK, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; JAMES O. STOLA, Assistant Attorney General, for Respondent.

APPROPRIATIONS—*"Expressly authorized by law."*

PER CURIAM.

This claim coming on to be heard on the joint stipulation of the parties hereto, and the Court being fully advised in the premises;

This Court finds that this claim is for the appearance of the State's Attorney for Will County on behalf of the State of Illinois in habeas corpus actions arising with regard to prisoners in Will County.

This claim is payable by this Court pursuant to Ill. Rev. Stat., ch. 65, paras. 37, 38, and 39 which states as follows:

37. Reimbursement of counties having penal or charitable institutions for expenses incurred in habeas corpus proceedings by non residents.] §1. In all counties in Illinois wherein there may be situated a State penal or charitable institution, the State shall assume and pay to such county the necessary expenses incurred by it, and its officers, either by means of service rendered or otherwise, by reason of Court proceedings therein involving a petition for the writ of habeas corpus, by or on behalf of, an inmate of such institution who was not a resident of such county at the time of his commitment and was not committed by any Court therein.

38. Claim by county for reimbursement.] §2. In order to entitle a county to such payment, as provided by Section 1 of this Act, it shall be necessary that a verified claim be filed by the State's Attorney of the County with the Court of Claims, setting forth the items for which the county claims the right to receive payment under the provisions of Section 1 of this Act. The Court of Claims shall proceed to consider such claim and enter such order as shall comply with the terms of this Act.

39. "Expenses" defined.] §3. The term "expenses" as used in Section 1 of this Act shall be construed to include all costs and fees of county officers as fixed by statute, including such expenses as may be incurred in providing juries, if any be made necessary by such proceedings. Provided, that all officers' fees so received by the county, shall in all cases be treated and accounted for as the earnings of the office of the respective officers in said county.

It is hereby ordered that the sum of $1,760.00 be awarded to Claimant in full satisfaction of any and all

claims presented to the State of Illinois under the above-captioned cause.

(No. 77-CC-1012—Claimant awarded $21.97.)

CHARLES PRUCHA, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed September 18,1978.

PRISONERS AND INMATES—Bailments. **State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.**

POLOS, C.J.

Claimant, an inmate of Illinois penal institution, **has brought this** action ***to*** recover **the** value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

The record establishes that on December **20,1976,** Claimant was a prisoner at the Joliet Correctional Center and was in possession of a General Electric radio which he had purchased for **$21.97** on August **17, 1976.** On that date he was taken to Silver Cross Hospital and prison authorities took possession of his personal property, including the radio. On his return from the hospital his property was returned to him, but the radio was missing.

This Court held in ***Doubling v. State, 32 Ill.Ct.Cl.1,*** deciding that the State has a duty to excercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such prop-

erty during the course of the transfer of an inmate between penal institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

"A constructive bailment can be created between an owner of the property and one in possession thereof." 4A Illinois Law and Practice 550, Bailments, citing ***Chesterfield Sewer & Water, Inc., v. Citizens Insurance Co. of New Jersey, et al.,*** **57 *Ill. App.2d 90, 207 NE2d 84.***

In ***Chesterfield,*** the Court quotes from ***Woodson v. Hare, 244 Ala. 301, 13 So2d. 172, at 174,*** as follows:

"An acutal contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law, generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship." ,

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disapperance of Claimant's property, and presented no testimony of its freedom from negligence.

It is therfore ordered that Claimant be, and hereby is, awarded the sum of $21.97.

(No. **77-CC-1018—Claim denied.**)

LANCE BELL, Claimant, *u.* STATE OF ILLINOIS, Respondent.

Opinion filed September 11,1978.

PRISONERS AND INMATES—*Bailments.* State has a duty to excercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

However, upon examination of the record in this cause, we find that Claimant's property was lost during the course of a shake down conducted by an employee of the Illinois Department of Corrections in search of contraband.

This was not an instance where the State took actual physical possession of Claimant's property, and this Court does not recognize a right to recovery under these circumstances. See, ***Bargas v. State, 32 Ill.Ct. Cl.***.

It is therefore ordered that this cause be, and hereby is, denied.

(No. **77-CC-1030—Claimant awarded $146.93.**)

ANTHONY ROCK, Claimant, *u.* STATE OF ILLINOIS, Respondent.

Opinion filed September 11,1978.

PRISONERS AND INMATES—*Bailments.* State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee **for** the return of that **property.**

Claimant contends that during the course of his transfer between cells at the Pontiac Correctional Center one Officer Zitnik collected his property, and that when it was delivered to his new cell three **of** Claimant's own oil paintings, and certain other items, were missing.

This Court held in ***Doubling v. State, 32 Ill.Ct.Cl.1,*** deciding that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical posession of such property during the course of the transfer of an inmate between penal institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

"A constructive bailment can be created between an owner of the property and one in possession thereof." 4A Illinois Law and Practice 550, Bailments, citing Chesterfield Sewer & Water, Inc., *v.* Citizens Insurance Co. of New Jersey, et al., 57 Ill. *App.2d* 90,207 *NE2d* ***84.***

In ***Chesterfield,*** the Court quotes from *Woodson v.* ***Hare, 24 Ala. 301, 13 So2d. 172, at 174,*** as follows;

"An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law, generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and presented no testimony of its freedom from negligence.

Claimant valued his oil paintings at $125.00, and his other items of property had a value of $21.93.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of $146.93.

(No. 77-CC-1110 — Claimant awarded $105.00.)

LAMAR DAVIS, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed August 30, 1978.

PRISONERS AND INMATES—*Bailments.* State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

In particular, Claimant contends that a television set was sent to him while he was an inmate of the Pontiac Correctional Center, and that the Center receipted for the set, but failed to deliver it to him. Claimant has established that the value of that television set was $105.00.

This Court held in ***Doubling u. State, 32 Ill.Ct.Cl.1,*** deciding that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property as during the course of the transfer of an inmate between penal institutions, or when the institution receipts for property.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

"A constructive bailment can be created between an owner of the property and one in possession thereof." 4A Illinois Law and Practice 550, Bailments, citing ***Chesterfield Sewer & Water, Znc., v. Citizens Insurance Co. of New Jersey, et al., 57 Ill. App.2d 90, 207 NE2d 84.***

In ***Chesterfield,*** the Court quotes from ***Woodson u. Hare, 244 Ala. 301, 13 So2d. 172, at 174, as follows;***

"An actual contract or one implied in fact is not always necessary to create a bailment. Where otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such

person and the owner of the property are, by operation of law, generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and presented no testimony of its freedom from negligence.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of $105.00.

(No. 77-CC-1164 — Claim denied.)

PEREZ FUNCHES, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed February 18, 1979.

PRISONERS AND INMATES — ***Property lost during transfer of inmate.***

POLOS, C.J.

Claimant, an inmate of an Illinois correctional institution, has brought this action to recover for the alleged loss of a gold wedding band, a pair of glasses, a three piece suit and some photographs. Claimant alleges that these items were lost during the course of his transfer from the Vienna Correctional Center to the Pontiac State Penitentiary.

It appears that at the time of his transfer his personal property was inventoried and packed, and

shipped to his mother at an address furnished by Claimant. Claimant signed the inventory as presented to him, and alleges that the items issued were either not on the inventory, or they were on the inventory and not received by his mother.

Claimant acknowledged that his mother received some of his personal property, which was shipped via Greyhound bus. His property therefore could have disappeared anywhere in transit. Further, Claimant's testimony was ambigous and inconsistent with respect to how he came into possession of certain of the property at issue, and the cost of that property.

For the foregoing reasons, the Court finds that Claimant has failed to establish by a preponderance of the evidence that the State came into actual possession of the items of property at issue, or that the property was lost due to negligence on the part of the State.

It is therefore ordered that this claim be, and hereby is denied.

(Nos. 77-CC-1186 & 77-CC-0726, Consolidated — Claimants awarded $106.93.)

KENNETH J. CATENACCI, Claimant, *v.* STATE OF ILLINOIS, Respondent.

ELMER KARNUTH and LILLIAN KARNUTH, Claimants *v.* STATE OF ILLINOIS, Respondent.

Opinion filed November 2, 1978.

PRISONERS AND INMATES — *Bailments.* State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

POLOS, C.J.

Claimant, Kenneth J. Catenacci, an inmate of an Illinois penal institution, seeks an award of $98.70 for the loss of a Panasonic stereo radio and tape player from his cell at the Stateville Correctional Center. Claimants, Elmer Karnuth and Lillian Karnuth, seek an award of $106.93 for a cassette player, headphones, and cassettes purchased by them for Claimant Catenacci while he was an inmate at Stateville Correctional Center, but never delivered to him.

The State did not offer any rebuttal to Claimants' testimony, and the record establishes the following facts without dispute.

Claimant Catenacci's grandparents, Elmer Karnuth and Lillian Karnuth brought a Panasonic AM-FM eight track stereo radio for Claimant from the K-Mart Store in Joliet, Illinois, for $98.70. The radio was delivered to Claimant through the office of one Mr. Maxwell, the institution property officer, on May 9, 1977. The next day, May 10, 1977, while Claimant was out of his cell for the noon meal, the radio was stolen from his cell. When Claimant returned to his cell from eating, he found that his cell, contrary to institution rules, was unlocked. Institution authorities have never been able to find the radio.

Claimant's claim is founded on negligence. Contrary to institution rules, the guard in the tower, who controls the cell doors by means of an electric switch, failed to lock the cells while the gallery residents were in the dining room eating. It is Claimant's contention that the guard in charge of the cell block could have anticipated that when he left the cell doors unlocked, contrary to institution rules, unauthorized persons would enter the unlocked cells and steal various items. Further, by virtue of the tower being in the center of the cellhouse, the tower guard can see persons going in and

out of the various cells. Therefore, Claimant alleges that the tower guard was additionally negligent in failing to notice someone enter Claimant's cell and carry away Claimant's radio.

With respect to the claim of Claimants Mr. and Mrs. Karnuth, the record establishes that in February, 1977, they paid $106.93 for a cassette player, headphones, and five cassettes to be shipped to their grandson by the dealers from whom they were purchased. The items were signed for by one Sgt. Adams at Stateville, the employee who accepts incoming merchandise for the inmates, but they were never received by inmate **Catenacci.**

This Court held in ***Doubling u. State, 32 Ill.Ct.Cl. 1,*** that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

> **"A** constructive bailment can be created between an owner of the property and one in possession thereof." 4A Illinois Law and Practice 550, Bailments, citing ***Chesterfield Sewer & Water,*** *Inc., v.* ***Citizens Insurance Co. of New Jersey, et al., 57 Ill. App.*** *2d 90,207* ***NE 2d 84.***

In ***Chesterfield,*** the Court quotes from ***Woodson u. Hare, 244 Ala. 301, 13*** *So2d. 172,* ***at 174,*** as follows:

> "An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law, generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the

possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding **or** going forward with the evidence.

Here the evidence shows that the State took physical possession of the cassette player, headphones and cassettes shipped to Catenacci by Mr. and Mrs. Karnuth, and as such became liable to them for the value of that property when it was lost.

However, this Court also held in *Bargas v. State*, ***32*** *Ill.Ct.Cl.*__, that the State does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells from pilferage from other inmates. Claimant alleges that his stereo radio was stolen from his cell, and under the Court's reasoning in *Bargas*, such loss is not compensable.

It is therefore ordered that Claimant Elmer Karnuth and Lillian Karnuth be, and hereby are, awarded the sum of $106.93.

It is further ordered that the claim of Kenneth J. Catenacci be, and hereby is, denied.

(No. **77-CC-1201 — Claimant awarded** $165.00.)

ROBERT HENDRICKS, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed January ***10, 1979.***

PRISONERS AND INMATES — *Bailments.* **State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.**

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

Claimant has established by a preponderance of the evidence that while an inmate at the Pontiac Penitentiary, he was placed in segregation and placed his personal property in the control of the State of Illinois. When he returned from segregation certain items of his property were damaged, and others were missing.

This Court held in ***Doubling v. State, 32 Ill.Ct.Cl.***, deciding that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

"A constructive bailment can be created between an owner of the property and one in possession thereof." 4A Illinois Law and Practice 550, Bailments, citing ***Chesterfield Sewer & Water, Inc., v. Citizens Insurance Co. of New Jersey, et al., 57 Ill. App. 2d*** *90,207 NE2d 84.*

In ***Chesterfield,*** the Court quotes from ***Woodson v. Hare, 244 Ala. 301, 13 So2d. 172, at 174,*** as follows;

"An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law, generally

treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and presented no testimony of its freedom from negligence.

The presumption that the State was negligent in caring for Claimant's property therefore stands unrebutted.

Claimant has established that the value of the property lost by the State was $165.00.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of $165.00.

(No. 77-CC-1218 — Claimant awarded $39.00.)

JESSIE OWENS, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed September 18, 1978.

PRISONERS AND INMATES — *Bailments.* State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

POLOS, C.J.

Claimant, an inmate of an Illinois penal institu-

tion, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

The record herein establishes by a preponderance of the evidence that in May, 1976, while confined at the Joliet Correctional Center, Claimant purchased a radio at the inmate's commissary for $39.00. On or about December 18, 1976, prison authorities took possession of that radio, and it has never been returned to Claimant.

This Court held in ***Doubling u. State, 32 Ill.Ct.Cl.1,*** deciding that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

"A constructive bailment can be created between an owner of the property and one in possession thereof." 4A Illinois Law and Practice 550, Bailments, citing ***Chesterfield Sewer & Water, Inc., v. Citizens Insurance Co. of New Jersey, et al., 57 Ill. App. 2d 90, 207 NE2d 84.***

In ***Chesterfield,*** the Court quotes from ***Woodson u. Hare, 244 Ala. 301, 13 So2d. 172, at 174,*** as follows;

"An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law, generally

treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and presented no testimony of its freedom from negligence.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of $39.00.

(No. 77-CC-1220 — Claimant awarded $14.91.)

WILLIAM ALBERT WIGGINS, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed April 6, 1979.

PRISONERS AND INMATES — Bailments. State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

At the hearing herein, Claimant established by a preponderance of the evidence that one pair of gym shoes, one bar of soap, one wash cloth, and one bar of deodorant were taken from him during a shakedown of the Pontiac Correctional facility. These items were not contraband, and Respondent presented no evidence to justify the taking.

Claimant established the value of the property taken from him at **$14.91.**

It is therefore ordered that Claimant be, and hereby is, awarded the sum of **$14.91.**

(No. 77-CC-1238—Claimant awarded $79.75.)

CHARLES HUDDLESTON, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed December 22, 1978.

PRISONERS *AND* INMATES—*Bailments.* State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

Claimant has proved by preponderance of the evidence that in November, 1975, he purchased a Sanyo, 12 inch Solid State, black and white television set for

$79.75, and that on December 15, 1975, he received a personal property permit for the television set from the Stateville Correctional Center. On or about January 13, 1977, the institution confiscated the television set for a **30** day period, and at the end of the period was unable to locate the television.

This Court held in *Doubling v.* ***State, 32 Ill.Ct.Cl.1,*** deciding that the State has a duty to exercise reasonable care to safeguard and return a inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

> "A constructive bailment can be created between an owner of the property and one in possession thereof." 4A Illinois Law and Practice 550, Bailments, citing ***Chesterfield Sewer & Water, Inc., v. Citizens Insurance Co.*** *of* ***New Jersey, et al., 57 Ill. App2d 90, 207 NE2d 84.***

In ***Chesterfield,*** the Court quotes from ***Woodson v. Hare, 244 Ala. 301, 13 So2d. 172, at 174,*** as follows;

> "An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law, generally treated as baillee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply

to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and presented no testimony of its freedom from negligence.

Claimant has proven that the State, as bailee, took actual physical possession of his property. The State has failed to rebut the presumption of negligence which arises when a bailee loses property entrusted to its possession.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of **$79.75.**

(No. **77-CC-1280—Claimant awarded $45,000.00.)**

WARCHOL CONSTRUCTION CO., INC., Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed July 2, 1979.

LOUIS C. WARCHOL and NICHOLAS S. AZGONE, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; FRANCIS DONAVAN, Assistant Attorney General, for Respondent.

CONTRACTS—Mistake in bid plans.
SAME—Delay in performance caused by State.

HOLDERMAN, J.

This claim arises as a result of a contract entered into on or about May **17,1973,** between Claimant and the Capital Development Board of the State of Illinois for the general construction work of the Davea Center in DuPage County, Illinois.

The work of the general contractor was to include excavating, backfilling, grading, sitework and applying base and bituminous (asphalt)paving of the Ringroad around said building and service area and parking lots on the north, south and west sides of the building.

The construction work began in June, 1973. It appears that in late September or early October 1973, the architect's representative issued a verbal stop-order concerning the on-going grading and paving on the south side of the building until such time as the architect could issue a bulletin which would price out the value of certain planned change-orders and modifications which would alter the elevations of the existing grades, increase the water retention pond and the installation of four new catch basins and storm sewers all located on the south side of the building.

It further appears that the architect did follow-up his stop-order with Bulletin No. 4 on October 8, 1973, and further issued revised drawings changing the elevations in these areas. It appears the following changes were requested:

(a) Re-location and enlargement of retention pond.
(b) Add four catch basins (two in the middle of south ringroad) and add new storm lines.
(c) Raise the grade of the south parking lot 18 inches in the center.
(d) Raise the grade of the south ringroad approximately 4 inches.
(e) Raise the grade approximately 4 inches at parts of the service area.

Pursuant to said stop-order, no work was done by the Claimant-contractor concerning the grade elevations or the paving operation in the south parking lot, south service areas or the south portion of the ringroad with the exception of the base course being put in the south portion of the ringroad, so that there would be access to the building site.

During the same period of time, to-wit: in October 1973, the Claimant-contractor was able to and did complete the grading, leveling and applying of bitunimous (asphalt) paving in the north parking lot and other portions of the ringroad.

During this period of time, the cost of construction, and in particular the cost of asphalt, was escalating daily, sometimes rising two or three times a day. During the winter months when it was impossible to do any grading and asphalt paving, no work was done.

Before Bulletin No. 4 could result in a change-order being issued, the architect's representative on April 5, 1974, issued another bulletin, Bulletin No. 8. This was six months after the grading and paving had been stopped and this bulletin again changed the grades and elevations on the south side of the building.

As a result, Bulletin No. 8 resulted in a change-order request No. 43 which contained the final grades and elevations and paving to be installed on the project.

The Capital Development Board did not approve and forward the signed change-order request No. 43 to Claimant until January 3, 1975.

The evidence is that the work on the revised elevations, grading and paving was done by Claimant in the Spring and Summer of 1975 at an additional cost of $73,510.90, which cost was due largely to increased costs for asphalt, grading and paving.

The evidence shows that the stop-order actually affected part of the south ringroad and south area and 90 percent of the south parking lot.

The record discloses that Claimant had a subcontract with the John Ward Paving Company for the

grading and bituminous paving at the site in the amount of $125,321.00. Ward commenced work on said project and did complete grading and paving of part of its contract for which it was paid $47,000.00, leaving a balance of $78,321.00 unfinished on its contract. Ward refused to perform under the contract because of increased cost of asphalt. Thereupon, the balance of Ward's contract was awarded to Rock Road Construction Company who was paid $151,831.90 to complete said contract. This amount is $73,510.90 in excess of the amount remaining in Ward's contract.

Testimony was given by one Ray Jensen of Claimant's construction company to the effect that 75.33 percent of the total uncompleted job was affected by the stop-order, and Claimant's evidence indicates that the sum of $55,375.76 is the amount of damages it sustained by the unreasonable delay caused by the architect's stop-order.

Claimant also requests the sum of $17,720.24 as interest due it for non-payment of the principal amount.

The evidence is uncontradicted that the delays were caused as a result of the various changes in plans of the State and that unfortunately these changes in plans occurred so that when the contractor could resume work, the weather conditions during the winter months were such that they could not be completed. It is also uncontradicted that the costs of construction particularly that of asphalt, were rising almost daily as a result of the Arab oil embargo.

Ordinarily a contractor is bound by the terms of his contract and must perform under the terms of said contract unless the other party to the contract, in this case, the State, by its own actions causes the additional

costs. The record is undisputed in the present case that the delays were caused by changed orders of the State from which the contractor could not protect itself and, as a result of said changed orders, Claimant did sustain considerable loss.

This Court, in the case of ***Blades, Inc. v. State of Illinois, 30 Ill.Ct.Cl. 388,*** laid down the rule that "contractor is entitled to damages caused by mistake in bid plans prepared by the State."

The Court believes the present case falls within the scope of the above-cited decision.

The Court **also** believes the unreasonable delay caused by Respondent when it issued its stop-order, coupled with the cold weather and the Arab oil embargo, resulted in a substantial escalation of the cost of asphalt and other construction costs.

It is the opinion of this Court that Claimant is entitled to the sum of $45,000.00 in payment of additional costs and an award is hereby entered in that amount.

(No. 77-CC-1310—Claimant awarded $400.00.)

SAMUEL CAGLE, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed July 6, 1978.

PRISONERS AND INMATES—*Bailments.* State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession **of** such property during the course of the transfer of an inmate between penal ipstitutions.

POLOS, C.J.

This is a claim brought by Samuel S. Cagle, an inmate of Stateville Correctional Center, for the loss of

certain items of personal property of the alleged value of $943.13.

At the hearing of this cause, Claimant established by the preponderance of the evidence that on June 25, 1976, he was a prisoner in the Illinois State Penitentiary, Menard branch. He was ordered transferred to the Stateville branch. On the day in question he was the owner and had in his possession in his cell at Menard various items of personal property. In transferring these items, prison officials had Claimant stand in his cell and pass each item to one Officer Smith, who was standing outside the cell. Officer Smith listed each item on a multi-copy inventory form, and saw that each item was dropped into a box for shipping.

A copy of the inventory list, signed by Claimant and by Officer Smith, was attached to Claimant's complaint.

The inventory includes a television set, a tape player, and a radio-phonograph, as well as numerous items of clothing and toiletries.

With the exception of certain letters, none of the property that Claimant turned over to Officer Smith was ever returned to him.

Respondent acknowledges that the property was never received at Stateville and never delivered to Claimant. Also attached to Claimant's complaint is a copy of a memorandum, dated December 21, 1976, from Stateville Warden David H. Brierton to Claimant, stating as follows:

"Assistant Warden Wallenstein recently interviewed you on a Call Line in the Safekeeping Unit. You expressed concern about property which you had not received since your transfer to Stateville from Menard Correctional Center. We have reviewed our personal property records and have deter-

mined that the property definitely did not arrive at Stateville with you. Efforts to locate the property at Menard have not been successful, though we will make an additional effort in this area on your behalf. You can expect to receive additional information within one week. I hope this information is responsive to your request."

Claimant is also claiming the loss of a man's wedding ring which he was allowed to wear when he left Menard, but which was taken from him on arrival at Stateville and never returned to him.

This Court held in ***Doubling v. State, 32 Ill.Ct.Cl. 1,*** deciding that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

"A constructive bailment can be created betwen an owner of the property and one in possession thereof." 4A Illinois Law and Practice 550, Bailments, citing Chesterfield Sewer & Water, Inc., *v.* Citizens Insurance ***Co.*** of ***New*** Jersey, et al., ***57*** Ill. ***App.2d 90,207 NE2d 84.***

In ***Chesterfield,*** the Court quotes from *Woodson v.* ***Hare, 244 Ala. 301, 13 So2d. 172, at 174,*** as follows;

"An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law, generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption **of** negligence which the bailee must rebut **by** evidence of due care. The effect of this rule is not to shift the ultimate

burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and presented no testimony of its freedom from negligence. Claimant's prima facie case, therefore, stands unrebutted.

In view of the fact that some of the larger items lost by Claimant had been in his possession since **1972** and **1973,** the Court must make allowance for depreciation. It is therefore ordered that Claimant be and hereby is awarded the sum of $400.00.

(No.* 77-CC-1319—Claimant awarded *$850.00.)

KING SCOTT, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed December 4, 1978.

NATE FINN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; GLEN P. LARNER, Assistant Attorney General, for Respondent.

NEGLIGENCE—Hospitals and Institutions. **State has duty to exercise reasonable care in restraining and controlling dangerous persons committed to its custody *so* that they will not have an opportunity to inflict a foreseeable injury upon others.**

PER CURIAM.

This claim coming on to be heard on the joint stipulation of the parties hereto, and the Court being fully advised in the premises.

This Court finds that Claimant, King Scott, seeks recovery of $1,000.00 for damages incurred from being

attacked and beaten by a patient at Manteno Mental Health Center.

The joint stipulation entered into between the parties, to which was attached the departmental reports of the Department of Mental Health, contained the following information:

On July **24,1975,** King Scott was in the parking lot outside of the security building at Manteno Mental Health Center, his status being that of an authorized visitor to the institution. While Claimant Scott was waiting in his car in the parking lot, he was approached and attacked by a Leroy Johnson for no apparent reason.

Patient Johnson had a history of violent behavior and it was noted throughout his medical history that he had assaulted other people without warning or provocation. Despite the known propensity of Leroy Johnson for violence towards others, he was given a grounds pass by the staff which allowed him to go unaccompanied into areas frequented by visitors.

There was no indication that Claimant provoked patient Johnson in any way, or that Johnson had any rational reason for attacking Claimant. Upon questioning the patient about this incident, he stated, "I hit him in the face because he put a spell on my cigarette."

From the foregoing facts, it appears that Respondent knew that Leroy Johnson was a violent individual and, therefore, should not have allowed him to enter the visitor area unattended. It appears further that Claimant was exercising due care for his own safety. The joint stipulation states both that Respondent was negligent in allowing the incident to happen and that

Claimant used due care for his own safety.

This Court has held on previous occasions that the State is required to exercise reasonable care in restraining and controlling dangerous persons committed to its custody, so that they will not have the opportunity to inflict a foreseeable injury upon others. ***Malloy u. State, 18 Ill.Ct.Cl. 137; Callbeck u. State, 22 Ill.Ct.Cl. 722; Maloney u. State, 22 Ill.Ct.Cl. 567.***

Both parties have stipulated that the amount of Claimant's loss is $850.00.

Claimant, King Scott, is hereby awarded damages in the sum of $850.00.

(No. 77-CC-1335—Claimant awarded $175.00.)

WILLIE E. MC **NEAL,** Claimant, *v.* **STATE** OF **ILLINOIS,** Respondent.

Opinion filed December 22, 1978.

PRISONERS AND INMATES—*Bailments.* **State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession** of **such property during the course** of **the transfer** of **an inmate between penal institutions.**

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

Claimant has proved by preponderance of the evidence that on January **27,** 1977, during a strip down search of his cell by two employees of Statevillle, took

possession of Claimant's 18carat gold cross with three chip diamonds on a chain, and a small locket with a photograph of his wife and daughter. Claimant estimates that the items cost $225.00. The items were not contraband, and the institution has failed to return them to Claimant.

This Court heldin ***Doubling u. State, 32 Ill.Ct.Cl.1,*** deciding that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

"A constructive bailment can be created between an owner of the property and one in possession thereof." 4A Illinois Law and Practice 550, Bailments, citing ***Chesterfield Sewer & Water, Inc., v. Citizens Insurance Co. of New Jersey, et al., 57 Ill. App.2d 90, 207 NE2d 84.***

In ***Chesterfield,***the Court quotes from ***Woodson u. Hare, 244 Ala. 301, 13 So2d. 172, at 174,*** as follows;

"An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal,property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law, generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express ***or*** implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and presented no testimony of its freedom from negligence.

Claimant has proven that the State, as bailee, took actual physical possession of his property. The State has failed to rebut the presumption of negligence which arises when a bailee loses property entrusted to its possession.

It is therefore ordered that Claimant be, and hereby is awarded the sum of $175.00.

(No. 77-CC-1414—Claimant awarded $50.73.)

MAURICE PENDLETON, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed August 28, 1978.

PRISONER AND INMATES—*Bailments.* State has a duty to exercise reasonable care to safeguard and return an inmate's property during the course of the transfer of an inmate between penal institutions.

POLOS, C.J.

Claimant, an inmate of the Stateville Correctional Center, has brought this action to recover the value of certain items of personal property which he alleges were lost during the course of its transfer from Stateville Correctional Center to Cook County Jail. These items consisted of a radio, chess set, cigarettes and personal care items valued at $50.73.

That Respondent has filed with the Court a stipulation by Respondent as well as a departmental report indicating that the, "Department of Corrections has no evidence to refute the allegations contained in Claimant's verified complaint."

Claimant's prima facie case therefore stand unrebutted.

It is therefore ordered, that Claimant be, and hereby is awarded the sum of $50.73.

(No. 77-CC-1430—Claimant awarded $20.81.)

IRA J. COLEMAN, JR., Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed November 2, 1978.

PRISONERS AND INMATES—*Bailments.* State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

Claimant has established that when he was transferred from the Minimum Security Unit of the Stateville Correctional Center to the wall enclosed compound, certain items of underclothing, towels, a safety razor and cigarette lighter, having the value of $20.81, were not delivered to him.

Respondent has acknowledged its liability for the loss of these items.

This Court held in ***Doubling v. State*, 32 *Ill. Ct. Cl.* 1,** deciding that the State has a duty to exercise reason-

able care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

> "A constructive bailment can be created between an owner of the property and one in possession thereof." 4A Illinois Law and Practice 550, Bailments, citing ***Chesterfield Sewer & Water, Inc., v. Citizens Insurance Co. of New Jersey, et al., 57 Ill. App.2d 90,207 NE2d 84.***

In ***Chesterfield,*** the Court quotes from ***Woodson v. Hare, 244 Ala. 301, 13 So2d. 172, at 174,*** as follows;

> "An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law, generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and presented no testimony of its freedom from negligence.

Claimant's prima facie case therefore stands unrebutted.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of $20.81.

(No. 77-CC-1477—Claimant awarded $391.68.)

CHERI A. WOOD, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed March 15, 1979.

STATE EMPLOYES BACK SALARY CLAIMS—Payment of back pay due because of administrative oversight is not additional payment for work already performed.

PER CURIAM.

This claim arises out of an employee request for payment of standby pay not included on her payroll vouchers for payroll periods from December 1, 1975, through February 8, 1976.

The Claimant in the case at bar pursued her request for back standby pay through a Facility Level Grievance where she was found to have been entitled to standby compensation, inasmuch as the reason she did not receive payment for the same was that the time was not recorded by the timekeeper as it was scheduled and the payroll office of the local facility was not aware of it and payment was, therefore, not made.

The amount claimed is $391.68 and is from the period of time December 1, 1975 through February 2, 1976.

Ill. Rev. Stat., Ch. 127, para. 145, provides as follows:

"Amounts paid from appropriations for personal service of any officer or employee of the State, either temporary or regular, shall be considered as full payment for all services rendered between the date specified in the payroll or other voucher and no additional sum shall be paid to such officer or employee from any lump sum appropriation, appropriation for extra help

or other purpose or any accumulated balances in specific appropriations, ***which payments would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon effective date of a collective bargaining agreement*** between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed. (Emphasis added)

The first part of the above cited statute is a clear and unequivocal prohibition of any additional payments "for work already performed" for payroll periods "for which remuneration had already been made," and presumably accepted, while the latter portion makes two exceptions to the general prohibition. The two exceptions are the retroactive payment to tradesmen who are paid in accordance with the pay scale prevailing in the geographic area of their employment, **and the second exception has to do with** claims for retroactive pay "based upon the effective date of a collective bargaining agreement."

Neither of these exceptions is involved in this case. This case involves an administrative error in failing to properly credit the Claimant for standby time or compensate accordingly.

In the case of ***Poskus*** *v.* State *of Illinois,* 26 *Ill.Ct.Cl.* 107, this Court awarded a half-time doctor a retroactive salary adjustment, after quoting from para. 145 stating in part:

"Nowhere is it contended that Claimant is requesting additional compensation for services performed, or that he has performed extra services. He is not asking payment for more than was appropriated, or for more than his contract of employment specifically provided, i.e., half the salary of a full-time physician. Because the contract of work was in a definite amount, and the sum paid to him by Respondent was admittedly below this amount, it cannot be contended that he was 'apparently paid for services in full.' Respondent's agents have clearly established that the sole reason for the nonpayment of the requested amount was a mistake. They have further established that the Claimant was entitled to the sum of **$1,812.25,** which would have been paid to him but for Respondent's mistake. Respondent cannot profit from its own errors."

In the case at bar, not only should this claim be awarded because of the State's error in recordkeeping, but it should be granted because it is not prohibited by Ch. 127, para. 145.

As stated earlier, it is the opinion of the Attorney General that the Legislature did not intend that para. 145 of ch. 127 provide a means by which errors, either clerical or otherwise, made by the State work for the benefit of the State at the expense of its employee.

The position stated in this memorandum is not a position grounded in equity or good conscience by one of law. A cardinal rule of statutory construction is to ascertain and give effect to the true intent and meaning of the Legislature enacting a law. *Electrical Contractors Association of the City of Chicago v. Illinois Building Authority*, 33 *Ill. 2d*, 587. Where an employee is erroneously paid for less time than actually put in, he or she is being erroneously paid too little salary and has, therefore, not been previously paid for services performed. As such retroactive payments would not be payments "for which remuneration had already been made" the exclusion contained in para. 145 would not apply. We find the Claimant is entitled to back salary in the gross amount of $391.68 plus employer contributions of $49.15 for a total employee benefit of $440.83.

It is therefore ordered that Claimant be and is hereby awarded the total employee benefit of $440.83.

(No. 77-CC-1517—Claimant awarded $100.00.)

JUAN ROBINSON, Claimant, *v.* **STATE OF ILLINOIS, Respondent.**

Opinion filed April 9, 1979.

PRISONERS AND INMATES—*Bailments.* State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

Claimant contends that during the course of his transfer from the Hanna City Youth Correction Center to the Youth Correction Center in St. Charles, Illinois, certain items of clothing, allegedly having a value of **$439.06** were lost.

This Court held in *Doubling u. State, 32 Ill.Ct.Cl.1,* deciding that the State has a duty to exercise reasonable care to safeguard and return an imate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

"A constructive bailment can be created between an owner of the property and one in possession thereof." 4A Illinois Law and Practice 550, Bailments, citing Chesterfield Sewer & Water, *Inc., v. Citizens Insurance Co.* of New Jersey, et al., 57 Ill. *App.2d 90, 207NE2d 84.*

In ***Chesterfield,*** the Court quotes from *Woodson v. Hare, 244 Ala. 301, 13 So2d. 172, at 174,* as follows;

"An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law, generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and presented no testimony of its freedom from negligence.

On consideration of the record herein, the Court finds that authorities at the Hanna City Center did in fact dispose of Claimant's clothing rather than ship it to him at St. Charles. However, Claimant's testimony was not clear with respect to either the exact items involved, or their cost. The Court finds that the items allegedly lost by Respondent had a value of no more than $100.00 at the time of the loss.

It is therefore ordered, that Claimant be and hereby is, awarded the sum of $100.00.

(No. 77-CC-1536—Claim dismissed.)

RICE GIBSON, Claimant, *v.* **STATE OF ILLINOIS, Respondent.**

***Order filed August** 9, 1978.*

PRISONERS AND INMATES—Bailment. Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Cliamant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas u. State,* **32** *Ill.Ct.Cl.*—, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling u. State,* ***32*** *Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas u. State, supra,* and *Doubling u. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It **is** therefore ordered that this cause be, and hereby is, dismissed.

(No. **77-CC-1539—Claimant awarded $397.08.)**

SYLVIA V. MINIZ, Claimant, *v.* **STATE** OF **ILLINOIS,** Respondent.

Opinion filed March 15, 1979.

STATE EMPLOYEES BACK SALARY CLAIMS—Payment of back pay due because of administrative oversight is not additional payment for work already performed.

PER CURIAM.

This claim arises out of an employee request for payment of standby pay not included on her payroll vouchers for payroll periods from December 8, 1975, through January 25,1976.

The Claimant in the case at bar pursued her request for back standby pay through a Facility Level Grievance where she was found to have been entitled to standby compensation, inasmuch as the reason she did not receive payment for the same was that the time was not recorded by the timekeeper as it was scheduled and the payroll office of the local facility was not aware of it and payment was, therefore, not made.

The amount claimed is $352.80 and is from the period of time December 8,1975, through January 25, 1976.

Ill. Rev. Stat., Ch. **127,** para. **145,** provides as follows:

"Amounts paid from appropriations for personal service of any officer or employee of the State, either temporary or regular, shall be considered as full payment for all services rendered between the date specified in the payroll or other voucher and no additional sum shall be paid to such officer or employee **from any lump sum appropriation, appropriation for extra help or other purpose or any accumulated balances in specific appropriations,** *which payments would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon effective date of a collective bargaining agreement* **between the State, or a State agency and an employee group shall not be construed as an additional payment for work of already performed. (Emphasis added)**

The first part of the above cited statute is a clear and unequivocal prohibition of any additional payments "for work already performed" for payroll periods "for which remuneration had already been made,'' and presumably accepted, while the latter portion makes two exceptions to the general prohibition. The two exceptions are the retroactive payment to tradesmen who are paid in accordance with the pay scale prevailing in the geographic area of their employment, and the second exception has to do with claims for retroactive pay "based upon the effective date of a collective bargaining agreement."

Neither of these exceptions is involved in this case. This case involves an administrative error in failing to properly credit the Claimant for standby time or compensate accordingly.

In the case of ***Poskus*** *v.* ***State of*** *Illinois,* 26 *Ill.Ct.Cl.* 107, this Court awarded a half-time doctor a retroactive salary adjustment, after quoting from para. **145** stating in part:

"Nowhere is it contended that Claimant is requesting additional compensation for services performed, or that he has performed extra services. He is not asking payment for more than was appropriated, or for more than his contract of employment specifically provided, i.e., half the salary of a full-time physician. Because the contract of work was in a definite amount, and the sum paid to him by Respondent was admittedly below this amount, it cannot be contended that he was 'apparently paid for services in full.' Respondent's agents have clearly established that the sole reason for the nonpayment of the requested amount was a mistake. They have further established that the Claimant was entitled to the sum of $1,812.25, which would have been paid to him but for Respondent's mistake. Respondent cannot profit from its own errors."

In the case at bar, not only should this claim be awarded because of the State's error in record keeping, but it should be granted because it is not prohibited by Ch. 127, para. **145.**

As stated earlier, it is the opinion of the Attorney

General that the Legislature did not intend that para. 145 of ch. 127 provide a means by which errors, either clerical or otherwise, made by the State work for the benefit of the State at the expense of its employees.

The position stated in this memorandum is not a position grounded in equity or good conscience but one of law. A cardinal rule of statutory construction is to ascertain and give effect to the true intent and meaning of the Legislature enacting a law. ***Electrical Contractors Association of the City of Chicago v Illinois Building Authority, 33 Ill. 2d, 587.*** Where an employee is erroneously paid for less time than actually put in, he or she is being erroneously paid too little salary and has, therefore, not been previously paid for services performed. As such retroactive payments would not be payments "for which remuneration had already been made" the exclusion contained in para. 145 would not apply.

It is therefore ordered that Claimant be and is hereby awarded the total employee benefit of $397.08.

(No. **77-CC-1564—Claimantawarded $95.73.)**

CHARLES BECO, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion ***filed December 22, 1978.***

PRISONERS **And INMATES—***Bailments.* **State has a duty** to **exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.**

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was

allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

Claimant has proven, by a preponderance of the evidence, that he ordered an eight track FM radio-tape player from Monroe Merchandisers, Inc., of Chicago, Illinois, which was delivered to the Pontiac Correctional Center on April 11, 1977. The cost of the merchandise, including tax and delivery, was $95.73. On April 11, 1977, United Parcel Service delivered the package to the gate house at Pontiac, and a receipt was signed by one Sergeant Staley. The package, however, was never delivered to Claimant.

This Court held in ***Doubling v. State, 32 Ill.Ct.Cl.1,*** deciding that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between pencil institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

"A constructive bailment can be created between an owner of the property and one in possession thereof." 4A Illinois Law and Practice 550, Bailments, citing ***Chesterfield Sewer & Water, Znc., v. Citizens Insurance Co. of New Jersey, et al., 57 Ill. App.2d 90,207 NE2d 84.***

In ***Chesterfield,*** the **Court** quotes form *Wooodsonv.* ***Hare, 244 Ala. 301, 13 So2d. 172, at 174,*** as follows;

"An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such

person and the owner of the property are, by operation of law, generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and presented no testimony of its freedom from negligence.

Claimant has proven that the State of Illinois, as bailee, took possession of his radio-tape player, and that the radio-tape player was never delivered to him. Under these circumstances a presumption arises that the State of Illinois was negligent in caring for Claimant's property, and the State of Illinois has presented no evidence **to** rebut that presumption.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of **$95.73.**

(No. 77-CC-1615—Claimant awarded $107.73.)

HENRY WILLIS, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed February 1, 1979.

PRISONERS AND INMATES—*Bailments.* State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

POLOS, C.J.

This is a claim brought by Henry Willis, now a prisoner at Stateville, but formerly at the Joliet Correctional Center.

At the hearing of this cause the following facts were established:

On June 10,1977,Claimant was in confinement at the Cook County Jail, Chicago, Illinois, preparatory to transfer to the Joliet Correctional Center at Joliet, Illinois. He had in his possession a large quantity of personal property items which he had packed in two milk crates and which were transferred with him from the Cook County Jail to Joliet.

On arrival at the Joliet Diagnostic Depot he went through the normal processing procedures. His property was taken from him and examined for contraband. However, when the processing was completed, all of his property was not returned to him, even though it was not contraband in nature. He instituted grievance procedures but the missing property could not be found. He testified that the items taken from him by the prison authorities on his arrival at Joliet and never returned to him had a value of $107.73.

This Court has held on many occasions that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of an inmate's transfer between penal institutions.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and presented no testimony of its freedom from negligence.

Claimant's prima facie case, therefore, stands unrebutted.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of $107.73.

(No. 77-CC-1647—Claimant awarded $3.00.)

CROFFORD HOLIFIELD, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed December 22, 1978.

PRISONERS AND INMATES—*Bailments.* State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual possession of such property during the course of the transfer of an inmate between penal institutions.

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

Claimant has proved by a preponderance of the evidence that the State took actual physical possession of a rug, valued at $3.00, when Claimant was transferred from the Vandalia Correctional Center to the Pontiac Penitentiary, at Pontiac, Illinois. The State failed to deliver the rug to Claimant upon his arrival at Pontiac.

This Court held in ***Doubling v. State, 32 Ill. Ct. Cl.*** 1, deciding that the State has a duty to exercise reasonable care to safeguard and return an imate's property

when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

"A constructive bailment can be created between an owner of the property and one on possession thereof." 4A Illinois Law and Practice 550, Bailments, citing Chesterfield Sewer & Water, Inc., *v.* Citizens Insurance *Co., of* New Jersey, et al., 57 Ill. *App.2d* 90, *207 NE2d 84.*

In ***Chesterfield,*** the Court quotes from ***Woodson v. Hare,*** *244* ***Ala.*** *301, 13* ***So2d.*** *172,* ***at*** *174,* as follows;

"An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law, generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and presented no testimony of its freedom from negligence.

Claimant has established that the State, as bailee, took physical possession of his rug, and failed to return it to him. A presumption of negligence therefore arises,

which the State of Illinois has failed to rebut with any evidence.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of $3.00.

Claimant had also sought compensation for bailing hay during June, 1977, as well as for other assigned work while in prison. In review of the evidence herein, the Court finds that Claimant is not due additional sums for work performed while in prison.

(No. 77-CC-1731—Claimant awarded $200.00.)

BOBBY J. ROLLINS, Claimant, *v.* **STATE** OF ILLINOIS, Respondent.

Opinion filed September *11, 1978.*

PRISONERS AND INMATES—*Bailments.* **State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.**

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

At the hearing of this cause, Claimant established that prior to July 7, 1977, he was an inmate of the Vienna Correctional Center, and had in his possession certain items of property. On that date he was transferred to the Stateville Correctional Center at Joliet, but was not allowed to take his property with him. On

his arrival at Joliet some of his property was returned to him, but other items were not.

This Court held in ***Doubling v. State,*** *32 Ill.Ct.Cl.1,* deciding that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

While bailment is ordinarily **a** voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

> "A constructive bailment can be created between an owner of the property and one in possession thereof." **4A** Illinois Law and Practice 550, Bailments, citing Chesterfield Sewer & ***Water,*** Inc., *v.* Citizens Insurance ***Co. of New Jersey, et al., 57 Ill. App.2d 90,207 NE2d 84.***

In ***Chesterfield,*** the Court quotes from ***Woodson v. Hare, 244 Ala.*** *301, 13 So2d. 172,* ***at*** *174,* as follows;

> "An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law, generally treated as bailee and bailor under a contract of bailment, irrespective of whether **or** not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding **or** going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and presented no testimony of its freedom

from negligence. Claimant's prima facie case therefore stands unrebutted.

The only evidence presented by Claimant relating to the value of the items lost while in the possession of the State, was his estimates of their value. We have carefully considered Claimant's testimony as to the items lost, and find that they had a value on July 7, 1977, of $200.00.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of $200.00.

(No. **77-CC-1751—Claimant awarded $267.85.)**

RAYMOND J. WHITE, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed June 28, 1978.

PRISONERS *AND* **INMATES—***Bailments.* **State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.**

POLOS, C.J.

This is a claim brought by Raymond J. White, formerly an inmate of Joliet Correctional Center in Stateville, for the conversion of certain items of clothing.

On or about January 18, 1976, Claimant had purchased certain items of new western clothing at the Libertyville Tack Shop, Libertyville, Illinois, namely, a sheep lined leather jacket for $175.00, a sport shirt for $32.95, a pair of sport slacks for $36.95, and a lizard skin belt for $22.95. He wore these clothes to his trial on January 23, 1976, at the Oak Lawn Court House in Oak Lawn, Cook County, Illinois. He was convicted and

that same day sent to the **Cook** County Jail. Following his conviction, his wife tried to bring other clothes to him while he was still in the Oak Lawn bull pen and while he was at the Cook County Jail, but she was not permitted to give him the change of clothing.

On January 30, 1976, Claimant was transferred from Cook County Jail to the Diagnostic Depot, Joliet Correctional Center, Joliet, Illinois

At Joliet he was issued prison clothing in place of the recently purchased clothing he was wearing. He told one Lt. Hefley, the officer in charge of the receiving process, that he would either pay to have his clothing shipped home or his wife would pick the items up.

Lt. Hefley gave him Official Receipt No. **04214** and **told** him to sign it. The receipt had his name, number, and the date on it, but otherwise it was blank. With **a** pen furnished by Lt. Hefley, Claimant listed his leather jacket, sport shirt, sports slacks and leather belt. That night in his cell, with a different pen, he wrote in the prices he had paid for the items.

About three weeks later his wife came to Joliet to pick up his clothing and was told that someone else had picked them up on January 9,1976, which was prior to the date of his trial.

The Joliet Correctional Center, in a memorandum dated November 14, 1977, forming part of the Departmental Report, indicated that an investigation conducted by it produced no information as to the disappearance of Claimant's clothing.

"Lieutenant Hefley was shown the attached copy of the Joliet Correctional Center, Official Receipt – Trust Fund receipt and stated that the signature was his, but could not identify the other witness's signature and could not say what happened to the resident's clothing . (The trust fund receipt is dated January **30, 1976.)"**

"No records, other than the trust fund receipt, showing that this institution received this clothing, could be obtained to the whereabouts of Resident White's clothing and no information could be obtained as to the whereabouts of Resident Whites clothing during this investigation."

This Court has held in ***Doubling v. State of Illinois,*** *32 Ill.Ct.Cl.1,* that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of an inmate's transfer between penal institutions.

In ***Bonner v. Coughlin,*** *517 F. 2d 1311 (1975),* our Court of Appeals, acknowledged a prisoner's rights to sue in the Illinois Court of Claims for loss of property occasioned by the negligent acts of State employees.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

"A constructive bailment can be created between an owner of the property and one in possession thereof." 4A Illinois Law and Practice 550, Bailments citing ***Chesterfield Sewer & Water, Inc., v. Citizens Insurance Co. of New Jersey, et al., 57 Ill. App 2d 90, 207 NE2d 84.***

In ***Chesterfield,*** the Court quotes from ***Woodson v. Hare,*** *244 Ala. 301, 13 So2d. 172, at 174,* as follows:

"An actual contract or one implied in fact, is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principals of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply

to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and prima facie case, therefore, stands unrebutted.

It is therefore ordered that Claimant be awarded the sum of $267.85.

(No. 77-CC-1760—Claimant awarded $355.95.)

MARIO ALFARO, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion *filed November* 2, 1978.

PRISONERS AND INMATES—*Bailments.* **State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.**

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

The record herein establishes without contradiction that on March 2, 1977, a 13 inch Zenith television set, costing $355.95, was delivered to Stateville Correctional Center by Polk Brothers of Joliet, Illinois, for delivery to Claimant. The television set was received by one Sgt. Adams at the gate of the institution, but disappeared before it was delivered to Claimant.

Respondent has conceded liability for the loss of the set.

This Court held in ***Doubling v. State, 32 Ill.Ct.Cl.1,*** deciding that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

> "A constructive bailment can be created between an owner of the property and one in possession thereof." 4A Illinois Law and Practice 550, Bailments, citing ***Chesterfield Sewer & Water, Inc., v. Citizens Insurance Co. of New Jersey, et al., 57 Ill. App.2d 90, 207 NE2d 84.***

In ***Chesterfield,*** the Court quotes from ***Woodson v. Hare, 244 Ala. 301, 13 So2d. 172, at 174,*** as follows;

> "An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under the circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law, generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's **property,** and presented no testimony of its freedom from negligence.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of $355.95.

(No. 77- CC-1766—Claim denied.)

THOMAS J. MURPHY, Claimant, *v.* **STATE** OF ILLINOIS, Respondent.

Order filed April 18, 1979.

CONTRACTS—*Illegality.* Contract entered into between State and an employee was held to be unlawful and void.

POLOS, C.J.

This cause is before the Court following oral argument on Claimant's petition for a rehearing.

The case involves construction of Ill. Rev. Stat. Ch. 127, 132.11-1, which provides, in pertinent part:

"It is unlawful for any person.. .employed in any of the offices of state government. . . to have or acquire any contract, or any direct pecuniary interest in any contract therein, whether for stationery, printing, paper or for any services, materials or supplies, which will be wholly or partially satisfied by the payment of funds appropriated by the general assembly of the State of Illinois . . ."

Claimant is a former employee of the Illinois Liquor Control Commission. He had been employed by the commission from February 13, 1973, to and including June 30, 1977. On June 7, 1977, while Claimant was the executive director of the commission, he entered into a contract with the commission under which he was to render services subsequent to termination of his employment. Claimant seeks to recover the sum of $3,525.00 for services rendered under that contract.

Respondent opposes the claim, relying on the foregoing statute, and arguing that the contract between Claimant and the commission is void and of no effect.

On September 18, 1978, this Court entered an order

denying the claim herein, on the ground that the plain wording of the statute voided the contract between Claimant and the commission.

We thereafter granted a rehearing. Oral argument was had, and additional briefs had been filed by the parties.

The Court has carefully considered those briefs, and the arguments adduced at the hearing herein. The Court remains convinced, however, that the language of the statute in question is certain and unambiguous. The Court may therefore not construe that language, but rather must apply it as enacted by the legislature. See ***Board of Education u. Chicago Teachers Union, 26 Ill. App. 3d 806, 326 N.E.2d 158, 161-2.***

It is agreed that Claimant entered into the contract in question while he was still an employee of the State of Ilinois. Under the terms of the foregoing statute, that contract is void and of no effect, and our order of September 18, 1978, denying this claim, will not be disturbed.

(No. **77-CC-1790—Claimant awarded $603.50.)**

CLAIRE C. CRAWFORD, Claimant, u. STATE OF ILLINOIS, Respondent.

Opinion filed* March *15, 1979.

STATE EMPLOYEE BACK SALARY CLAIMS—Payment of back pay due because of administrative oversight is not additional payment for work already performed.

PER CURIAM.

This claim arises out of an employee request for a job audit and reallocation to a higher job classification, and subsequent claim for retroactive salary commensurate with a retroactive reallocation.

The Claimant, in the case at bar, pursued her request for reallocation through the remedy provided by the Civil Service Commission where she was found to have been entitled to be reallocated.

Following the Civil Service Commission ruling, the Department of Personnel determined the Claimant to be entitled to certain back pay and arranged for payment of retroactive salary differential for the then current fiscal period and instructed her that she would have to *go* to the Court of Claims for the differential falling in lapsed fiscal periods.

The amount claimed is $603.50 and is from the period of time from October 1, 1976, through June 30, 1977.

The finding of the Civil Service Commission was dated August 12, 1977. The Department of Personnel determined the retroactive dates of October 1, 1976, by application of their existing procedure as they then related to their Rule 1-30 which called for retroactive application back to the date of the application for reconsideration being filed with the director of the Department of Personnel.

Ill. Rev. Stat. Ch. 127, para. 145, provides as follows:

"Amounts paid from appropriations for personal service of any officer or employee of the State, either temporary or regular, shall be considered as full payment for all services rendered between the dates specified in the payroll or other voucher and no additional sum shall be paid to such officer or employee from any lump sum appropriation, appropriation for extra help or other purpose or any accumulated balances in specific appropriations, which payments would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of a collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.

The first part of the above-cited statute is a clear and unequivocal prohibition of any additional payments "for work already performed" for payroll periods "for which remuneration had already been made," and presumably accepted, while the latter portion makes two exceptions to the general prohibition. The two execptions are the retroactive payment to tradesmen who are paid in accordance with the pay scale prevailing in the geographic area of their employment, and the second exception has to do with claims for retroactive pay "based upon the effective date of a collective bargaining agreement."

Neither of these exceptions are involved in this case. This case involves an administrative error in failing to properly classify and compensate the Claimant for the work performed.

In the past this Court has granted awards for retroactive salary adjustments in cases involving clerical errors in either the calculation of a payroll voucher or where an automatic annual pay increase was eroneously missed.

In the case of ***Poskus v. State of Illinois, 26 Ill.Ct.Cl. 107,*** this Court awarded a half-time doctor a retroactive salary adjustment, after quoting from para. **145,** stating, in part:

"Nowhere is it contended that Claimant is requesting additional compensation for services performed, or that he has performed extra services. He is not asking payment for more than his contract of employment specifically provided, i.e., half the salary of a full-time physician. Because the contract of work was in a definite amount, and the sum paid to him by Respondent was admittedly below this amount, it cannot be contended that he was 'apparently paid for services in full.' Respondent's agents have clearly established that the sole reason for the nonpayment of the requested amount was a mistake. They have further established that Claimant was entitled to the sum of $1,812.25 which would have been paid to him **but** for Respondent's mistake. Respondent cannot profit from its own errors."

In the case at bar, not only should this claim be awarded because of the State's error in allocation but it should be granted because it is not prohibited by Ch. **127,** para. **145.**

It is the opinion of this Court that it was not the intention of the legislature that para. **145** of Ch. 127 would provide a means by which errors, either clerical or otherwise, made by the State would deprive any of its employees compensation that is rightfully due them.

This Court has stated many times that it is not a Court of Equity. However, the position stated in this opinion is not a position grounded in equity or good conscience but one of law. A cardinal rule of statutory construction is to ascertain and give effect to the true intent and meaning of the legislature enacting a law. ***Electrical Contractors Association of the City of Chicago v. Illinois Building Authority, 33 Ill. 2d 587,*** where an employee is erroneously allocated to a lower paying position than his duties call for, he is being erroneously paid too low a salary and has, therefore, not been previously paid for services performed. As such retroactive payments would not be payments "for which remuneration had already been made" the exclusion contained in para. **145** would not apply.

An award is hereby entered in favor of Claimant in the amount of **$603.50** for back salary for the period of October **1,1976,** through June **30,1977,** plus the State's contribution to the State Employees' Retirement System and to FICA. From the aforesaid award to Claimant, there shall be deducted amounts for Claimant's Federal and State income tax witholding and amounts for Claimant's contributions to the State Employees' Retirement System and to FICA.

(No. 77-CC-1804—Claimant awarded $437.00.)

MAYROSE WHITE, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed March 15, 1979.

STATE EMPLOYEES BACK SALARY CLAIMS—Payment of back pay due because of administrative oversight is not additional payment for work already performed.

PER CURIAM.

This claim arises as the result of an employee request for reallocation to a higher job classification, and subsequent retroactive reallocation. The following facts are stipulated to by the office of the Attorney General.

On August 16, 1975, as the result of a survey of job duties, by the Department of Personnel, Instructor Classification was changed from Pay Grade 11 to 12. Mayrose White being on Step 5 of Pay Grade 11 received the minimum increase by going to Step 4 of Pay Grade 12. On June 1, her previous creditable service date, she was placed on Step 5. The action was incorrect in that Mayrose should have been placed on Step 5 on August 16, 1975, and should have received an August creditable service date. To correct this error it is necessary to give the difference between Steps 4 and 5 Pay Grade 12 for the nine and one-half months during the Fiscal Year 1976. The August 16, 1975, creditable service date makes her eligible for the July 1, 1977, increase to Step 6 with retroactive pay to December 1, 1976.

Ill. Rev. Stat., Ch 127, para. 145 provides as follows:

"Amounts paid for appropriations for personal service of any officer or employee of the State, either temporary or regular, shall be considered as full payment for all services rendered between the dates specified in the

payroll or other voucher and no additional sum shall be paid to such officer or employee from any lump sum appropriation, appropriation for extra help or other purpose or any accumulated balances in specific appropriations, ***which payments would constitute in fact an additional payment for work already performed and for whrch remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of a collective bargaining agreement*** between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed." (Emphasis added)

The first part of the above cited statute is a clear and unequivocal prohibition of any additional payments "for work already performed" for payroll periods "for which remuneration had already been made", and presumably accepted, while the latter portion makes two exceptions to the general prohibition. The two exceptions are the retroactive payment to tradesmen who are paid in accordance with the pay scale prevailing in the geographic area of their employment, and the second exception has to do with claims for retroactive pay "based upon the effective date of a collective bargaining agreement."

Neither of these exceptions are involved in this case. This case involves an administrative error in failing to properly classify and compensate the Claimant for the work performed.

As stated in the Attorney General's stipulation, it is the position and opinion of the Attorney General that it was not the intent of the Legislature that Para. **145** of Ch. 127 to bar this Court from granting recoveries in cases arising out of properly processed grievances for reallocation or reclassification.

This Court has in the past granted awards for retroactive salary adjustments in cases involving clerical errors in either the calculation of a payroll voucher or where an automatic annual pay increase was erroneously missed.

In the case of ***Poskus u. State of Illinois, 26 Ill.Ct.Cl. 107,*** this Court awarded a half-time doctor a retroactive salary adjustment, after quoting from para. **145,** stating in part:

"Nowhere is it contended that Claimant is requesting additional compensation for services performed, or that he has performed extra serivces. He is not asking payment for more than was appropriated, or for more than his contract of employment specifically provided, i.e., half the salary of a full-time physician. Because the contract of work was in a definite amount, and the sum paid to him by Respondent was admittedly below this amount, it cannot be contended that he was 'apparently paid for services in full.' Respondent's agents have clearly established that the sole reason for the nonpayment of the requested amount was a mistake. They have further established that Claimant was entitled to the sum of $1,812.25, which would have been paid to him but for Respondent's mistake. Respondent cannot profit from its own errors."

In the case at bar, not only should this claim be awarded because of the State's error in allocation but it should be granted because it is not prohibited by Ch. **127,** para. **145.**

This Court believes that the Legislature did not intend that para. **145** of Ch. **127** provide a means by which error, either clerical or otherwise, made by the State work for the benefit of the State at the expense of its employee.

This Court has stated many times that it is not a Court of Equity. However, an award in this case need not be grounded in equity or good conscience but may be grounded in law. **A** cardinal rule of statutory construction is to ascertain and give effect to the true intent and meaning of the Legislature enacting a law. ***Electrical Contractors Association of the City of Chicago u. Illinois Building Authority, 33 Ill. 2d, 587,*** where an employee is erroneously allocated to a lower paying position than his duties call for, he is being erroneously paid too low a salary and has, therefore, not been previously paid for services performed. **As** such retroactive payments would not be payments "for

which remuneration had already been made" the exclusion contained in para. **145** would not apply. Claimant is hereby awarded the sum of **$437.00** plus the usual employer contributions to retirement and F.I.C.A. to be distributed as follows:

To the State Employees' Retirement System as follows:

$ 17.48 Employee's contribution to State Employees' Retirement System

$ 25.65 Employee's contribution to F.I.C.A.

$ 29.28 State's contribution to State Employees' Retirement System

$ 25.65 State's contribution to F.I.C.A.

To the Illinois State Treasurer to be remitted to the Internal Revenue Service:

$ 48.07 as Claimant's Federal Income Tax withholding for current taxable year.

To the Illinois Department of Revenue, Income Tax Division:

$ 8.74 as Claimant's Illinois Income Tax withholding for current taxable year.

To the Claimant:

$337.06 as Claimant's net salary after all of the above contributions and withholdings have been deducted from the above total employee benefit.

(No. 77-CC-1835—Claimant awarded $73.92.)

MILLERS MUTUAL INSURANCE ASSOCIATION OF ILLINOIS, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed November 14, 1978.

AL J. PRANAITIS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*Subrogation* **agreements.**

PER CURIAM.

The record in this cause indicated the purpose of the expenditure by the Department of Mental Health and Developmental Disabilities for which this claim was filed was for the subrogation interest on an insurance payment for damage to a car insured by the Millers Mutual Insurance Association of Illinois and that the Attorney General has submitted a stipulation by Respondent based upon information forwarded to his office by said Department, as evidenced by the departmental report attached to the stipulation by Respondent.

No part of this claim has been paid and the amount claimed is **$73.92.**

It is hereby ordered that the Claimant be awarded, in full satisfaction of any and all claims presented to the State of Illinois under the above captioned cause, the sum of **$73.92.**

(NO. **77-CC-1898—Claim denied.)**

ROBERT P. STUDNICKA, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

***Opinion* filed January 10,1979.**

PRISONERS AND INMATES—*Bailments.* State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

POLOS, C.J.

Claimant, an inmate of the Joliet Correctional Center, asserts that in August, 1977, during the course of this transfer from the R & C Annex, a building where inmates had one-man cells, to segregation, certain of his personal property was lost, including a set of contact lenses, a portable radio, and a pair of wire frame glasses.

Respondent introduced the testimony of one Lt. Cooper, an employee of the Joliet Correctional Center, who transferred Claimant's property. He testified that when he went to Claimant's cell it was locked and he found an officer to open it. He said that with the assistance of two prisoners he packed Claimant's property in six or seven large boxes. He testified, "We went through everything, Sir, desk drawers, everything that was in the cell, and got everything out of it." Cooper said that when he delivered the property to Claimant, Claimant inquired about his contact lenses. Cooper said he had not noticed any contact lenses when he was packing Claimant's property.

Even if we were to find it there was a bailment relationship under the circumstances here, we find that Respondent has met its burden of proving that it acted with due care with respect to Claimant's property.

Lieutenant Cooper testified in detail as to each step he took with reference to packing and delivering Claimant's property. There was nothing in Lt. Cooper's testimony to indicate that he did not act with due care with respect to that property.

We therefore find that Claimant has failed to demonstrate by a preponderence of the evidence that the State did not act with due care with respect to his property.

It is therefore ordered that this claim be, and hereby is denied.

(No. 77-CC-1936—Claimant awarded $134.00.)

BERNARD JOHNSON, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion **filed** *September 18, 1978.*

PRISONERS AND INMATES—*Bailments.* State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

The record establishes that on December 13, 1976, Claimant's father sent a 19 inch television set to Claimant at the Joliet Correctional Center as a gift. The television set was delivered to the prison on December 17, 1976, by United Parcel Service and one Sgt. Adams, who was on duty at the front gate, receipted for it. It was then determined that prison rules would not permit Claimant to accept that set, and it was to be returned to the sender by United Parcel Service. It was never returned, however, and disappeared from the office at the front gate of the prison.

This Court held in ***Doubling v. State, 32 Ill. Ct. Cl. 1,*** deciding that the State has a duty to exercise reason-

able care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

"A constructive bailment can be created between an owner of the property and one in possession thereof." 4A Illinois Law and Practice 550, Bailments, citing ***Chesterfield Sewer & Water, Inc., v. Citizens Insurance Co. of New Jersey, et al., 57 Ill. App.2d 90, 207 NE2d 84.***

In ***Chesterfield,*** the Court quotes from ***Woodson v. Hare, 244 Ala. 301, 13 So2d. 172, at 174,*** as follows;

"An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law, generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and presented no testimony of its freedom from negligence.

Here the prison took actual physical possession of the television set for Claimant. The law recognizes delivery to third persons acting on behalf of a donee,

and delivery of the gift was effected when Sgt. Adams signed for the television set. The State thus became the bailee of the television set, and is liable for its loss.

It was established that the television set was purchased for **$134.00.**

It is therefore ordered that Claimant be, and hereby is, awarded the sum of **$134.00.**

(No. 77-CC-1954 - Claimant awarded $82.00.)

JAMES T. THOMAS, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed November 2, 1978.

PRISONERS AND INMATES - Bailments. State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

Claimant has established without contradiction that a Panasonic television set was delivered to the Stateville Correctional Center, after Claimant had ordered it from York Radio and **T.V.** of Decatur, Illinois, at a cost of **$82.00,** on April **26,1977,** and delivered to the wrong resident through a clerical error.

Respondent has conceded liability for the loss of the set.

This Court held in ***Doubling v. State, 32 Ill.Ct.Cl.l*** deciding that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

> "A constructive bailment can be created between an owner of the property and one in possession thereof." 4A Illinois Law and Practice 550, Bailments, citing ***Chesterfield Sewer & Water, Inc., v. Citizens Insurance Co. of New Jersey, et al., 57 Ill. App. 2d 90,207 NE2d 84.***

In ***Chesterfield,*** the Court quotes from ***Woodson v. Hare, 244 Ala. 301, 13 So2d. 172, at 174,*** **as follows;**

> "An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law, generally treated **as** bailee and bailor under a contract **of** bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and presented no testimony of its freedom from negligence.

The presumption of the State's negligence is thus unrebutted.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of $82.00 in full satisfaction of this claim.

(No. 77-CC-2007 — Claim dismissed.)

HAROLD BENDICSEN, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Order filed September 7, 1978.

NEGLIGENCE — *Damage to property by escaped wards of State.* **Where wards of the State under Claimant's control escaped and vandalized his car, Claimant was held to be contributorily negligent in allowing the escape.**

HOLDERMAN J.

This matter comes before the Court on a claim filed by Claimant and motion of Respondent for judgment on the pleadings.

Claimant was a superintendent of Herrick House Children's Center at the time of the incident that caused the damages of which Claimant complains.

Claimant alleges that his car was parked on the grounds of the institution, that it had been locked, that it was damaged and vandalized, and that said car had an inside hood release which was working at the time of the incident and by being forced caused most of the damage on which this claim is based.

Respondent's motion for judgment on the pleadings is based primarily on the fact that Claimant was either negligent in failing to maintain adequate control over the residents which would constitute negligence on the part of Claimant and that if he was negligent, he cannot recover from his own negligent action.

It is also the State's contention that it was the responsibility of Claimant to prevent the very action of which he now seeks to recover. If an award were granted, it would have to be based upon the fact that the State was negligent in failing to prevent the act in question and would be in fact compensating him for his own failure to perform the duties for which he was hired.

Exhibits, in the form of letters, attached to the complaint state the damage was done by one or more residents of the Center although the identity of the guilty party or parties has never been determined.

An award can be granted in cases such as the present one only when there is negligence on the part of the State and no contributory negligence on the part of Claimant.

The State is only liable where there is some negligence on its part and, as stated above, the State could only have been negligent in the present case by failing to properly supervise the inmate or inmates who caused the damage. To make a finding to that effect would put the State in a position of being an insurer which it is not.

An award cannot be made to an individual working for the State when it is the responsibility of that individual to prevent incidents such as the one on which this claim is based. To hold otherwise would amount to an award based upon contributory negligence of the Claimant.

Motion for judgment on the pleadings is hereby granted and said cause is dismissed.

(No. 77-CC-2048 — Claimant awarded $58.50.)

ALBERT WINFREY, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed April 9, 1979.

PRISONERS AND INMATES — *Bailments.* State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

The claim arises out of two separate incidents. Claimant first alleges the loss of laundry, which was given over to the prison laundry and not returned. A second loss was a loss of personal property which allegedly disappeared from the vicinity of the lieutenant's desk on the first floor of the segregation unit. Claimant testified that his property was brought with him to the segregation unit, but he was taken up to the cell and the property left on the lower level at the lieu-

tenant's desk for inspection to determine if it contained any contraband. Before the property could be moved up to Claimant's cell, certain items disappeared. Claimant said inmates go through property left unattended, and it disappears.

The Court finds that in both instances the State of Illinois became a bailee of Claimant'-s property, and owed Claimant a duty to use reasonable care in ensuring its return to him.

Claimant testified that the property lost by the prison laundry had a value of $16.00 and that the property lost by the segregation desk had a value of $42.50.

The State of Illinois presented no evidence to rebut the presumption of negligence which arises when property, in the hands of a bailee, is not returned to the bailor.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of $58.50.

(No. 77-CC-2105 — Claimant awarded $32.50.)

VICTOR HUBBARD, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed November 2,1978.

PRISONERS AND INMATES — *Bailments.* State has a duty to exercise reasonable care to safeguard and return an inmate's property when it take actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

POLOS, J.C.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the

actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

Claimant has established that on December 24, 1976, five eight track tapes were delivered to the Stateville Correctional Center, after Claimant had ordered them from Music Wholesalers of Des Moines, Iowa, at a cost of $32.50. The institution took possession of the tapes, but they were never delivered to Claimant.

This Court held in ***Doubling v. State, 32 Ill. Ct. Cl. 1,*** deciding that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

> "A constructive bailment can be created between an owner of the property and one in possession thereof." 4A Illinois Law and Practice 550, Bailments, citing ***Chesterfield Sewer & Water, Inc., v. Citizens Insurance Co. of New Jersey, et al., 57 Ill. App. 2d 90, 207 NE2d 84.***

In ***Chesterfield,*** the Court quotes from ***Woodson v. Hare, 244 Ala. 301, 13 So2d. 172, at 174,*** as follows;

> "An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law, generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due

care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and presented no testimony of its freedom from negligence.

The presumption of the State's negligence is thus unrebutted.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of $32.50 in full satisfaction of this claim.

(No. 77-CC-2106 — Claimant awarded $136.65.)

STEVEN HENSON, Claimant, *v.* STATE OF ILLINOIS, **Respondent.**

Opinion filed October 23, 1978.

STATE EMPLOYEES BACK SALARY CASE — ***Insufficient lapsing of funds to pay claim for back salary.***

PER CURIAM.

This case arises as a result of a three day disciplinary suspension of the Claimant, a prison guard. The suspension was revoked as the result of a fourth level grievance appeal to the Director of Personnel. The suspension occurred on September 20, 21 and 22, 1976, but by the time of the fourth level grievance determination the Fiscal Year 1977 appropriation had lapsed. Following the Director's reversal of the suspension no appeal was taken. The Claimant then applied directly to this Court for relief. Although appropriations remaining available in the personal services line item when coupled with other claims of a similar nature made for

the same fiscal period there were inadequate funds remaining in the personal services line item. The supplemental departmental report of March 24,1978, clearly points out this deficiency of line item money when it refers to the cases of Homer Ward and Bobby Miller, involving the same line item appropriation. However, the supplemental departmental report also establishes that pursuant to the provisions of *Ill. Rev. Stat., Ch. 127, para. 149.2,* that there was available from the commodities line item of the same general fund appropriation the amount of $83,039.24 which could have been transferred for utilization in the payment of these salaries had the necessity become obvious prior to the lapse of the fund. Chapter 127, para. 149.2 states in pertinent part as follows:

> "Transfers among line item appropriations from the same treasury fund for the objects specified in this Section when the balance remaining in one or more such line item appropriations is insufficient for the purpose for which the appropriation was made. No transfers may be made from one agency to another agency, nor may transfers be made from one institution of higher education to another institution of higher education. Transfers may be made only among the objects of expenditure enumerated in this section, except that no funds may be transferred from any appropriation for personal services. The sum of such transfers for an agency in the fiscal year shall not exceed two percent of the aggregate amount appropriated to it within the same treasury fund for the following objects: personal services, extra help, student and inmate compensation, State contributions to retirement systems, State contributions to Social Security, contractual services, travel, commodities, printing, equipment; electronic data processing, operation of automotive equipment, telecommunications services, library books, Federal matching grants for student loans, refunds, Workmen's Compensation, occupational disease, and Tort claims, and, in appropriation to institutions of higher education, awards and grants." etc., etc.

As can be seen from the above quotation the legislature has approved transfers from the commodity line item to personal services.

In view of the provisions contained in *Ill. Rev. Stat. Ch. 127, para. 145,* prohibiting retroactive salaries this Court feels it to be appropriate to comment as follows:

Chapter **127,** para. **145,** provides in part as follows:

"Amounts paid from appropriations for personal service of any officer or employee of the State, either temporary or regular, shall be considered as full payment for all services rendered between the dates specified in the payroll or other voucher and no additional sum shall be paid to such officer or employee from any lump sum appropriation for extra help or other purpose or any accumulated balances in specific appropriations, which payments would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant, to the application of the prevailing rate principle or based upon the effective date of a collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed."

This Court recognizes the validity of the above paragraph but finds that it does not restrict the entry of an award in this case. It is clear from the examination of the facts that a payment in this case would not "constitute in fact an additional payment for work already performed and for which remuneration had already been made." In their joint stipulation the parties have agreed to the above finding and this Court, as above stated, concurs in that agreement. There was never any remuneration for the period of time of the suspension and, therefore, the prohibition contained in paragraph **145** is inapplicable.

This Court, therefore, awards the Claimant the amount of **$136.65** plus appropriate employer's retirement contribution and F.I.C.A. contributions.

(No. 77-CC-2108—Claimant awarded $35.00.)

DAVID LAWRENCE, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed January 10, 1979.

PRISONERS AND INMATES—Bailment. State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

SAME-Contraband.

PER CURIAM.

Claimant, an inmate of an Illinois State Penitentiary at Pontiac, Illinois, has brought this action to recover the value of certain items of his personal property which he alleges were legally confiscated during a shakedown on April 27, 1977. Claimant alleges that authorities at the Pontiac Correctional Center illegally confiscated two stereo speakers and a pair of tennis shoes. Claimant values the speakers at $60.00, and the tennis shoes at $35.00. Claimant also seeks $95.00 in damages for replacement of a damaged phonograph.

The Court has carefully considered the transcript of evidence taken before a Commissioner of this Court. The evidence establishes that the speakers in question were taken from a fellow resident, and not from Claimant himself. It was a prison rule that personal items may not be loaned to fellow prisoners, or they become subject to confiscation as contraband. The prisoner to whom Claimant loaned the speakers had no permit for them, and they were properly confiscated.

The tennis shoes taken from Claimant's cell were not contraband, and should have been returned to him after the shakedown.

The phonograph in question is in the possession of the Claimant, but he seeks damages for its repair. The record is unclear as to who damaged the phonograph, but it does appear that it was not damaged by Claimant, and that the damage occurred during the shakedown.

In view of the foregoing, the Court finds that Claimant is entitled to reimbursement for his loss of his tennis shoes. The Court finds he is not entitled to reimbursement for damage to his phonograph, or for confiscation of his speakers.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of **$35.00.**

(No. 77-CC-2126 — Claim dismissed.)

FISHER SCIENTIFIC Co., Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed November 8, 1978.

PRACTICE AND PROCEDURE-*Filing of* ***duplicate.***
DAMAGES-Double recovery disallowed.

PER CURIAM.

This matter comes before the Court on a motion to dismiss filed by Respondent.

Respondent's motion **states as follows:**

"1. That the claim herein seeks the recovery of $2,025.00 for the delivery of one electrometer to the Illinois Department of Law Enforcement.

2. That Claimant filed a second claim seeking $2,025.00 for the delivery of one electrometer to the Respondent.

3. That Claimant filed a third claim for **$8,100.00,** for the delivery of four electrometers. **(78** CC 718)

4. That Claimant, in fact, delivered four electrometers to Respondent as alleged in the third complaint. **(78** CC **718)**

5. That the claim herein duplicates a portion of claim no. **78** CC **718.**

6. That Ill. Rev. Stat., Ch. **37,** Sec. 26, **(1977)** states that there shall be but one satisfaction of any cause of action.

7. That Ill. Rev. Stat., Ch. 110, Sec. 48(c), (1977) states that another action pending between the same parties for the same cause is a ground for dismissal."

Motion for dismissal in this cause is hereby granted and said cause dismissed. All the matters contained herein can be disposed of in Case No. 78 CC 718.

(No. 77-CC-2127—Claimant awarded $225.32.)

ALFRED BRACEY, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed *February* 1, 1979.

PRISONERS AND INMATES—*Bailments.* **State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.**

POLOS, C.J.

Claimant, formerly an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

The record herein establishes by the preponderance of the evidence that in June, 1975, while confined at Stateville Correctional Center, Claimant purchased from Monroe Merchandisers, Inc., Joliet, Illinois, a Zenith television set for the sum of $95.37. Further, on April 22, 1976, Claimant purchased from Monroe Merchandisers, Inc., Joliet, Illinois, a Panasonic AM-FM portable radio and eight track tape player for $129.95.

On or about January 27, 1977, prison authorities took possession of Claimant's television set and it has never been returned to him.

On January 23,1978, prison authorities took possession of Claimant's Panasonic radio and it has never been returned to him.

This Court held in ***Doubling u. State, 32 Ill.Ct.Cl.1,*** deciding that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

"A constructive bailment can be created between an owner of the property and one in possession thereof." 4A Illinois Law and Practice 550, Bailments, citing ***Chesterfield Sewer & Water, Znc., v. Citizens Insurance Co. of New Jersey, et al, 57 Ill. App. 2d 90, 207NE2d 84.***

In ***Chesterfield,*** The Court quotes from ***Woodson u. Hare, 244 Ala. 301, 13 So2d 172, at 174,*** as follows:

"An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply

to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and presented no testimony of its freedom from negligence.

Claimant's prima facie case therefore stands unrebutted.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of **$225.32.**

(No. 77-CC-2130- Claimant awarded $159.00.)

JAMES CLIMONS, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed April *9,* 1979.

PRISONERS AND INMATES-*Bailments.* State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

Claimant has shown by a preponderence of the evidence that in September, 1976, an employee of the Stateville Correctional Center took from Claimant an **AM-FM** radio having a value of $159.00. There was no

explanation given Claimant for this action, and the radio has never been returned to him.

This Court held in ***Doubling u. State, 32 Ill.Ct.Cl.1,*** deciding that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

> "A constructive bailment can be created between an owner of the property and one in possession thereof." 4A Illinois Law and Practice 550, Bailmenti, citing ***Chesterfield Sewer & Water, Inc., v. Citizens Insurance Co. of New Jersey, et al, 57 Ill. App. 2d 90, 207 NE2d 84.***

In ***Chesterfield,*** The Court quotes from ***Woodson u. Hare, 244 Ala. 301, 13 So2d 172, at 174,*** as follows:

> "An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's

property, and presented no testimony of its freedom from negligence.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of $159.00.

(No. 77-CC-2187 - Claimant awarded $1,344.00.)

WESTERN WATERPROOFING COMPANY, Claimant *v.* STATE OF ILLINOIS, Respondent.

Opinion filed April 9, 1979.

RICHARD A. HOLLIS, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS-Changeorders issued without approval.

POLOS, C.J.

This matter is before the Court on the stipulation of the parties. That stipulation establishes that Claimant, Western Waterproofing Company, was awarded a contract for certain work on the Armory Building at Dixon, Illinois. After the contract was awarded and the work commenced, Claimant determined that in order to adequately complete the job, it was necessary to replace windows around the upper perimeter of the Armory. This involved removing the old glazing and replacing the glass where missing or broken with new glazing prior to painting.

The Capitol Development Board was the contracting agency on behalf of the using agency, the Military and Naval Department. The project manager overseeing the work on behalf of the Capitol Development Board was one Mr. J. Delaney, who is no longer employed by the State. It appears that Mr. Delaney, upon receiving a proposal from Claimant, approved

the proposal and told Claimant to proceed with the additional work. The work was completed, but a "Request For Proposal And Change Order'' was never processed. The "request" was recommended by the contractor, by the using agency, and by the Capitol Development Board. However the change order was never approved and issued by the Capitol Development Board. The Capitol Development Board had provided for a ten percent contingency in their appropriations and allocations for this contract, and there were adequate funds remaining in the project at the time the verbal authorization was given by Mr. Delaney and the work performed.

Claimant is requesting the sum of **$1,344.00** for the additional work performed, and there is no question as to the reasonableness of that charge, or the quality of the work performed.

The State of Illinois has agreed to submission of this matter on the foregoing stipulation, and agrees that an award should be made at the discretion of the court.

On consideration of the foregoing, it is hereby ordered that Claimant be, and hereby is, awarded the sum of **$1,344.00.**

(No. 77-CC-2236 — Claim dismissed.)

FISHER SCIENTIFIC *Co.*, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed November 8, 1978.

PRACTICE AND PROCEDURE-Filing of duplicate.
DAMAGES-Double recovery disallowed.

PER CURIAM.

This matter comes before the Court on a motion to dismiss filed by Respondent.

Respondent's motion states as follows:

"1. That the claim herein seeks the recovery of $2,025.00 for the delivery of one electrometer to the Illinois Department of Law Enforcement.

2. That prior to the filing of this claim, Claimant filed an identical claim seeking $2,025.00 for the delivery of one electrometer to Respondent *(Fisher Scientific Co., 32 Ill.Ct.Cl.__)*

3. That a third claim was filed by Claimant subsequent to the claim herein for $8,100.00 for the delivery of four electrometers. *(78-CC-718)*

4. That Claimant, in fact, delivered four electrometers to Respondent as alleged in the third complaint. *(78-CC-718)*

5. That the claim herein duplicates a portion of the third complaint. *(78-CC-718)*

6. That Ill. Rev. Stat., Ch. 37, Sec. 26, (1977) states that there shall be but one satisfaction of any cause of action.

7. That Ill. Rev. Stat., Ch. 110, Sec. 48(c), (1977) states that another action pending between the same parties for the same cause is a ground for dismissal."

Motion for dismissal in this cause is hereby granted and said cause dismissed. All the matters contained herein can be disposed of in Case No. 78-CC-718.

(No. 77-CC-2300—Claimant awarded $8,134.20.)

ROY E. HOFER, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed October 4, 1978.

GARY M. ROPSKI, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; FRANCIS M. DONOVAN, Assistant Attorney General, for Respondent.

CONTRACTS-Outside counsel employed by State agency.
DAMAGES-Quantum Meruit.

PER CURIAM.

The Claimant in this case seeks recovery under two counts. The first count prays for an award of $8,134.20 under a contract and supplemental agreement for legal services entered into between the Illinois Pollution Control Board and the Claimant, Roy E. Hofer, of the law firm of Hume, Clement, Brinks, William, and Olds, Ltd., (hereinafter referred to as the Hume firm). The second count prays for an award of $14,786.70 under a theory of quantum meruit for legal services provided to the Illinois Pollution Control Board by the Hume firm.

This cause is before this Court on the basis of the complaint filed on November 29,1977, and a joint stipulation of facts entered into by the parties hereto. The complaint and the stipulation set forth the following facts:

1. On July 29, 1976, Russel R. Eggert, Assistant Attorney General and Acting Chief, Southern Region, Environmental Control Division of the Attorney General's Office sent a letter to Jacob D. Dumelle, Chairman, Illinois Pollution Control Board (hereinafter referred to as the Board) in which permission was granted to the Board to appear through counsel of its choice in ***Caterpillar Tractor Company v. Pollution Control Board, et al., Third District No. 76-114*** (hereinafter referred to as the Caterpillar litigation).
2. Pursuant to the grant of authority contained in said letter, the Board entered into an Agreement with Roy E. Hofer on August 12,1976. The Agreement authorized Hofer to represent the Board and to incur disbursements necessary in Hofer's judgment in the Caterpillar litigation before the Ill. App. 3d. The Board agreed to pay for the legal services

rendered and disbursements incurred, by Hofer and other lawyers and personnel of the Hume firm in representing the Board in the Caterpillar litigation, said legal services not to exceed $5,000.00 unless approved by the Board. No limit was placed on the amount of disbursements allowable according to Hofer's judgment.

3. On October 4, 1976, the Ill. App., 3d entered an order pursuant to Ill. Rev. Stat., Ch. 14, para. 6 "Illinois Attorney General Act" confirming the appointment of Hofer as substitute counsel for the Board.
4. On February 17, 1977, the Board and Hofer entered into a supplemental agreement approving a $6,500.00 fee for legal services rendered by Hofer and the Hume firm through January 31, 1977, in the Caterpillar litigation and further authorized Hofer and the Hume firm to provide legal services in representing the Board at oral argument before the Ill. App., 3d in the Caterpillar litigation. The fee for said legal services was not to exceed $1,250.00 unless approved by the Board. Once again, no limit was placed on the amount of disbursements allowed by the supplemental agreement according to Hofer's judgment.
5. Claimant, Hofer, has provided the services required in said agreement (August 12, 1976) the supplemental agreement (February 17, 1977), has incurred disbursements as a result thereof and has performed all other obligations required of him by the agreement and supplemental agreement.
6. In fulfilling the terms of said agreement and supplemental agreement, Hofer and an associate of the Hume firm spent 129.5 hours and 152 hours respectively for a total of 281.5 hours working on the Caterpillar litigation. For this time, pursuant to said contracts, Claimant seeks an award of $7,750.00 or $27.53 per hour.
7. In fulfilling the terms of his contracts with the Board, Claimant Hofer incurred disbursements in the amount of $384.20 for Xeroxing, long distance telephone calls, and filing fees during the course of the Caterpillar litigation.
8. Claimant, Hofer's total claim under his contracts with the Board is for $8,134.20.
9. The Respondent, the Illinois Pollution Control Board, and the Claimant have entered into a joint stipulation agreeing that the Claimant, Roy E. Hofer, be awarded the sum of $8,134.20.

The award stipulated by the parties hereto is justified because the agreement and supplemental agreement were entered into with the permission of the Attorney General. Furthermore, the appointment of Hofer as counsel for the Board was confirmed by the Ill. App., 3d, pursuant to *Ill. Rev. Stat., ch. 14, para. 6* ("Illinois Attorney General Act").

It is established law in the State of Illinois that the

Attorney General "is the law officer of the people, as represented in the State Government, and its only legal representative in the Courts. ***"Fergus v.*** Russel, ***270 Ill. 304; Stein v. Howlett, 52 Ill. 2d 570; People ex rel. Scott v. Briceland, 65*** Ill. *2d 485."* See also 1970 ***Illinois Constitution, Article V, Section 15; Ill. Rev. Stat. ch. 14, para. 4.*** As the State's sole legal officer, the Attorney General has the power to permit other attorneys to assist him in performing his responsibilities such as those of representing a State agency, the Illinois Pollution Control Board.

There can be no question that in this case the Board looked to the Attorney General for representation in the Caterpillar litigation, as reflected in the July 29, 1976, letter from Russel R. Eggert. The letter then states:

> **"[P]ermission is herewith granted to the Pollution Control Board to appear through counsel of its own choice. . . ."**

Therefore, this Court is faced with a situation wherein the Attorney General, after due deliberation, granted permission to a State agency to retain outside counsel to appear on its behalf before a Court of this State.

Because the Board sought and obtained permission from the Attorney General to retain private counsel beforehand, the Attorney General retained his role of chief legal officer of the State, and his duties of directing the legal affairs of the State and its agencies. Far from hampering the execution of the Attorney General's duties, the hiring of outside counsel permitted the Attorney General to accomplish his responsibility of ensuring that the Board was properly represented, when other considerations apparently made it difficult, inconvenient or impossible for him or his staff to do so personally.

The facts, now before this Court, further reflect that the Ill. App., 3d, entered an order pursuant to the "Attorney General Act" confirming Claimant, Hofer, as the substitute counsel for the Board. The propriety of Hofer's appointment as counsel is therefore unquestioned.

The second count of the complaint filed herein seeks recovery of **$14,786.70** under a theory of quantum meruit. It is established law in the Court of Claims that recovery against the State of Illinois cannot be had in quantum meruit. ***Schutte & Koerting Company, et al v. State of Illinois, 22 Ill.Ct.Cl. 591,626.*** Therefore, Claimant's plea for relief under Count II of the complaint herein is hereby denied.

Accordingly, based upon the complaint and attached exhibits and the joint stipulation and attached exhibits, this Court hereby awards the Claimant, Roy E. Hofer, the amount of **$8,134.20** in full payment and satisfaction for legal services rendered pursuant to the agreement (August **12,1976)** and supplemental agreement (February **17, 1977)** with the Illinois Pollution Control Board for representation in the Caterpillar litigation before the Ill. App., 3d.

(No. 77-CC-2385—Claimant awarded $20.45.)

BOB SHELTON, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed June 28, 1978.

PRISONERS **AND** INMATES—*Bailments.* **State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.**

POLOS, C.J.

This is a claim brought by Bob Shelton, an inmate of Stateville Correctional Center, for the loss of certain items of personal property allegedly of the value of $20.45.

At the hearing of the cause, Claimant established by the preponderance of the evidence that on September 23,1977, he was a prisoner in the Joliet Correctional Center, Joliet, Illinois. On that date he was ordered transferred to the Stateville branch. At that time he was the owner of and had in his possession in his cell at Joliet various items of personal property. Prior to transfer, his property was inventoried by a guard and put in a paper bag and a box for transfer. The items in question are a pair of slacks and a pair of jeans purchased new at the Commissary on September 13,1977,for $20.45 and never worn. These were among the items placed in the paper sack.

Three weeks after arriving at Stateville he was given all of his personal property except the jeans and the slacks which were not in the paper bag.

Claimant duly filed a grievance, but the missing property was never found.

This Court held in ***Doubling u. State,*** *32 Ill.Ct.Cl.1,* deciding that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of and inmate transfer between penal institutions.

In ***Bonner u. Coughlin,*** *517 F. 2d 1311 (1975),* our Court of Appeals acknowledged a prisoner's rights to sue in Illinois Court of Claims for loss of property occasioned by the negligent acts of State employees.

While bailment is ordinarily a voluntary contrac-

tual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

"A constructive bailment can be created between an owner of the property and one in possession thereof." 4A Illinois Law and Practice 550, Bailments, citing ***Chesterfield Sewer & Water, Inc., v. Citizens Insurance Co. of New Jersey, et al., 57 Ill. App. 2d 90, 207 NE2d 84.***

In ***Chesterfield,*** the Court quotes from ***Woodson v. Hare, 244 Ala. 301, 1350 2d 172, at 174, as follows:***

"An actual contract or one implied in fact, is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and presented no testimony of its freedom from negligence. Claimant's prima facie case, therefore, stands unrebutted.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of **$20.45.**

(No. 78-CC-2446 — Claimant awarded $21,684.76.)

ROY E. HOFER, Claimant, *v.* **STATE** OF ILLINOIS, Respondent.

Opinion filed October 4, 1978.

GARY M. ROPSKI, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; FRANCIS M. DONOVAN, Assistant Attorney General, for Respondent.

CONTRACTS—outside counsel employed by state agency.
DAMAGES—Quantum meruit.

PER CURIAM.

The Claimant in this case seeks recovery under a theory of contract in two counts. Both counts are founded upon a contract and supplement thereto between Claimant, Roy E. Hofer, of the law firm of Hume, Clement, Brinks, William and Olds, Ltd., (hereinafter referred to as the Hume Firm) and the Illinois Pollution Control Board (hereinafter referred to as the Board). The first count prays for an award of $21,684.76 pursuant to the terms of the contract and supplement thereto. The second count prays for an award of $29,956.01 under a theory of quantum meruit for the value of services rendered pursuant to the contract and supplement thereto. For purposes of this opinion only the first count will be considered.

This cause is before this Court on the basis of the complaint and exhibits filed on December 14, 1977, and a joint stipulation of facts and attachments thereto entered into by all the parties. The complaint, joint stipulation and the associated exhibits reveal the following facts:

1. On December 30, 1975, Richard W. Cosby, Chief of the Environmental Control Division of the Attorney General's Office sent a letter to Jacob Dumelle, Chairman, Illinois Pollution Control Board, in which permission was granted to the Board to retain counsel to represent the Board in the ***Illinois Environmental Protection Agency v. Illinois Pollution Control Board*** case (hereinafter referred to as the First District litigation).
2. On June 10, 1976, Richard W. Cosby sent another letter to Jacob Dumelle in which permission was granted to the Board to retain counsel to represent the Board in the Peterson/Puritan appeal (hereinafter referred to as the Fourth District litigation).

3. Pursuant to the grants of authority from the Attorney General contained in said letters, the Board entered into two agreements (the First and Fourth District Agreements) with Roy E. Hofer on August 12, 1976. The First District Agreement authorized Hofer to represent the Board and to incur disbursements necessary in Hofer's judgment therefore in the First District litigation. The Board agreed to pay for the legal services rendered and disbursements incurred by Hofer and other lawyers and personnel of the Hume firm in representing the Board in the First District litigation, said legal services not to exceed $5,000.00 unless approved by the Board. No limit was placed on the amount of disbursements allowable according to Hofer's judgment. The Fourth District Agreement was similar in substance except that the legal services and disbursements were for Hofer's representing the Board before the Ill. App., 4d litigation.
4. On January 28, 1977, the Supreme Court of Illinois granted the Board's petitions for leave to appeal in the First and Fourth District litigation.
5. On January 28, 1977, Hofer and the Board entered into two supplemental agreements (First and Fourth District Supplemental Agreements). In the First District Supplemental Agreement, the Board authorized Hofer and the Hume firm to provide legal services in representing the Board before the Supreme Court of Illinois in the First District litigation. The Board agreed to pay the disbursements authorized by Hofer and the legal services he and others of the Hume firm rendered on behalf of the Board in said litigation. The fee for said legal services was not to exceed $5,000.00 unless approved by the Board. No limit was placed on the amount of disbursements allowable according to Hofer's judgment. The Fourth District Supplemental Agreement was similar in substance except that the legal services and disbursements were for Hofer's representing the Board before the Illinois Supreme Court in the Fourth District litigation.
6. Claimant, Hofer, has provided the legal services required in the First and Fourth District Agreements and the supplements thereto, has incurred disbursements as a result thereof, and has performed all other obligations required of him by said agreements and supplemental agreements.
7. In fulfilling the terms of said agreements and supplemental agreements, Hofer and firm associates in the Hume firm spent a total of 523.25 hours working on the First and Fourth District litigation before the Ill. App., (First and Fourth Districts) and the Illinois Supreme Court. For this time, pursuant to said agreements and supplements thereto, Claimant seeks an award of $20,000.00 or approximately $28.22 per hour.
8. In fulfilling the terms of the agreements and Supplements thereto, Hofer incurred disbursements of $325.00 in the First District litigation, $261.00 in the Fourth District litigation, and $1,098.76 in the appeal of said litigation to the Illinois Supreme Court, for a total of $1,684.76. These disbursements were for Xeroxing, long distance telephone calls, filing fees and normal expenses associated with a Supreme Court appeal.

9. **Claimant, Hofer's, total claim in this case pursuant to the terms of the agreements and Supplements thereto with the Board is for $21,684.76.**
10. **The Respondent, the Board and the Claimant have entered into a joint stipulation agreeing that the Claimant, Roy E. Hofer, be awarded the** sum **of $21,684.76.**

The award stipulated by the parties hereto is justified because the agreements and supplemental agreements were entered into with the permission of the Attorney General.

It is established law in the State of Illinois that the Attorney General "is the law officer of the people, as represented in the State Government, and its only representative in the Courts." ***Fergus u. Russel, (1915), 270 Ill. 304; Stein u. Howlett (1972), 52 Ill. 2d 570; People ex rel. Scott u. Briceland, 65 Ill. 2d 485.*** See also ***1970 Illinois Constitution, Article V, Section 15; Ill. Rev. Stat. ch. 14, para. 4.*** Pursuant to his position as the State's sole legal officer, the Attorney General has the power to permit other attorneys to assist him to perform his responsibilities, such as those of representing a State agency, the Illinois Pollution Control Board.

It is apparent from the facts before this Court that prior to contracting with Mr. Hofer, the Board did seek the permission of the Attorney General to retain outside counsel. Two letters from Richard W. Cosby, Assistant Attorney General, granting such permission pre-date the agreements with Mr. Hofer. Regarding the First District litigation, the Board obtained authority from the Attorney General to retain outside counsel on December **30, 1975.** Similarly, in the Fourth District litigation, the Attorney General withdrew his appearance on behalf of the Board on June **9, 1976,** and granted permission to the Board to represent itself on June **10, 1976.** Both the First and Fourth District Agreements between the Board and Mr. Hofer are dated August **12,1976.**

Because the Board sought and obtained permission from the Attorney General to retain private counsel beforehand, the Attorney General retained his role of chief legal officer of the State, and his duties of directing the legal affairs of the State and its agencies. Far from hampering the execution of the Attorney General's duties, the hiring of outside counsel permitted the Attorney General to accomplish his responsibility of ensuring that the Board was properly represented, when other considerations apparently made it difficult, inconvenient or impossible for him or his staff to do so personally.

As to the second count of the complaint filed in this action, Claimant prays for an award of **$29,956.01** based on a theory **of** quantum meruit. It is established law in the Court of Claims that recovery cannot be had under quantum meruit against the State of Illinois. ***Schutte & Koerting Company, et al. v. State of Illinois, 22 Ill.Ct.Cl. 591,626.*** Therefore, Claimant's recovery under Count II of the complaint herein is hereby denied.

Accordingly, the Claimant, Roy E. Hofer, is hereby awarded the amount of **$21,684.76** in full payment and satisfaction for legal services rendered and disbursements incurred pursuant to the First District Agreement (August 12, 1976), and Fourth District Agreement (August **12,** 1976), and First District Supplemental Agreement (January **28,1977)** and the Fourth District Supplemental Agreement (January **28,1977)** between the Claimant and the Illinois Pollution Control Board for legal representation before the Illinois Appellate Courts, First and Fourth Districts and subsequently before the Illinois Supreme Court.

(No. 77-CC-2458—Claimant awarded $194.00.)

DELBERT SCOTT, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed September 18, 1978.

PRISONERS AND INMATES—*Bailments.* **State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.**

POLOS, J.C.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

The record establishes that on July **26,1977,** Claimant was in possession of a Panasonic AM FM radio and tape player, and a television set. These items had been purchased in November, **1976,** and September, **1975,** respectively, for a total of **$194.00.** On July **26, 1977,** Claimant was taken from the Stateville Correctional Center to St. Joseph Hospital in Joliet, Illinois, and prison authorities took possession of the aforesaid property. The items were not returned to Claimant upon his return from the hospital.

This Court held in Doubling *v.* State, **32** Ill.Ct.*Cl.1,* deciding that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

"A constructive bailment can be created between an owner of the property and one in possession thereof." **4A** Illinois Law and Practice 550, Bailments, citing ***Chesterfield Sewer & Water, Inc., v. Citizens Insurance Co. of New Jersey, et al., 57 Ill. App. 2d 90, 207 NE2d 84.***

In ***Chesterfield,*** The Court quotes from ***Woodson v. Hare, 244 Ala. 301, 13 So2d 172, at 174,*** as follows;

"An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and presented no testimony of its freedom from negligence.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of $194.00.

(No. **77-CC-2491- Claim denied.)**

LOUIS C. MALONE, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed November 2,1978.

PRISONERS AND INMATES—Bailments. **State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.**

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

Claimant complains that he was deprived of the possession of a stereo tape player. On cross examination, Claimant admitted that prison officials had found his stereo after the instant claim was filed, and had offered to return it to him, but that he refused to accept return of the item.

As the property in question is no longer lost, and has been made available to Claimant, the Court finds that this claim has been rendered moot.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. **78-CC-0015 — Claimant awarded $360.00.)**

ILLINOIS VALLEY SHELTERED WORKSHOP, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed August 9,1978.

This cause coming on to be heard on the motion of Respondent to dismiss, and the Court being fully advised in the premises.

It is hereby ordered that Respondent's motion to dismiss be, and hereby is, denied.

It is further ordered, in view of the departmental report herein which admits liability on this claim, that Claimant be, and hereby is, awarded the sum of $360.00 in full satisfaction of its claim.

(No. 78-CC-0055 - Claim dismissed.)

JAMES THOMAS a/k/a JAMES PASLEY, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed November 14, 1978.

PRISONERS AND INMATES—*Prisoner's trust fund.*

This cause coming to be heard on the motion of the Respondent to dismiss, due notice given to the Claimant, and the Court being fully advised, finds that pursuant to Rule **14** of the Court, the report **of** the Department of Corrections is prima facie evidence that the Respondent exercised ordinary care with regard to the deposit of the check at issue. The deposit of the check into the account of an individual by the same name of the Claimant does not create a cause of action against Respondent in the absence of an allegation that the duty of ordinary care owed to Claimant was breached. There is no allegation of any breach of duty owed to the Claimant.

It is hereby ordered that the motion of the Respondent to dismiss, be and the same is hereby granted and the complaint is dismissed.

(No. 78-CC-0359 — Claimant awarded $4,658.40.)

MASON & MEENTS CONSTRUCTION Co., Claimant, *u.* STATE OF ILLINOIS, Respondent.

Opinion filed August 21,1978.

PRACTICE AND PROCEDURE— Unauthorized practice of law. Corporations are prohibited from representing themselves in any litigation before a Court.

PER CURIAM.

On August 3,'1978, this Court entered an order granting motion of Respondent to dismiss.

This order was based upon representation that the Claimant was a corporation which had filed its own claim.

Since the above order was entered, the Court has received a letter from Claimant, dated May 30, 1978, setting forth that Claimant is not a corporation but is a co-partnership.

The previous order of dismissal is hereby revoked and award is entered in the amount of $4,658.40 in favor of Claimant.

(No. 78-CC-0516 — Claimant awarded $94,689.06.)

JAMES F. SHIMEALL, Claimant, *u.* STATE OF ILLINOIS, Respondent.

Opinion filed March 15, 1979.

STANLEY K. STEWART, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; PAUL M. SENPIEHL, Assistant Attorney General, for Respondent.

STATE EMPLOYEE BACK SALARY CASE—Mitigation of damages.

SAME—*Elements of damages for wrongful discharge.* Items not compensable as damages in a wrongful discharge case include State's contribution toward health and life insurance and sums representing compensation for vacation days and holidays not taken.

HOLDERMAN, J.

This matter comes before the Court on complaint filed by Claimant for back salary allegedly due him as a result of a discharge. The claim covers wages lost from March 5,1973, through June 30,1977.

At the time of his discharge from his certified position, Claimant was a Technical Advisor V with the Department of Personnel. On approximately May 20, 1977, the Civil Service Commission of the State of Illinois, ruled that Claimant's discharge from his certified position was improper and illegal and ordered the Department of Personnel to reinstate Claimant in his position.

Because of ambiguities in the Civil Service Commission's order, in June, 1977, Claimant and a co-complainant, one Robert Rayford, filed an Administrative Review Action in the Circuit Court of Sangamon County, Illinois. In October, 1977, Claimant and the defendants in the Administrative Review Action, namely, the Civil Service Commission and the Department of Personnel, settled the Administrative Review Action, the written settlement agreement filed in the case providing in part as follows:

"2. Mr. James F. Shimeall will be reinstated as a Technical Advisor V, Pay Grade 25, Step 7, in the Department of Personnel, effective November 15, 1977. Mr. Shimeall has been offered and accepted a position with another State Agency; and Mr. Shimeall will apply for voluntary reduction and transfer to that position in another State Agency effective November 16, 1977.

3. Mr. Shimeall and Mr. Rayford are entitled to full back salary and benefits for the period from March 5,1973, to the effective dates of Mr. Shimeall's transfer and Mr. Rayford's resignation, subject to mitigation for earnings received from other employment and to other rules and requirements of the Court of Claims of the State of Illinois.

4. Mr. Shimeall and Mr. Rayford will file their claims in the Court of Claims for salary and benefits for the period from March 5,1973, to June 30, 1977. Said claims shall be for the salary and benefits of paragraph three less the following:

a. Accrued vacation time for Mr. Shimeall totalling six weeks which Mr. Shimeall will retain and which the State Agency to which he will transfer has agreed to accept.

5. Department of Personnel will immediately process a supplemental payroll to pay Mr. Shimeall and Mr. Rayford the following amounts, which represent full compensation for the time period from July 1,1977, through October 31, 1977, for Mr. Rayford, and from July 1,1977,through November 15,1977 for Mr. Shimeall:

a. Mr. Shimeall: $8,550.50
b. Mr. Rayford: $4,205.00

It is understood that the Department shall deduct from the above-stated amounts appropriate deductions for Federal and State Income tax, FICA (Federal Insurance Contributions Act), and State Employees' Retirement System of Illinois.

6. a. Mr. Shimeall and Mr. Rayford will receive full-time credit toward their retirement for the period from March 5,1973, through October 31,1977, for Mr. Rayford, and through November 15, 1977, for Mr. Shimeall.

b. Mr. Shimeall and Mr. Rayford are entitled to pay back to the State Employees Retirement System of Illinois, all contributions required to receive said credit and any amounts previously withdrawn. Said repayments shall be due to the System when the award from the Court of Claims is received pursuant to the Rules and Regulations of the System."

It is acknowledged by the Respondent that the gross pay due Claimant for the period March 5,1973, through June 30,1977, was $124,690.64.

Claimant introduced into evidence copies of his federal income tax returns for the years 1973 through and including 1977, and gave testimony as to his earnings during such period. It is found that Claimant's admit their claim should be reduced by $30,517.89 for mitigation purposes. Included in the total mitigation earnings submitted by Claimant was the sum of $2,092.00 partnership earnings for the period of January 1, 1977, to July 1, 1977. However, his 1040 tax return showed an income of $10,292.00 for 1977 from the partnership. Lacking any other reasonable approach, we are prorating one-half of that amount, or $5,146.00, to the first six months of 1977. Thus, instead of $2,092.00 earnings in mitigation for this period, we are adding an additional $3,054.00. This makes a total

of $33,571.58 in mitigation, instead of $30,517.89. The State argues that a $5,000.00 withdrawal by the Claimant from the partnership in December should be charged to the extent of 80 percent to the time before November 15, 1977, since 80 percent of the work of a certain condemnation litigation was performed prior to then. This is not convincing as it would then be necessary to audit the books of the partnership on the accrual basis to determine exactly how much was earned before a certain date and how much after. While our approach has to be logical and consistent with acceptable accounting practices, we are making our findings consistent with the cash basis method of bookkeeping followed by the firm in 1977 and previous years.

Claimant makes certain additional claims. He claims what would have been the State's contribution to health and life insurance policies if he had been on the State payroll from March 5,1973, through June 30, 1977. While the guideline furnished by the Circuit Court of Sangamon County, Illinois, to this Court sets forth that Claimant is entitled to full back salary and benefits, to date, this Court has never included in back salary and benefit awards, any sum for the State's contribution to the employees' group hospital and life insurance coverage. This part of the claim is denied.

Claimant also claims pay for 45 holidays and 30 vacation days during the period March 5,1973, through June 30, 1977. There is no basis for Claimant's claim for holidays. As brought out in the testimony, the semi-monthly pay period for which State employees are paid includes all holidays. If an employee is required to work on a holiday he is entitled to compensatory time off for that particular holiday, or he can add it to his

vacation time as an extra day. However, since Claimant was not working for the State during the period of his wrongful discharge, obviously he was not required to work on holidays. Thus he earned no compensatory or vacation time for such holiday work. That portion of Claimant's additional claim is denied.

As part of Claimant's settlement with the Department of Personnel he was awarded **30** days accrued vacation time to be accepted by the State Agency to which he transferred. He claims an additional **30** days because a full **60** days vacation time was lost. There is nothing in the record to indicate that Claimant should be barred from this additional claim. In ***Harrington v. State 30 Ill.Ct.Cl. 67, this Court recognized accrued vacation pay as proper for a claim. Claimant is awarded $3,570.00 for the 30 days vacation pay.***

In summary, this Court makes an award based on the following gross figures:

Gross pay due	**$124,690.64**
Plus vacation pay due	**3,570.00**
Total	**$128,260.64**
Less mitigation earnings	**33,571.58**
Gross Award	**$ 94,689.06**

Accordingly, there is hereby awarded to Claimant the amount of **$94,689.06** for back salary, plus the State's contribution to the State Employees' Retirement System and to FICA. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to FICA.

(No. 78-CC-0523—Claimant awarded $32,833.08.)

JOHN PARSONS, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed March 15, 1979.

SHIMEALL and STEWART, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; PAUL M. SENGPIEHL, Assistant Attorney General, for Respondent.

STATE EMPLOYEE BACK SALARY CASE—Duty to mitigate damages.

HOLDERMAN, J.

This matter comes on before the Court on a complaint for wages allegedly due him as a result of the layoff as provided for in Ill. Rev. Stat., Ch. **127,** Sec. **63b 111.**

From the stipulation and evidence introduced at the hearing, it appears:

A. That on October 9, 1973, Claimant was discharged from his certified position as Executive V, Grade 25 with the Industrial Commission.

B. That on October 16, 1973, Claimant filed an appeal with the State Civil Service Commission of Illinois alleging that his removal from his position was illegal and fraudulent and contrary to the Personnel Code of Illinois.

C. That subsequently the Civil Service Commission' of the State of Illinois conducted a hearing into Claimant's removal from his certified position.

D. That on May 23, 1975, the Civil Service Commission of the State of Illinois ruled that Claimant's removal was justified.

E. That on June 26, 1975, Claimant appealed said Ruling to the Circuit Court of Cook County under the provision of the "Administrative Review Act."

F. That on March 31, 1976, the Circuit Court of Cook County overturned the decision of the Civil Service Commission and ordered Claimant to be put back in his job.

G. That on April 15, 1976, the State of Illinois appealed said order of the Circuit Court of Cook County to the Appellate Court of Illinois 1st District.

H. That on June 29, 1977, the Appellate Court of Illinois 1st District affirmed and upheld the decision of the Circuit Court of Cook County and ordered Claimant to be reinstated. On July 1, 1977, Claimant was reinstated to his certified position by the Industrial Commission of the State of Illinois.

The only issue before the Court is the amount of compensation as wages due the Claimant because of his wrongful discharge. It was stipulated that the amount due as wages amounted to $102,621.35. To be deducted from this sum is the amount of earnings he had while away from his State of Illinois employment, which sum is to be deducted in mitigation of his total claim, as provided for in the Act.

While employed by the State of Illinois, Claimant also worked as a consultant to various companies in the evenings and on weekends. Some time after being laid off Claimant obtained full-time employment with the Federal Reserve Board. He received from his full-time employer compensation, which, when added to his unemployment compensation, amounted to the sum **of $69,788.27.** While working full-time with the Federal Reserve Board he continued to do consulting work evenings and on weekends, just as he had while working for the State.

During the period prior to his employment with the Federal Reserve Board, Claimant worked a total of **22** hours at **$50.00** an hour rate, receiving $1,100.00 for such consulting work. Respondent claims that his $1,100.00 should be deducted from the sum of $32,833.08, which is the amount Respondent claims is due him after deducting his regular employment wages from the stipulated wages which would have been paid him by the State of Illinois.

Respondent bases this on the fact that this was the only amount of earnings he received during that particular off period.

In ***Wagner v. State 26 Ill.Ct.Cl. 402,*** we allowed a discharged employee to retain for himself, wages he earned during hours which were in excess of the hours

he worked for the State. While working for the State he worked 45 hours a week. When suspended he worked **60** hours a week. The Court did not require him to use in mitigation the extra wages earned during the extra 15 hours. The present case is similar in spirit and to compel Claimant to account for wages made during extra hours would be unreasonable.

The Court holds that Claimant is entitled to back salary in gross amount of **$102,621.35** less **$69,788.27** income earned, including unemployment compensation, in mitigation of the loss.

Accordingly, there is hereby awarded to Claimant the amount of $32,833.08 for back salary, plus the State's contribution to the State Employees' Retirement System and to FICA. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to FICA.

(No. 78-CC-0586—Claimant awarded $168.95.)

DOUGLAS BROWN, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed February 18,1979.

PRISONERS AND INMATES—Bailments. **State has a duty to exercise reasonable care to safeguard and return an inmates property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.**

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was

allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Ilinois, and that the State is liable as a bailee for the return of that property.

The record herein establishes by the preponderance of the evidence that in July, **1977,** Claimant requested permission for a color television set, a gift from friends. He had in his cell at the time a black and white **12** inch Admiral costing **$99.00.** Residents are not allowed to have two television sets in their cells, so Claimant surrendered the black and white Admiral set to Mr. Elmer L. Maxwell, Property Control Office, to be picked up by a friend. On September **4,1977,** employees at the front gate erroneously gave the television set to the wrong person. The institution has never recovered the television set.

Additionally a pair of work shoes costing **$39.93** were confiscated from Claimant on January **22,1977,** by officers of the institution, and never returned, and a sterling silver neck chain costing **$30.00** was confiscated from Claimant by officers of the institution on May **8,1977,** and never returned.

This Court held in ***Doubling*** *v.* State, **32** Ill. Ct. *Cl.1,* deciding that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

"A constructive bailment can be created between an owner of the property and one in possession thereof." Chesterfield Sewer & Water, Inc., *v.* Citizens Insurance Co. **of** New Jersey, et *al.*, 57111. ***App.2d 90, 207 NE2d 84.***

In ***Chesterfield,*** the Court quotes from ***Woodson v. Hare, 244 Ala. 301, 13 So2d. 172, at 174,*** as follows;

"An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law, generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's property, and presented no testimony of its freedom from negligence.

At the trial of the cause the State presented no testimony to explain the failure of the institution to return Claimant's items of property to him, and presented no testimony of its freedom from negligence.

It is therefore ordered that Claimant be, and hereby is awarded the sum of $168.95.

(No. 78-CC-0623—Claimant awarded $236.41.) .

DR. RALPH H. COUNCIL, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed on November 29,1978.

This matter comes before the Court on a motion by Respondent to dismiss this cause.

In a recent case, ***Jewel*** Food ***Stores, Division of Jewel Companies, Inc. v. State*** *of* ***Illinois, No. 77 CC*** 095, this Court made a ruling in cases of this nature.

Based upon said decision, Respondent's motion to dismiss is hereby denied and an award is entered in the amount of **$236.41** in favor of Claimant.

(No. **78-CC-0648—Claimant awarded $24.00.)**

EVELYN COLE, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed September 29,1978

STIPULATED SETTLEMENTS—*Overpayment of vehicle license fee.*

PER CURIAM.

This matter comes before the Court on a stipulation by Respondent which states as follows:

"**1.** That the complaint herein originally sought **$144.00** in license fee overpayments.

2. That pursuant to an order of the Court dated August **3,** 1978, the allowable recovery on this claim was reduced to **$24.00.**

3, That according to the report submitted by the Illinois Secretary of State, dated May 10,1978, Claimant in fact made overpayments of her license fee.

4. That under Ill. Rev. Stat., Ch. 95 1/2, Sec. **3-824** (6), 1977, the Secretary of State is authorized to make refunds of overpayments made within six months prior to a refund application.

5. That the $24.00 cannot be directly refunded by the Secretary of State in that the amounts were paid by Claimant one and two years ($12.00 each year) before she requested a refund.

6. That under Ill. Rev. Stat., Ch. 95 1/2 Sec. 3-824 (d), 1977, the Claimant must apply to the Court of Claims for this refund.

7. That there being no disputed questions of fact, Respondent agrees to an entry of an award of $24.00.

There being no matters under dispute, an award is hereby entered in the amount of $24.00.

(No. 78-CC-0701—Claimant awarded $15.43.)

EARNEST JENNINGS, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed April 6, 1979.

PRISONERS AND INMATES—*Bailments.* **State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.**

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of that property.

The record herein establishes that on August 13, 1976, when he arrived at the Joliet Correctional Center, penitentiary authorities took from Claimant his toliet

articles and cigarettes having a value of $15.43. Claimant was told that he would receive the articles shortly after processing, but the articles were never returned to him.

This Court held in ***Doubling u. State, 32 Ill.Ct.Cl.1,*** deciding that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

> "A constructive bailment can be created between an owner of the property and one in possession thereof." Chesterfield ***Sewer & Water, Inc., v. Citizens Insurance Co. of New Jersey, et al., 57 Ill. App.2d 90, 207 NE2d 84.***

In ***Chesterfield,*** the Court quotes from ***Woodson v. Hare, 244 Ala. 301, 13 So2d. 172, at 174,*** as follows;

> "An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law, generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of this cause the State presented no testimony to explain the disappearance of Claimant's

property, and presented no testimony of its freedom from negligence.

Respondent has presented no evidence to explain the disappearance of Claimant's property, and no testimony to rebut the presumption of negligence that arises from the loss of the bailed property.

It is therefore ordered that Claimant be, and hereby is awarded the sum of $15.43.

(No. 78-CC-0707—Claimant awarded $82.50.)

EDWARD M. CAMPBELL, SR., Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed February 1, 1979.

PRISONERS *AND* INMATES—*Bailments.* State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of the property.

The record herein establishes that on January 17, 1977, Claimant, while confined at Stateville Correctional Center, had in his possession a 12 inch black and white Panasonic television set for which he had paid $82.50. On said date he went out on a writ to the Cook County Jail where he remained until February, 1978. In February, 1978, he was returned to Stateville.

During his absence from Stateville, Claimant's television was confiscated by prison guards, during the course of a shakedown inspection, and it has never been returned to him.

This Court held in ***Doubling v. State, 32 Ill.Ct.Cl.1,*** deciding that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

> "A constructive bailment can be created between an owner of the property and one in possession thereof." ***Chesterfield Sewer & Water, Inc., v. Citizens Insurance Co. of New Jersey, et al., 57 Ill. App.2d 90, 207 NE2d 84.***

In ***Chesterfield,*** the Court quotes from ***Woodson v. Hare, 244 Ala. 301, 13 So2d. 172, at 174,*** as follows;

> "An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law, generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of the cause the State presented no testimony to explain the failure of the institution to

return Claimant's items of property to him, and presented no testimony of its freedom from negligence.

Claimant's prima facie case, therefore, stands unrebutted.

It is therefore ordered that Claimant be, and hereby is awarded the sum of $82.50.

(No. 78-CC-0844—Claimant awarded $19.97.)

CHARLES HILL, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed April 6, 1979.

PRISONERS AND INMATES—*Bailments.* **State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.**

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of the property.

The record herein establishes that on December 20, 1976, while confined at Stateville Correctional Center, Claimant had in his possession a General Electric Clock Radio for which he paid $19.97. On that date the radio was taken from him by a guard, because it was playing too loud. The disciplinary committee denied him the use of the radio for 60 days, and at the end of the 60-day period, the radio could not be found.

This Court held in ***Doubling u. State, 32 Ill.Ct.Cl.1,*** deciding that the State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

While bailment is ordinarily a voluntary contractual transaction between bailor and bailee, various types of constructive and involuntary bailments have been recognized:

> "A constructive bailment can be created between an owner of the property and one in possession thereof." ***Chesterfield Sewer & Water, Inc., v. Citizens Insurance Co. of New Jersey, et al., 57 Ill. App.2d 90, 207 NE2d 84.***

In ***Chesterfield,*** the Court quotes from ***Woodson u. Hare, 244 Ala. 301, 13 So2d. 172, at 174,*** as follows;

> "An actual contract or one implied in fact is not always necessary to create a bailment. Where, otherwise than by mutual contract of bailment, one person has lawfully acquired the possession of personal property of another and holds it under circumstances whereby he ought, upon principles of justice, to keep it safely and restore it or deliver it to the owner, such person and the owner of the property are, by operation of law, generally treated as bailee and bailor under a contract of bailment, irrespective of whether or not there has been any mutual assent, express or implied, to such relationship."

The loss or damage to bailed property while in the possession of the bailee raises a presumption of negligence which the bailee must rebut by evidence of due care. The effect of this rule is not to shift the ultimate burden of proof from the bailor to the bailee, but simply to shift the burden of proceeding or going forward with the evidence.

At the trial of the cause the State presented no testimony to explain the failure of the institution to return Claimant's items of property to him, and presented no testimony of its freedom from negligence.

Respondent has conceded liability in this matter,

and has presented no testimony to explain the loss of Claimant's property.

It is therefore ordered that Claimant be, and hereby is awarded the sum of $19.97.

(No. 78-CC-1511—Claimant awarded $240.00.)

NADINE Y. FEADER/WEINSTOCK, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE—Retroactive salary increase based on collective bargaining agreement.

SAME—Arbitration.

PER CURIAM.

In the case of *John J.* Beard *v. State of Illinois,* **32** Ill. Ct. *Cl.*__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC 14 Collective Bargaining Agreement. The effective dates of the agreement are July 1, 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

"All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer."

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

> "Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed."

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate Ill. Rev. Stat., Ch. 127, para. 145.

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by

arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequest legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, John Beard, was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk II, a classification on the RC-14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section 4 of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a pro-rated basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978.

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the Beard case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Nadine Y. Feader/Weinstock was employed by the Department of

Public Aid. This Claimant, as was Mr. Beard, was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorated payment.

Accordingly, there is hereby awarded to Claimant the amount of $240.00 plus the State's contribution to the State Employee's Retirement System and to F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1048—Claim dismissed.)

CHARLES F. KELLY, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed September 29, 1978.

PRACTICE AND PROCEDURE — ***Statute of limitations for filing notice of personal injury.***

This matter comes before the Court on a motion filed by Respondent to dismiss the complaint.

As basis for said motion, Respondent calls attention to the fact that the accident giving rise to the present cause of action occurred on December 1, 1976, as set forth in the complaint.

Statutory notice was filed ten months and six days after the accident occurred.

Respondent's motion to dismiss sets forth as follows:

"That Ill. Rev. Stat. Ch. 37, Para. 439.22-1, 1977 provides in pertinent part that

"Actions for personal injuries — Notice — Contents Para. 22-1. Within six months from the date that such an injury was received or such cause of

action accrued, any person who is about to commence any action in the Court of Claims against the State of Illinois.. .for damages on account of any injury to his person shall file (a Notice of Intent to Sue) . . ."

Respondent further sets forth:

"That Ill. Rev. Stat. Ch. 37, Para. 439-22-2, 1977 provides in pertinent part that

"If the notice provided for by Section 22-1 is not filed as provided in that Section, any such action commenced against the State of Illinois.. .shall be dismissed and the person to whom any such cause of action accrued for any personal injury shall be forever barred from further action in the Court of Claims for such personal injury . . ."

The Court finds that Claimant has failed to comply with the statutory notice requirement, motion to dismiss is granted and said cause dismissed.

(No. 78-CC-1057—Claim dismissed.)

CRAIG SPRINGFIELD, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed July *25, 1978.*

PRISONERS AND INMATES—Bailment. Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In ***Bargas*** *v.* State, 32 *Ill. Ct. Cl.*__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which

inmates keep in their cells. In the companion case of ***Doubling u. State, 32 Ill.Ct.Cl.1,*** we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in ***Bargas u. State, supra,*** and ***Doubling u. State, supra,*** the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 78-CC-1112—Claim dismissed.)

CARL WELCHMAN, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed July 25, 1978.

PRISONERS *AND INMATES—Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas u. State, 32 Ill.Ct.Cl.*—, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling u. State, 32 Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's **property** was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas v. State, supra,* and *Doubling u. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 78-CC-1175—Claim dismissed.)

GEORGE COLES, Claimant, *v.* **STATE OF** ILLINOIS, Respondent.

Order filed August 9,1979.

PRISONERS AND INMATES—Bailment. Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was

allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas v. State*, **32** *Ill.Ct.Cl.*__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling v. State*, **32** *Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared **or** was damaged in Claimant's cell. Under our reasoning in *Bargas u. State, supra,* and ***Doubling*** *u. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 78-CC-1189 — Claim dismissed.)

ARTHUR J. INMAN, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Order filed October 23, 1978.

This cause coming on to be heard on the motion of the Respondent and the Court being fully advised in the premises find that the legislature has failed to appropriate funds for the purpose of paying the type of

fee claimed herein.

Chapter 38, Section 1005-2-4(c)(2) provides as follows:

"(2) Upon filing with the Court of a verified statement of legal services rendered by the private attorney appointed pursuant to paragraph (1) of this sub-section, the Court shall determine a reasonable fee for such services. If the defendant is unable to pay the fee, the Court shall enter an order upon the State to pay the entire fee or such amount as defendant is unable to pay ***from funds appropriated by the General Assembly for that purpose.***" (Emphasis added)

The statute is clear that the fee claimed herein may be awarded only from funds appropriated by the General Assembly for that purpose and inasmuch as funds were not appropriated there can be no award.

It is therefore ordered that this case be and the same is hereby dismissed.

(No. 78-CC-1223 — Claim dismissed.)

GEORGE MCLELLAN, Claimant, *v.* **STATE OF ILLINOIS**, Respondent.

Order filed August 9, 1978.

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas v. State*, **32** *Ill.Ct.Cl.*__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling* ***u.*** *State, 32 Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas* ***u.*** *State, supra,* and *Doubling v. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 78-CC-1262—Claim dismissed.)

WILLIE DONNIE SCALES, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed September 11, 1978.

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or

destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In ***Bargas u. State*, 32 *Ill.Ct.Cl.*—,** this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of ***Doubling** v. **State, 32** Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in ***Bargas u. State, supra,*** and ***Doubling u. State, supra,*** the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 78-CC-1269—Claimant awarded $119.98.)

JAMES RAMSEY, Claimant, *v.* **STATE** OF ILLINOIS, Respondent.

Opinion filed February 1, 1979.

PRISONERS *AND* **INMATES**—*Bailments.* State has a duty to exercise reasonable care to safeguard and return an inmate's property when it takes actual physical possession of such property during the course of the transfer of an inmate between penal institutions.

POLOS, C.J.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that the property in question was lost while in the actual physical possession of the State of Illinois, and that the State is liable as a bailee for the return of the property.

The record herein establishes that on December 7, 1976, Claimant, while confined at Stateville Correctional Center had in his possession an eight track, AM/FM tape player for which he had paid $119.98. At about four o'clock p.m. on said day, his tape player was taken from him by a guard, because he was playing it too loud. The disciplinary committee denied him the use of the tape player for 90 days. At the end of the 90 days the tape player could not be found in the property control room, and has never been returned to Claimant.

The Respondent has conceded liability, and Claimant's claim is fully documented by Exhibits attached to complaint.

It is therefore ordered that Claimant be, and hereby is, awarded the sum of $119.98.

(No. 78-CC-1292—Claim dismissed.)

JOHN E. BUTCHER, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Order filed September 11, 1978.

PRISONERS AND INMATES—Bailment. **Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.**

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In ***Bargas u. State, 32 Ill.Ct.Cl.***__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of ***Doubling u. State, 32 Ill.Ct.Cl.1,*** we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's **cell.** Under our reasoning in ***Bargas u. State, supra,*** and ***Doubling u. State, supra,*** the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 78-CC-1306—Claim dismissed.)

MARZELL REED, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed November 2,1978.

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas u. State,* ***32*** *Ill.Ct.Cl.*__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling u. State,* ***32*** *Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas u. State, supra,* and *Doubling v. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 78-CC-1307 — Claimant awarded $4,000.00.)

LEO **PALMERI,** Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed May 8, 1979.

PATRICK J. CADIGAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; WILLIAM E. WEBBER, Assistant Attorney General, for Respondent.

CONTRACTS—*State* auction. Where State represented at auction that a certain vehicle had far less mileage on it than it had in actuality, damages were awarded accordingly.

PER CURIAM.

This claim arises out of the purchase of a State motor vehicle from the Illinois Department of Administrative Services.

This Court Finds:

1. That a stipulation of fact was entered into by the Claimant and the Illinois Department of Administrative Services. These facts were later introduced into evidence at a hearing, and were uncontraverted by the Respondent. These facts are as follows:

a. That on June 24, 1978, the Respondent held an auction of surplus State vehicles at the State Fairgrounds in Springfield, Illinois.

b. That at the time and place aforesaid, a certain 1967, GMC bus with Vin No. SDH 4502043 was displayed for sale by Respondent; that said vehicle as offered for display had a certain mileage number written on the windshield of said vehicle.

c. That the Respondent, although not obligated to furnish an odometer certificate did furnish one following the conclusion of the auction.

d. *That* the vehicle in question had previously been used by the Department of Mental Health and

Developmental Disabilities and the maintenance records for the vehicle were not obtained by Respondent prior to the State vehicle auction of June 24, 1978.

e. That the odometer reading of 44,656 miles was inaccurate, that the original odometer had been replaced in 1972 by Mental Health and that the vehicle actually had in excess of 300,000 miles.

f. That the estimated fair market value of the vehicle, considering the need for a major engine overhaul and the true mileage, is $500.00.

g. That the vehicle was purchased at the State auction on June 24, 1978 for $4,500.00.

2. The testimony of Claimant proved out these facts as stated in No. 1 above. The Claimant was qualified as an expert witness and testified that the true market value of the vehicle in question was $500.00. He also stated that the vehicle was tendered back to the State for the purchase price, but was refused.

3. The State, by counsel, cross-examined Claimant but his testimony remained uncontravented. The State offered no evidence or rebuttal witnesses.

4. The right to file briefs were waived by counsel for both parties.

It is hereby ordered that the sum of $4,000.00 be, and is hereby awarded to Claimant, Leo Palmeri, in full satisfaction of any and all claims presented to the State of Illinois under the above-captioned cause.

(No. 78-CC-1325 — Claimant awarded $812.00.)

ROBERT CLADWELL, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed February 15,1979.

STATE EMPLOYEES BACK SALARY CLAIMS—Payment of back pay due because of administrative oversight is not additional payment for work already performed.

PER CURIAM.

The record in this cause indicated the purpose of the expenditure by the Department of Transportation for which this claim was filed was set forth in Case #AA-105-78 before the Civil Service Commission of the State of Illinois and therein the commission held the petitioner was improperly classified as a Clerk IV when in fact the proper classification should have been Safety Responsibility Analyst I.

The Attorney General filed an extensive Memorandum of Law to which this Court subscribes, in the main. The text of the Memorandum with certain deletions by the Court, is as follows:

"This claim arises out of an employee request for a job audit and reallocation to a higher job classification, and subsequent claim for retroactive salary commensurate with a retroactive reallocation.

The Claimant in the case at bar pursued his request for reallocation through the remedy provided by the Civil Service Commission where he was found to have been entitled to be reallocated.

Following the Civil Service Commission ruling, the Department of Personnel determined the Claimant to be entitled to certain back pay and arranged for payment of retroactive salary differential for the then current fiscal period and instructed him that he would have to go to the Court of Claims for the differential falling in the lapsed fiscal period.

The amount claimed is $812.00 and is from the

period of time April **16,1977** through June **30,1978.**

Ill. Rev. Stat., Ch. **127,** Para. **145** provides as follows:

> *"Amounts paid from appropriations for personal service of any officer or employee of the State, either temporary or regular, shall be considered as full payment for all services rendered between the dates specified in the payroll or other voucher and no additional sum shall be paid to such officer or employee* **from any lump sum appropriation, appropriation for extra help or other purpose or any accumulated balances in specific appropriations,** *which payments would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of a collective bargaining agreement* **between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed."** **(Emphasis added.)**

The first part of the above cited statute is a clear and unequivocal prohibition of any additional payments "for work already performed" for payroll periods "for which remuneration had already been made," and presumably accepted, while the latter portion makes two exceptions to the general prohibition. The two exceptions are the retroactive payment to tradesmen who are paid in accordance with the pay scale prevailing in the geographic area of their employment, and the second exception has to do with claims for retroactive pay "based upon the effective date of a collective bargaining agreement."

Neither of these exceptions are involved in this case. This case involves an administrative error in failing to properly classify and compensate the Claimant for the work performed.

It is the position and opinion of the Attorney General that it was not the intent of the Legislature that *para. 145 of Ch.* 127 bar this Court from granting recoveries in cases arising out of grievances for reallocation or reclassification.

This Court has in the past granted awards for retroactive salary adjustment in cases involving clerical errors in either the calculation of a payroll voucher or where an automatic annual pay increase was erroneously missed.

In the case of *Poskus v. State of Illinois, 26 Ill.Ct.Cl. 107,* this Court awarded a half-time doctor a retroactive salary adjustment, after quoting from para. 145, stating in part:

> "Nowhere is it contended that Claimant is requesting additional compensation for services performed, or that he has performed extra services. He is not asking payment for more than was appropriated, or for more than his contract of employment specifically provided, i.e., half the salary **of** a full-time physician. Because the contract of work was in a definite amount, and the **sum** paid to him by Respondent was admittedly below this amount, it cannot be contended that he was 'apparently paid for services in full.' Respondent's agents have clearly established that the sole reason for the nonpayment of the requested amount was a mistake. They have further established that Claimant was entitled to the sum of $1,812.25, which would have been paid to him but for Respondent's mistake. Respondent cannot profit from its own errors."

In the case at bar, not only should this claim be awarded because of the State's error in allocation but it should be granted because it is not prohibited by Ch. 127, para. 145.

As stated earlier, it is the opinion of the Attorney General that the Legislature did not intend that para. 145 of Ch. 127 provide a means by which errors, either clerical or otherwise, made by the State work for the benefit of the State at the expense of its employee.

A cardinal rule of statutory construction is to ascertain and give effect to the true intent and meaning of the Legislature enacting a law. *Electrical Contractors Association of the City of Chicago v. Illinois Building Authority, 33 Ill. 2d, 587.* Where an employee is erroneously allocated to a lower paying position than his duties call for, he is being erroneously paid too

low a salary and has, therefore, not been previously paid for services performed. As such retroactive payments would not be payments 'for which remuneration had already been made' the exclusion contained in *para.* ***145*** would not apply.

After having reviewed the record in this matter including the joint stipulation of the parties, we find that Claimant is entitled to back salary in the gross amount of $812.00 plus employer contributions of $63.01 for a total employee benefit of $875.01 which should be disbursed by the Comptroller and credited as follows:

The Claimant is, therefore, granted an award by this Court in the amount of $812.00 gross salary plus fringe benefits as set forth above.

(No. 78-CC-1332—Claim dismissed.)

ZACK MORRIS, JR., Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Order filed November *2,1978.*

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In ***Bargas u. State, 32 Ill.Ct.Cl.***, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of ***Doubling u. State, 32 Ill.Ct.Cl.1,*** we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in ***Bargas u. State, supra,*** and ***Doubling u. State, supra,*** the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. **78-CC-1451 — Claimant awarded** $280.00.)

ELMER E. **WELTIN** Claimant, ***v.*** **STATE OF ILLINOIS,** Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of ***John J. Beard v. State of Illinois, 32 Ill.Ct.Cl.***, the Respondent stipulated, in part, as follows:

"This case arises out of an RC **14** Collective Bar-

gaining Agreement. The effective dates of the agreement are July 1, 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

> 'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).
>
> Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employer for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

"Amounts paid from appropriations for personal service of any officer or employee of the State, ***, shall be considered as full payment for all services rendered between the dates specified in the payroll *** which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed."

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate Ill. Rev. Stat., Ch. 127, para. 145.

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or regulate his powers or responsibilities to determine or negotiate working conditions, etc. However; as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20, 1977 to January 31, 1978 as a Clerk **11,** a classification on the RC 14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article **XXXIII,** Section **4 of** the RC 14 contract agreement provides that such employees are entitled only to **a**

lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978, (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the *Beard* case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Elmer E. Weltin, was employed by the Department of Veteran's Affairs. This Claimant, as was *Mr. Beard,* was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a pro-rata payment.

Accordingly, there is hereby awarded to Claimant the amount of $280.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. *78-CC-1460—Claimant* $300.00.)

WILLIAM A. GAY, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE—Retroactive salary increase based on collective bargaining agreement.

SAME—Arbitration.

PER CURIAM.

In the case of *John J. Beard v. State of Illinois, 32 Ill. Ct. Cl.*__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC 14 Collective Bargaining Agreement. The effective dates of the agreement are July 1, 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

> 'Amounts paid from appropriations for personal service of any officer or employee of the State, ***, shall be considered as full payment for all services rendered between the dates specified in the payroll *** which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate Ill. Rev. Stat., Ch. 127, para. 145.

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilties to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk II, a classification on the RC 14 bargaining

unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section 4 of the RC **14** contract agreement provides that such employees are entitled only to a lump sum retroactive payment an a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October **6,** 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, William **A.** Gay was employed by the Department of Corrections. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $300.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1485—Claim dismissed.)

WILLIAM A. SWANSON, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed November 2,1978.

PRISONERS AND INMATES—Bailment. Complaint failed to state a cause to action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisioned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In ***Bargas v. State, 32 Ill.Ct.Cl.***, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of ***Doubling u. State, 32 Ill.Ct.Cl. 1,*** we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in ***Bargas u. State, supra,*** and ***Doubling u. State, supra,*** the complaint herein fails to state a claim upon which relief can be granted

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 78-CC-1531 — Claimant awarded $180.00.)

WILLIAM K. SCHROEDER, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of ***John J. Beard v. State of Illinois, 32 Ill.Ct.Cl.***__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC 14 Collective Bargaining Agreement. The effective dates of the agreement are July 1, 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly

passed House Bill **3237** which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. **127,** para. **145** prohibit the retroactive pay envisioned by Article XXXIII, Section **4** of RC **14** Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. **145** paraphrased provides in essential part as follows:

> 'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact **an** additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective barganing agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate *Ill. Rev. Stat., Ch. 127, para. 145.*

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these

employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk II, a classification on the RC 14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section 4 of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, William K. Schroeder was employed by the Department of Public Aid. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $180.00 plus the State's contribution to the State Employee's Retirement System and the

F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. **78-CC-1538 — Claimant awarded $180.00.)**

BENJAMIN LAZAROVITZ, Claimant, *v.* **STATE OF ILLINOIS, Respondent.**

Opinion filed April 13, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Deductions from award for back salary.*** No **deductions are to be taken from any award of back salary** to **a Claimant who is deceased at the time the award is made.**

SAME — ***Retroactive salary increase based on collectiue bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

This claim coming to be heard on the Respondent's stipulation and this Court being fully advised in the premises:

This Court finds that the Claimant is making a claim for back salary arising out of a collective bargaining agreement between A.F.S.C.M.E. and the Department of Public Aid. The back salary in question was attributable to Claimant's deceased spouse, Natalie Lazarovitz, for Fiscal Year 1978 between July 1, 1977, and November 4,1977, the date of her death.

The collective bargaining agreement provided that employees who were not in active status for all 12 months of Fiscal Year 1978 would be entitled to a lump sum retroacative payment on a pro-rated basis for the number of months worked.

Employees affected had **to** file a claim with the Department of Public Aid within 60 days of the end of

Fiscal Year 1978or August 30,1978. The Director of the Department of Personnel extended this deadline until October 14, 1978. The Claimant herein filed his claim with the Department of Public Aid on September 26, 1978.

An investigation of this claim by the Department of Public Aid determined that money was appropriated for this expenditure by the following appropriations;

a. Field Level Operation 001-47810-1120-00-00
b. Retirement 001-47810-1161-00-00
c. Social Security 001-47810-1170-00-00

and that the following amounts were returned to the State Treasury at the time of the lapsing of said appropriations;

a. $86,477.78
b. $ 4,142.04
c. $ 5,066.04

The amount of $180.00 which was due and would have been paid in the regular course of business had the claim been presented to the proper office at the appropriate time. The sole reason said claim was not previously paid is due to the lapse of the appropriation for the period during which the debt was incurred, the same having been confirmed by the written report of the Department of Public Aid, a copy of said report being attached to the stipulation by Respondent submitted herein.

We find that Claimant is entitled to back salary credited to his deceased spouse in the amount of $180.00. Pursuant to the Comptroller's Uniform Statewide Accounting System Procedure 23.5.20, no deductions are taken from any salary due a State employee which is paid after the death of such employee.

It is therefore ordered that Claimant, Benjamin Lazarovitz, surviving spouse of Natalie Lazarovitz,

deceased, be and is hereby awarded the sum of $180.00 in full satisfaction of any and all claims arising herein.

(No. **78-CC-1557 — Claim dismissed.)**

BROKAW HOSPITAL, Claimant, *v.* **STATE OF ILLINOIS, Respondent.**

***Order filed June** 27,1979.*

CONTRACTS — ***Services rendered in excess of and in absence of State contracts.***

HOLDERMAN, J.

This matter comes before the Court upon a motion by Respondent to dismiss said cause and objections to **said motion filed by Claimant.**

Respondent's motion is based upon the premise that Claimant's contract with the State was exceeded and that there was no contract in existence at the time the services were rendered.

Claimant, in its objections to Respondent's motion, cites the case of Vancil, Inc. v. State, 27 *Ill. Ct. Cl.* 352. It is the Courts opinion that the present case is distinguished from the case above cited because of the fact the services rendered by Claimant in the above case were of an emergency nature and for the benefit of the State whereas in the present case the services were rendered on behalf of the patient and were not for the benefit of the State.

For the Court to order payment of this claim could and would result in services being rendered in amounts far above those provided for in the contract and would practically eliminate the need for contracts between the State and Claimants.

It is hereby ordered that Respondent's motion to dismiss be, and the same is, granted and this cause is dismissed.

(No. **78-CC-1559 — Claim dismissed.)**

BROKAW HOSPITAL, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Order filed June 27, 1979.

CONTRACTS — ***Services rendered in excess of and in absence of State contracts.***

HOLDERMAN, J.

This matter comes before the Court upon a motion by Respondent to dismiss said cause and objections to said motion filed by Claimant.

Respondent's motion is based upon the premise that Claimant's contract with the State was exceeded and that there was no contract in existence at the time the services were rendered.

Claimant, in its objections to Respondent's motion, the case of *Vancil, Inc. v.* ***State,*** 27 *Ill.Ct.Cl.* ***352.*** It is the Court's opinion that the present case is distinguished from the case above cited because of the fact the services rendered by Claimant in the above case were of an emergency nature and for the benefit of the State whereas in the present case the services were rendered on behalf of the patient and were not for the benefit of the State.

For the Court to order payment of this claim could and would result in services being rendered in amounts far above those provided for in the contract and would practically eliminate the need for contracts between the State and Claimants.

It is hereby ordered that Respondent's motion to dismiss be, and the same is, granted and this cause is dismissed.

(No. 78-CC-1576 — Claimant awarded $240.00.)

IRIS C STUART, Claimant, *v.* **STATE OF ILLINOIS, Respondent.**

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER **CURIAM.**

In the case of *John J.* ***Beard v. State of*** *Illinois,* ***32*** *Ill.* ***Ct.*** *Cl.*__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC 14 Collective Bargaining Agreement. The effective dates of the agreement are July **1,** 1977, to June **30,** 1979. The relevant provision is **found** in Article XXXIII, Section **4** on page **62** of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 month of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to

the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that **$40.00** per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year **1978.** Subsequently, the Eightieth General Assembly passed House Bill **3237** which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. **127,** para. **145** prohibit the retroactive **pay** envisioned **by** Article **XXXIII,** Section **4 of** RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter **127,** para. **145** paraphrased provides in essential part as follows:

> 'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective barganing agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate Ill. Rev. Stat., Ch. **127,** para. **145.**

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Direc-

tor given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequest legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk II, a classification on the RC-14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section **4** of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October **6,** 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Iris C. Stuart, was employed by the Department of Public Aid. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is,

therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $240.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1582—Claimant awarded $100.00.)

MARY LOU REMLING, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE—Retroactive salary increase based on collective bargaining agreement.

SAME—Arbitration.

PER CURIAM.

In the case of ***John J. Beard v. State of Illinois, 32 Ill.Ct.Cl.***___, the Respondent stipulated, in part, as follows:

"This case arises out of an RC **14** Collective Bargaining Agreement. The effective dates of the agreement are July **1,** 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section **4** on page **62** of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section **3,** up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July **1,** 1978. Employees not on the active payroll for the full 12

months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section **4** the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill **3237** which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. **145** prohibit the retroactive pay envisioned by Article XXXIII, Section **4** of RC **14** Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. **145** paraphrased provides in essential part as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective barganing agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargain-

ing agreement, the relevant section does not violate Ill. Rev. Stat., Ch. 127, para. 145.

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20, 1977, to January 31, 1978, as a Clerk 11, a classification on the RC-14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section **4** of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October **6,** 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case

is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Mary Lou Remling, was employed by the Department of Public Aid. This Claimant, as was *Mr.* ***Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $100.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1585 — Claimant awarded $260.00.)

JOHN J. BEARD, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed May 8, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In this case the Respondent submitted a stipulation as follows:

"This case arises out of an RC 14 Collective Bargaining Agreement. The effective dates of the agreement are July 1, 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000 00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 month of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate

principle or based upon the effective date of the collective barganing agreement between the State, **or** a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate Ill. Rev. Stat., Ch. 127, para. 145.

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20, 1977, to January 31, 1978, as a Clerk II, a classification on the RC 14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII Section **4** of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978

(not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

The Department in its departmental report recognizes that on a prorata basis the additional salary for the time in question would amount to $260.00 prior to any additions or withholdings for FICA, retirement or taxes. The departmental report contains payroll information relative to these additions and witholdings should the Court desire to avail itself of the computations provided by the Department.

This Court adopts the Respondent's stipulation as the law relevant to this case as this Court sees it.

Claimant is therefore awarded the sum of $260.00 subject to such usual additional benefits and withholdings.

(No. 78-CC-1587 — Claimant awarded $440.00.)

RUTH V. **LYONS,** Claimant, *v.* STATE **OF ILLINOIS,** Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of ***John J. Beard v. State of Illinois, 32 Ill.Ct.Cl.__,*** the Respondent stipulated, in part, as follows:

"This case arises out of an RC **14** Collective Bargaining Agreement. The effective dates of the agreement are July **1,** 1977, to June 30, 1979. The relevant

provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a prorated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which

payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate Ill. Rev. Stat., Ch. 127, para. **145.**

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequest legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20, 1977, to January 31, 1978, as a Clerk **11,** a classification on the RC-14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section **4** of the RC **14** contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their

making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the *Beard* case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Ruth V. Lyons, was employed by the Department of Public Aid. This Claimant, as was *Mr. Beard*, was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $440.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1593 — Claimant awarded $400.00.)

PAUL LINDHOLM, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of *John J. Beard v. State of Illinois, 32 Ill. Ct.Cl.*__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC 14 Collective Bargaining Agreement. The effective dates of the agreement are July 1, 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate *Ill.* ***Rev.*** *Stat., Ch. 127, para.* ***145.***

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, John Beard, was employed by the Department of Public Aid during Fiscal Year 1978 from July 20, 1977, to January 31, 1978, as a Clerk II, a classification on the RC 14 bargaining

unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section 4 of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Paul Lindholm, was employed by the Department of Public Aid. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $400.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1596 — Claimant awarded $180.00.)

LINDA CLOYD, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — *Retroactive salary increase based on collective bargaining agreement.*

SAME — *Arbitration.*

PER CURIAM.

In the case of *John J. Beard v. State of Illinois, 32 Ill. Ct. Cl.* __, the Respondent stipulated, in part, as follows:

"This case arises out of an RC 14 Collective Bargaining Agreement. The effective dates of the agreement are July 1, 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

> 'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate Ill. Rev. Stat., Ch. 127, para. 145.

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk **11,** a classification on the RC 14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section 4 of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October **6,** 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Linda Cloyde, was employed by the Department of Public Aid. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $180.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1605 — Claim dismissed.)

WILLIE LADD, Claimant, *v.* **STATE** OF ILLINOIS, Respondent.

Order filed November 20, 1978.

PRISONERS AND INMATES — ***Bailment.*** Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen **or** destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas* v. ***State, 32 Ill.Ct.Cl.***, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of ***Doubling u. State, 32 Ill.Ct.Cl.1,*** we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in ***Bargas u. State, supra,*** and ***Doubling*** v. ***State, supra,*** the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 78-CC-1621 — Claimant awarded $440.00.)

MARY L. CARPENTER, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of *John J.* ***Beard v. State*** *of Illinois,* ***32*** *Ill.* ***Ct.Cl.***__, the Respondent stipulated, in part as follows:

"This case arises out of an RC **14** Collective Bargaining Agreement. The effective dates of the agreement are July **1,** 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section **4** on page **62** of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July **1,** 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section **4** the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually

settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. **145** prohibit the retroactive pay envisioned by Article XXXIII, Section **4** of RC **14** Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. **145** paraphrased provides in essential part as follows:

> 'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate Ill. Rev. Stat., Ch. 127, para. **145.**

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate work-

ing conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20, 1977, to January 31, 1978, as a Clerk II, a classification on the RC **14** bargaining unit. Inasmuch as this Claimant was not in active status for all **12** months of Fiscal Year 1978, Article XXXIII, Section **4** of the RC **14** contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October **6,** 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October **14,** 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Mary L. Carpenter, was employed by the Department of Public Aid. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $440.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1622 — Claimant awarded $360.00.)

ETHEL M. LE GIER, Claimant, *v.* **STATE OF ILLINOIS,**
Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***
SAME — ***Arbitration.***

PER CURIAM.

In the case of *John J.* ***Beard v. State*** *of Illinois,* ***32*** *Ill.* ***Ct.Cl.***__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC **14** Collective Bargaining Agreement. The effective dates of the agreement are July **1,** 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section **4** on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

> 'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate Ill. Rev. Stat., Ch. 127, para. 145.

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by

arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk II, a classification on the RC **14** bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII Section **4** of the RC **14** contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October **6,** 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October **14,** 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Ethel M. Le Gier, was employed by the Department of Public Aid. This

Claimant, as was *Mr. Beard,* was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $360.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1638 — Claimant awarded $340.00.)

LINDA J. BURKE, Claimant, *v.* **STATE OF ILLINOIS, Respondent.**

***Opinion filed May 31,* 1979.**

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of *John J. **Beard** v. **State** of Illinois, **32** Ill.Ct.Cl.__,* the Respondent stipulated, in part, as follows:

"This case arises out of an RC **14** Collective Bargaining Agreement. The effective dates of the agreement are July **1,** 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section **4** on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 "excess" of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required ***to*** make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the employer.'

Pursuant to said Article **XXXIII,** Section **4** the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds **for** the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. **127,** para. **145** prohibit the retroactive pay envisioned by Article **XXXIII,** Section **4** of RC **14** Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. **145** paraphrased provides in essential part as follows:

'Amounts paid from appropriations for personal service of any officer **or** employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate Ill. Rev. Stat., Ch. 127, para. 145.

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk II, a classification on the RC 14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section 4 of the RC **14** contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above situation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Linda J. Burke, was employed by the Department of Public Aid. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of **$340.00** plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1648 — Claimant **awarded $340.00.)**

LILLIE JAMISON, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of ***John J. Beard v. State of Illinois, 32 Ill. Ct. Cl.***__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC **14** Collective Bargaining Agreement. The effective dates of the agreement are July **1, 1977,** to June **30, 1979.** The relevant

provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which

payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate Ill. Rev. Stat., Ch. 127, para. 145.

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk 11,a classification on the RC 14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section 4 of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their mak-

ing claim for the retroactive benefits within 60 days of the end of Fiscal Year **1978.**

This Claimant filed his claim on October 6, **1978** (not within the original 60 days), however, the Director of Personnel extended the filing date to October **14,** 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Lillie Jamison, was employed by the Department of Public Aid. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of **$340.00** plus the State's contribution to the State Employee's Retirement System and the **F.I.C.A.** From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1657 — **Claimant awarded $60.00.)**

DEBORAH D. FRIEDERICH, Claimant, *v.* **STATE OF ILLINOIS, Respondent.**

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of *John J. Beard v. State of Illinois, 32 Ill. Ct. Cl.*__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC 14 Collective Bargaining Agreement. The effective dates of the agreement are July 1, 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

> 'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate ***Ill. Rev. Stat.,*** *Ch. 127, para. 145.*

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978,

as a Clerk 11, a classification on the RC 14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section 4 of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Deborah D. Friederich, was employed by the Department of Public Aid. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $60.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1661 — Claimant awarded $440.00.)

LEROY ALLISON, Claimant, *v.* **STATE** OF **ILLINOIS,** Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of ***John J. Beard v. State of Illinois, 32 Ill.Ct.Cl.__,*** the Respondent stipulated, in part, as follows:

"This case arises out of an RC **14** Collective Bargaining Agreement. The effective dates of the agreement are July **1, 1977,** to June **30, 1979.** The relevant provision is found in Article XXXIII, Section **4** on page **62** of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section **3,** up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section **4** the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that **$40.00** per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year **1978.** Subsequently, the Eightieth General Assembly

passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

> 'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate Ill. Rev. Stat., Ch. 127, para. 145.

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these

employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk 11,a classification on the RC 14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section 4 of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Leroy Allison, was employed by the Department of Public Aid. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $440.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there

shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1662 — Claimant awarded $220.00.)

MARY A. CONOVER, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of ***John J. Beard v. State of Illinois, 32 Ill. Ct. Cl.***__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC 14 Collective Bargaining Agreement. The effective dates of the agreement are July 1, 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to

the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

> 'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate Ill. Rev. Stat., Ch. 127, para. 145.

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the

following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk 11,a classification on the RC 14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section 4 of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Mary A. Conover, was employed by the Department of Public Aid. This Claimant, as was ***Mr. Beard,*** was employed for

only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $220.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. **78-CC-1667—Claim dismissed.)**

MICHAEL ANDERSON, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Order filed November 20, 1978.

PRISONERS AND INMATES—Bailment. **Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.**

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In ***Bargas u. State, 32 Ill.Ct.Cl.***, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of ***Doubling u. State, 32 Ill.Ct.Cl.1,*** we further held that

only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in ***Bargas u. State, supra,*** and ***Doubling u. State, supra,*** the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 78-CC-1669 — Claimant awarded $480.00.)

JOHN KAMPFER, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of ***John J. Beard u. State of Illinois, 32 Ill.Ct.Cl.__,*** the Respondent stipulated, in part, as follows:

"This case arises out of an RC **14** Collective Bargaining Agreement. The effective dates of the agreement are July **1,** 1977, to June **30,** 1979. The relevant provision is found in Article XXXIII, Section **4** on page **62** of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section **3,** up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section **4** the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. **145** prohibit the retroactive pay envisioned by Article XXXIII, Section **4** of RC **14** Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. **145** paraphrased provides in essential part as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate

principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate Ill. Rev. Stat., Ch. 127, para. 145.

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20, 1977, to January 31, 1978, as a Clerk II, a classification on the RC 14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII Section 4 of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October **14,** 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, John Kampfer, was employed by the Department of Public Aid. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $480.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1680 — Claimant awarded $62.58.)

DAN F. FULTZ, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

The report of the Department of Revenue confirms the facts alleged by the Claimant, and the Attorney General stipulates to the facts and the law as it relates

to this claim as follows:

"This is a claim for 15percent premium pay to a Department of Revenue auditor for out-of-state travel for the pay period June 1 to June 15, 1978. According to rules and regulations of the Department in effect at the time of the rendering of the services the Claimant was entitled to a premium pay of 15percent of the base pay for out-of-state travel. Claimant has been paid the base pay but was not paid this premium pay at the time of the processing of the payroll vouchers for the period in question. The question presented here is whether the payment of the premium pay at this time, in view of the fact that the Claimant has already been paid and accepted the standard rate of pay for the period in question, would amount to a violation of the prohibition contained in Ch. 127, para. 145 (Section 9 of the "Finance Act").

The prohibition in Section 9 of the "Finance Act" is as follows:

'***Amounts paid from appropriations for personal service of any officer*** *or* ***employee of the State, either temporary*** *or* ***regular, shall be considered as full payment for*** *all* ***services rendered between the dates specified in the payroll*** *or* ***other voucher and no additional sum shall be paid to such officer or employee*** from any lump sum appropriation, appropriation for extra help or other purpose or any accumulated balances in specific appropriations, ***which payments would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the preuailing rate principle*** *or* ***based upon the effective date of a collective bargaining agreement*** between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.' (emphasis added)

This case is analygous to the case of ***Claire Crawford v. State*** *of* ***Illinois,*** ***32*** *Ill.Ct.Cl.*__, in which this Court granted an award to the Claimant where the Claimant had been misallocated and was paid for the payroll period in question at the lower allocation rate. The Court in ***Claire Crawford, supra*** held that where an employee is erroneously allocated to a lower paying position than his duties call for, he is being erroneously paid too low a salary and has, therefore, not been previously paid for services performed. Inasmuch as he was not previously paid for the services performed but only paid at a lower rate they held that this was not a violation of para. 145 inasmuch as remuneration had not already been made for the work performed.

The same is true here inasmuch as the duties included travel out-of-state for which payment was not made. It is, therefore, this writer's opinion that para. 145 would not be violated by the additional payment of the 15percent premium.''

This Court agrees with the position stated **by** the Attorney General.

Claimant is, therefore, granted an award in the amount of $62.58 with appropriate withholdings,

deductions and additional benefits for **F.I.C.A.,** taxes and retirement.

(No. 78-CC-1682 — Claimant awarded $34.12.)

THOMAS ESKER, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — *Retroactive salary increase based on collective bargaining agreement.*

SAME — *Arbitration.*

PER CURIAM.

The report of the Department of Revenue confirms the facts alleged by the Claimant, and the Attorney General stipulates to the facts and the law as it relates to this claim as follows:

"This is a claim for 15 percent premium pay to a Department of Revenue auditor for out-of-state travel for the pay period June 1 to June 15, 1978. According to rules and regulations of the Department in effect at the time of the rendering of the services the Claimant was entitled to a premium pay of 15 percent of the base pay for out-of-state travel. Claimant has been paid the base pay but was not paid this premium pay at the time of the processing of the payroll vouchers for the period in question. The question presented here is whether the payment of the premium pay at this time, in view of the fact that the Claimant has already been paid and accepted the standard rate of pay for the period in question, would amount to a violation of the prohibition contained in Ch. **127,** para. **145** (Section 9 of the "Finance Act").

The prohibition in Section 9 of the "Finance Act" is as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State, either temporary or regular, shall be considered as full payment for all services rendered between the dates specified in the payroll or other voucher and no additional sum shall be paid to such officer or employee from any lump sum appropriation, appropriation for extra help or other purpose or any accumulated balances in specific appropriations, *which payments would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of a collective bargaining agreement* between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.' (emphasis added)

This case is analygous to the case of ***Claire Crawford v. State of Illinois, 32 Ill.Ct.Cl.***, in which this Court granted an award to the Claimant where the Claimant had been misallocated and was paid for the payroll period in question at the lower allocation rate. The Court in ***Claire Crawford, supra*** held that where an employee is erroneously allocated to a lower paying position than his duties call for, he is being erroneously paid too low a salary and has, therefore, not been previously paid for services performed. Inasmuch as he was not previously paid for the services performed but only paid at a lower rate they held that this was not a violation of para. 145 inasmuch as remuneration had not already been made for the work performed.

The same is true here inasmuch as the duties included travel out-of-state for which payment was not made. It is, therefore, this writer's opinion that para. **145** would not be violated by the additional payment of the 15 percent premium."

This Court agrees with the position stated by the Attorney General.

Claimant is, therefore, granted an award in the amount of **$34.12** with appropriate withholdings, deductions and additional benefits for F.I.C.A., taxes and retirement.

(No. 78-CC-1685 — Claimant awarded $340.00.)

LINDA S. DANNER, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of *John J.* ***Beard v. State*** *of Illinois,* ***32*** *Ill. Ct.Cl.*, the Respondent stipulated, in part, as follows:

"This case arises out of an RC **14** Collective Bargaining Agreement. The effective dates of the agreement are July **1,** 1977, to June **30,** 1979. The relevant

provision is found in Article XXXIII, Section **4** on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section **3,** up to a maximum of $50.00 per month (a maximum payment of *$600.00* for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within *60* days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section **4** the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that **$40.00** per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. **145** prohibit the retroactive pay envisioned by Article XXXIII, Section **4** of RC **14** Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. **145** paraphrased provides in essential part as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which

payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate Ill. Rev. Stat., Ch. 127, para. 145.

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John Beard,* was employed by the Department of Public Aid during Fiscal Year 1978 from July 20, 1977, to January 31, 1978, as a Clerk 11, a classification on the RC 14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII Section 4 of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their mak-

ing claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the Beard case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Linda S. Danner, was employed by the Department of Public Aid. This Claimant, as was *Mr. Beard,* was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $340.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1699 — Claimant awarded $56.91.)

LARRY A. BOOK, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed June 12, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

The report of the Department of Revenue confirms the facts alleged by the Claimant, and the Attorney General stipulates to the facts and the law as it relates to this claim as follows:

"This is a claim for 15 percent premium pay to a Department of Revenue auditor for out-of-state travel for the pay period June 1 to June 15, 1978. According to rules and regulations of the Department in effect at the time of the rendering of the services the Claimant was entitled to a premium pay of 15 percent of the base pay for out-of-state travel. Claimant has been paid the base pay but was not paid this premium pay at the time of the processing of the payroll vouchers for the period in question. The question presented here is whether the payment of the premium pay at this time, in view of the fact that the Claimant has already been paid and accepted the standard rate of pay for the period in question, would amount to a violation of the prohibition contained in Ch. 127, para. 145 (Section 9 of the "Finance Act").

The prohibition in Section 9 of the "Finance Act" is as follows:

'*Amounts paid from appropriations for personal service of any officer or employee of the State, either temporary or regular, shall be considered as full payment for all services rendered between the dates specified in the payroll or other voucher and no additional sum shall be paid to such officer or employee* from any lump sum appropriation, appropriation for extra help or other purpose or any accumulated balances in specific appropriations, *which payments would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of a collective bargaining agreement* between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.' (emphasis added)

This case is analygous to the case of ***Claire Crawford v. State of Illinois, 32 Ill.Ct.Cl.***, which this Court granted an award to the Claimant where the Claimant had been misallocated and was paid for the payroll period in question at the lower allocation rate. The Court in ***Claire Crawford, supra*** held that where an employee is erroneously allocated to a lower paying position than his duties call for, he is being erroneously paid too low a salary and has, therefore, not been previously paid for the services performed but only paid at a lower rate they held that this was not a violation of

para. **145** inasmuch as remuneration had not already been made for the work performed.

The same is true here inasmuch as the duties included travel out-of-state for which payment was not made. It is, therefore, this writer's opinion that para. **145** would not be violated by the additional payment of the 15 percent premium.''

This Court agrees with the position stated by the Attorney General.

Claimant is, therefore, granted an award in the amount of $56.91 with appropriate withholdings, deductions and additional benefits for F.I.C.A., taxes and retirement.

(No. 78-CC-1700 — **Claimant awarded** *$60.00.)*

CATHERINE OSTERBYE, Claimant, *v.* **STATE OF ILLINOIS, Respondent.**

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of *John J.* ***Beard v. State of Illinois, 32 Ill.Ct.Cl.***__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC **14** Collective Bargaining Agreement. The effective dates of the agreement are July **1,** 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section **4** on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate

principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate Ill. Rev. Stat., Ch. 127, para. **145.**

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, ***John Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk II, a classification on the RC **14** bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section **4** of the RC **14** contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October **6,** 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October **14,** 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Catherine Osterbye, was employed by the Department of Public Aid. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $60.00 **plus** the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1702—Claim dismissed.)

ALBERT W. EDMONDS, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed November 20, 1978.

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of

certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In ***Bargas u. State, 32 Ill.Ct.Cl.***, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of ***Doubling u. State, 32 Ill.Ct.Cl.1,*** we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does **a** duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in ***Bargas v. State, supra,*** and ***Doubling u. State, supra,*** the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. **78-CC-1726** — Claimant **awarded $46.32.)**

URMEL B. RICHARDSON, Claimant, *v.* **STATE OF ILLINOIS, Respondent.**

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

The report of the Department of Revenue confirms the facts alleged by the Claimant, and the Attorney General stipulates to the facts and the law as it relates to this claim as follows:

"This is a claim for **15** percent premium pay to a Department of Revenue auditor for out-of-state travel for the pay period June **1** to June **15,** 1978. According to rules and regulations of the Department in effect at the time of the rendering of the services the Claimant was entitled to a premium pay of **15** percent of the base pay for out-of-state travel. Claimant has been paid the base pay but was not paid this premium pay at the time of the processing of the payroll vouchers for the period in question. The question presented here is whether the payment of the premium pay at this time, in view of the fact that the Claimant has already been paid and accepted the standard rate of pay for the period in question, would amount to a violation of the prohibition contained in Ch. **127,** para. **145** (Section 9 of the "Finance Act").

The prohibition in Section **9** of the "Finance Act" is **as** follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State, either temporary or regular, shall be considered as full payment for all services rendered between the dates specified in the payroll or other voucher and no additional sum shall be paid to such officer or employee from any lump sum appropriation, appropriation for extra help or other purpose or any accumulated balances in specific appropriations, ***which payments would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the preuailing rate principle or based upon the effective date of a collective bargaining agreement*** between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.' (emphasis added)

This case is analygous to the case of ***Claire Crawford v. State of Illinois, 32 Ill. Ct. Cl.*** _, in which this Court granted an award to the Claimant where the Claimant had been misallocated and was paid for the payroll period in question at the lower allocation rate. The Court in ***Claire Crawford, supra*** held that where an employee is erroneously allocated to a lower paying position than his duties call for, he is being erroneously paid too low a salary and has, therefore, not been previously paid for the services performed but only paid at a lower rate they held that this was not a violation of para. **145** inasmuch as remuneration had not already been made for the work performed.

The same is true here inasmuch as the duties included travel out-of-state for which payment was not made. It is, therefore, this writer's opinion that para. **145** would not be violated by the additional payment of the **15** percent premium."

This Court agrees with the position stated by the Attorney General.

Claimant is, therefore, granted an award in the amount of **$46.32** with appropriate withholdings, deductions and additional benefits for **F.I.C.A.,** taxes and retirement.

(No. 78-CC-1727 — Claimant awarded $80.00.)

LINDSEY SCHAEFER, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of *John J.* ***Beard*** *v.* ***State*** *of Illinois,* ***32*** *Ill. Ct. Cl.* ___, the Respondent stipulated, in part, as follows:

"This case arises out of an RC **14** Collective Bargaining Agreement. The effective dates of the agreement are July **1,** 1977, to June **30,** 1979. The relevant provision is found in Article **XXXIII,** Section **4** on page **62** of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section **3,** up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July **1,** 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section **4** the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year **1978.** Subsequently, the Eightieth General Assembly passed House Bill **3237** which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. **127,** para. **145** prohibit the retroactive pay envisioned by Article XXXIII, Section **4** of RC **14** Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. **145** paraphrased provides in essential part as follows:

> 'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate *Ill. Rev. Stat., Ch. 127, para. 145.*

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by

arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk II, a classification on the RC **14** bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section **4** of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October **14,** 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Lindsey Schaefer, was employed by the Department of Public

Aid. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $80.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. **78-CC-1732 — Claimant awarded $100.00.)**

DEBRA ANN SOMMER, Claimant, *v.* **STATE OF ILLINOIS, Respondent.**

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of ***John J. Beard v. State of Illinois, 32 Ill. Ct. Cl.***__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC **14** Collective Bargaining Agreement. The effective dates of the agreement are July 1, **1977,** to June **30, 1979.** The relevant provision is found in Article XXXIII, Section **4** on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 **per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).**

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate *Ill. Rev. Stat., Ch. 127, para. 145.*

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John Beard,* was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk II, a classification on the RC 14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII Section 4 of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Debra Ann Sommer, was employed by the Department of Public Aid. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $100.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1733 — **Claimant awarded $220.00.)**

BRENDA J. PALUSKA, Claimant, *v.* **STATE OF ILLINOIS, Respondent.**

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of ***John J. Beard v. State of Illinois, 32 Ill.Ct.Cl.__,*** the Respondent stipulated, in part, as follows:

"This case arises out of an RC 14 Collective Bargaining Agreement. The effective dates of the agreement are July 1, 1977, to June 30, 1979. The relevant

provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which

payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the. retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate *Ill. Rev. Stat., Ch. 127, para. 145.*

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John Beard,* was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk II, a classification on the RC **14** bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII Section **4** of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their mak-

ing claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October **14,** 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Brenda **J.** Paluska, was employed by the Department of Public Aid. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $220.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1741 — Claimant awarded $440.00.)

RUBY M. MEYERS, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of *John J. Beard v. State of Illinois, 32 Ill.Ct.Cl.*__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC **14** Collective Bargaining Agreement. The effective dates of the agreement are July **1,** 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section **3,** up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section **4** the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. **145** prohibit the retroactive pay envisioned by Article XXXIII, Section **4** of RC **14** Collective Bargaining Agreement?

2. May the Director of Personnel agree to and

abide by an arbitrator's decision?

Chapter **127,** para. **145** paraphrased provides in essential part as follows:

> 'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate *Ill.* ***Rev.*** *Stat., Ch. 127,* ***para. 145.***

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20, 1977, to January 31, 1978, as a Clerk 11, a classification on the RC **14** bargaining

unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section 4 of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the *Beard* case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Ruby M. Myers, was employed by the Department of Public Aid. This Claimant, as was *Mr. Beard,* was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $440.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1749—Claim dismissed.)

KENNETH STEPHENSON, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed December 4, 1978.

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In ***Bargas*** *u.* ***State, 32 Ill.Ct.Cl.***__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of ***Doubling*** *v.* ***State, 32 Ill.Ct.Cl.1,*** we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in ***Bargas*** *u.* ***State, supra,*** and ***Doubling*** *u.* ***State, supra,*** the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 78-CC-1771 — Claimant awarded $440.00.)

HOLLY SMITH, Claimant, ***v.*** **STATE OF ILLINOIS,** Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of *John J.* ***Beard v. State of Illinois, 32 Ill.Ct.Cl.__,*** the Respondent stipulated, in part, as follows:

"This case arises out of an RC **14** Collective Bargaining Agreement. The effective dates of the agreement are July **1,** 1977, to June 30, 1979. The relevant provision is **found** in Article XXXIII, Section **4** on page **62** of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section **3,** up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July **1,** 1978. Employees not on the active payroll for the full **12** months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section **4** the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill **3237** which provided the funds for

the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

> 'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate *Ill. Rev. Stat., Ch. 127, para. 145.*

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating

by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk 11,a classification on the RC 14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII Section 4 of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October **6,** 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Holly Smith, was employed by the Department of Public Aid. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $400.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal

and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1789 — Claimant awarded $160.00.)

MARIE T. REICH, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of ***John J. Beard v. State of Illinois, 32 Ill.Ct.Cl.***__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC 14 Collective Bargaining Agreement. The effective dates of the agreement are July 1, 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not bn the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of

the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

> 'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate *Ill. Rev. Stat., Ch. 127, para. 145.*

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his pow-

ers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk 11,a classification on the RC 14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII Section **4** of the RC **14** contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Marie T. Reich, was employed by the Department of Revenue. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $160.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1809 — Claimant awarded $260.00.)

IRIS J. STAPLES, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of ***John J. Beard v. State of Illinois, 32 Ill. Ct. Cl.***__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC 14 Collective Bargaining Agreement. The effective dates of the agreement are July 1, 1977, to June **30,** 1979. The relevant provision is found in Article XXXIII, Section **4** on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or

been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within **60** days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to **the employees.**

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section **4** of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate *Ill. **Rev.** Stat., Ch. 127, para. **145.***

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to .determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sumretroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department **of** Public **Aid** during Fiscal Year **1978** from July **20,1977,** to January **31,1978,** as a Clerk II, a classification on the RC **14** bargaining unit. Inasmuch as this Claimant was not in active status for all **12** months of Fiscal Year **1978,** Article XXXIII, Section **4** of the RC **14** contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year **1978.**

This Claimant filed his claim on October **6, 1978** (not within the original 60 days), however, the Director of Personnel extended the filing date to October **14, 1978."**

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Iris J. Staples, was employed by the Department of Public Aid. This Claimant, as was *Mr.* ***Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $260.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to **F.I.C.A.**

(No. 78-CC-1828 — Claimant awarded $454.50.)

JUDITH C. NEVITT, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed March 6, 1979.

STATE EMPLOYEES BACK SALARY CLAIMS — Payment of back pay due because of administrative oversight is not additional payment for work already performed.

PER CURIAM.

This cause comes before this Court as a result of a reconsideration of a job audit by the Director of Personnel. This claim is for retroactive pay as a result of the reallocation of the Claimant's job reclassification.

The Respondent, represented before this Court by the Office of the Attorney General, submitted a stipulation which is as follows:

"Now comes the Respondent by William J. Scott, Illinois Attorney General, William E. Webber, Assistant Attorney General of Record and stipulates in the above captioned matter as follows:

1. This case arises as a result of a reconsideration of a job audit conducted October 13, 1978, and pursuant to Rule 1-30 was held to be effective on December 1, 1977.

2. The issue before this Court in this case is whether the awarding of retroactive salary as a result of a reallocation of job classification violate the prohibitions set forth in ***Chapter 127, para. 145,*** which in part provides as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State.. .,shall be considered as full payment for all services rendered between the dates specified in the payroll.. .and no additional sum shall be paid. . . which payments would constitute in fact an additional payment for work already performed and for which remuneration had already been made, . . .'

3. The above issues were dealt with fully in the case of ***Claire Crawford, 32 Ill.Ct.Cl.***, and is dispositive of the issues presented by this case.

4. The Court in ***Claire Crawford, supra,*** decided that the misclassification amounted to an administrative error and that an award should be granted consistent with the Department **of** Personnel's application of Rule **1-30.**

5. Wherefore, Respondent consents to an award to this Claimant in the amount of $363.00 subject to appropriate added benefits and deductions and withholdings as required by law and the rules and regulations of the State of Illinois for retirement, F.I.C.A. and income tax withholdings."

This Court concurs with the Attorney General and hereby grants an award to Judith C. Nevitt in the amount of **$454.50,** subject to the appropriate added benefits and deductions and withholdings as required **by** laws, rules and regulations of the State of Illinois for retirement, F.I.C.A. and income tax withholdings.

(No. 78-CC-1851— Claimant awarded **$34.12.)**

HAROLD BERMAN, Claimant, *v.* STATE OF ILLINOIS, Respondent

Opinion filed February 26, 1979.

APPROPRIATIONS — ***Lapsed appropriation.***

PER CURIAM.

The record in this cause indicated the purpose of the expenditure by the Illinois Department of Revenue for which this claim was filed was for reimbursing the Department of Revenue auditor for **15** percent premium

pay for out-of-state travel for period June 1through **15, 1978,** and that the Attorney General has submitted a stipulation by Respondent based upon information forwarded to his office by said Department, as evidenced by the departmental report attached to the stipulation by Respondent.

Accordingly, this Court finds that this was a properly authorized expenditure at prices reasonable, usual and customary in the area where received. No part of this expenditure has been paid and the total outstanding is **$34.12.** Money was appropriated under appropriation and fund number **001-49212-1120,** of which appropriation $17,582.56 lapsed and was returned to the State Treasury.

The sole reason said claim was not paid is due to the lapse of the appropriation for the period during which the debt was incurred.

It is hereby ordered that the Claimant, Harold Berman, be and is hereby awarded, in full satisfaction of any and all claims presented to the State of Illinois under the above captioned cause, the sum of **$34.12.**

(No. 78-CC-1855 — Claimant awarded $140.00.)

JOSIE **P. MARTIN,** Claimant, *v.* **STATE** OF **ILLINOIS,** Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of *John J.* ***Beard v. State of Illinois, 32*** *Ill.Ct.Cl.*__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC 14 Collective Bargaining Agreement. The effective dates of the agreement are July 1, 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section **3,** up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix **A,** effective July **1,** 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article **XXXIII,** Section **4** the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate *Ill. Rev. Stat., Ch. 127, para. 145.*

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John Beard,* was employed by the Department of Public Aid during Fiscal Year 1978 from July 20, 1977, to January 31, 1978, as a Clerk II, a classification on the RC **14** bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section **4** of the RC **14** contract agreement provides that such employees are entitled only to a lump

sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Josie P. Martin, was employed by the Department of Public Aid. This **Claimant, as was Mr. Beard, was employed for only a** portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $140.00 plus the State's contribution to the State Employee' s Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1858 — **Claimant awarded $160.00.)**

JACQUELINE THAMES, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of *John J. Beard v. State of Illinois, 32 Ill. Ct. Cl.* __, the Respondent stipulated, in part, as follows:

"This case arises out of an RC 14 Collective Bargaining Agreement. The effective dates of the agreement are July 1, 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. **145** paraphrased provides in essential part as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate *Ill.* ***Rev. Stat.,*** *Ch. 127, para.* ***145.***

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel' and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978,

as a Clerk II, a classification on the RC 14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section 4 of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October **14,** 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Jacqueline Thames was employed by the Department of Public Aid. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $160.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1883 — Claimant awarded $360.00.)

CATHERINE TERESA HOBAN, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — *Retroactive salary increase based on collective bargaining agreement.*

SAME — *Arbitration.*

PER CURIAM.

In the case of *John J. Beard v. State of Illinois, 32 Ill.Ct.Cl.*__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC 14 Collective Bargaining Agreement. The effective dates of the agreement are July 1, 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly

passed House Bill **3237** which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. **145** prohibit the retroactive pay envisioned by Article XXXIII, Section **4** of RC **14** Collective Bargaining Agreement?

2 May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

> 'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate *Ill. Rev. Stat., Ch. 127, para. 145.*

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these

employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk II, a classification on the RC **14** bargaining unit. Inasmuch as this Claimant was not in active status for all **12** months of Fiscal Year 1978, Article XXXIII, Section **4** of the RC **14** contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October **14,** 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Catherine Teresa Hoban, was employed by the Department of Public Aid. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $360.00 plus the State's contribution to the State Employee' Retirement System and the

F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to **F.I.C.A.**

(No. 78-CC-1887 — Claimant awarded $320.00.)

CAROL ANN SCHMIDT, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***
SAME — ***Arbitration.***

PER CURIAM.

In the case of *John* ***J. Beard*** *v.* ***State*** *of Illinois,* ***32*** *Ill. Ct. Cl.*__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC **14** Collective Bargaining Agreement. The effective dates of the agreement are July 1, 1977, to June **30,** 1979. The relevant provision is found in Article XXXIII, Section **4** on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section **3,** up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix **A,** effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section **4** the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill **3237** which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. **145** prohibit the retroactive pay envisioned by Article XXXIII, Section **4** of RC **14** Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

> 'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate *Ill.* ***Rev. Stat., Ch.*** *127, para.* ***145.***

As to the second issue, as to whether the Director of

Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk **11,** a classification on the RC 14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section 4 of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Carol Ann

Schmidt, was employed by the Department of Public Aid. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $320.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1916 — Claimant awarded $80.00.)

BETTY COLEMAN, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of *John J.* ***Beard*** *v.* ***State*** *of Illinois,* ***32*** *Ill.* ***Ct.*** *Cl.*__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC 14 Collective Bargaining Agreement. The effective dates of the agreement are July **1,** 1977, to June **30,** 1979. The relevant provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section **3, up** to a maximum of $50.00 per month (a maximum payment **of** $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill **3237** which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State, * * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant **to** the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate *Ill. Rev. Stat., Ch. 127, para. 145.*

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John Beard,* was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk II, a classification on the RC **14** bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section 4 of the RC **14** contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October **6,** 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Betty Coleman, was employed by the Department of Public Aid. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $80.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1920 — Claimant awarded $240.00.)

NELLIE THOMPSON, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of ***John J. Beard v. State of Illinois, 32 Ill. Ct. Cl.***__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC **14** Collective Bargaining Agreement. The effective dates of the agreement are July **1, 1977,** to June **30, 1979.** The relevant

provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State, * * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which

payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate *Ill. Rev. Stat., Ch. 127, para. 145.*

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John Beard,* was employed by the Department of Public Aid during Fiscal Year 1978 from July 20, 1977, to January 31, 1978, as a Clerk II, a classification on the RC 14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section 4 of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their

making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the *Beard* case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Nellie Thompson, was employed by the Department of Public Aid. This Claimant, as was *Mr. Beard,* was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $240.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1953 — Claimant awarded $440.00.)

KATHY KUNTZI, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of *John J. Beard v. State of Illinois, 32 Ill. Ct. Cl.*__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC 14 Collective Bargaining Agreement. The effective dates of the agreement are July 1, 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively *to* all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments *due* within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and

abide by an arbitrator's decision?

Chapter 127, para. **145** paraphrased provides in essential part as follows:

> 'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate *Ill. Rev. Stat., Ch. 127,para. 145.*

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John Beard,* was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31, 1978, as a Clerk II, a classification on the RC **14** bargaining unit. Inasmuch as this Claimant was not in active

status for all 12 months of Fiscal Year 1978, Article XXXIII, Section **4** of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Kathy Kuntzi, was employed by the Department of Administrative, but resigned from that Department, effective following the last day of May, 1978, in order that she might assume a position with the Office of the Governor on the first day of June, 1978. The collective bargaining agreement in question provided that terminated employees must file by September 5, 1978. However, this filing date, as pointed out in the John **J.** Beard Stipulation, was unilaterally extended to October **14,** 1978. However, this Claimant did not file within those dates but rather, having been informed by the Department of Administrative Services that they did not include her in their payroll for the increase, that she would have to file in the Court of Claims, filed her case in the Court of Claims on November 29, 1978. Although the collective bargaining agreement provided that "any employee who has voluntarily quit or been discharged discharged during Fiscal Year 1978 will be required to make

claim for retroactive payments due within 60 days of the end of the fiscal year to the employer", this employee was on the active payroll of the employer, vis-a-vis the State of Illinois, on June 30,1978, (the end of the fiscal year). We, therefore hold that the deadline for this benefit does no apply to this Claimant.

Accordingly, there is hereby awarded to Claimant the amount of $440.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-1977—Claim dismissed.)

JOHN H. FINN, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed January 10,1979.

PRISONERS AND INMATES— Bailment. Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession **of** Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused **by** the negligence of employees of the State of Illinois.

In *Bargas u. State, 32 Ill.Ct.Cl.*__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling u. State, 32 IlZ.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas u. State, supra,* and *Doubling v. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 78-CC-1992 — Claimant awarded $260.00.)

HELEN LARISON, Widow **of GEORGE LARISON, Claimant,** *v.* **STATE OF ILLINOIS, Respondent.**

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — *Retroactive salary increase based on collective bargaining agreement.*

SAME — *Arbitration.*

PER CURIAM.

In the case of *John J. Beard v. State of Illinois, 32 Ill.Ct.Cl.*__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC **14** Collective Bar-

gaining Agreement. The effective dates of the agreement are July 1, 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

> 'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section **3,** up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).
>
> Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section **4** of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall he considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application **of** the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate *Ill.* ***Rev. Stat.,*** *Ch. 127, para.* ***145.***

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20, 1977, to January 31, 1978, as a Clerk II, a classification on the RC **14** bargaining unit. Inasmuch as this Claimant was not in active status for all **12** months of Fiscal Year 1978, Article XXXIII, Section 4 of the RC 14 contract agreement provides that such employees are entitled only to a

lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the *Beard* case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Helen Larison, Widow of George Larison, was employed by the Department of Corrections. This Claimant, as was *Mr. Beard,* was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $260.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. **78-CC-2035 — Claimant awarded $344.80.)**

RAYMOND C. **MAIER,** Claimant, *v.* **STATE OF** ILLINOIS, Respondent

***Opinion filed May** 17, 1979.*

STATE EMPLOYEES BACK SALARY CASE — *Collective bargaining agreement.*

SAME — *Arbitration.*

PER CURIAM.

This claim coming on to be heard on the joint stipulation of the parties hereto, and the Court being fully advised in the premises:

This Court Finds that this claim is for a retroactive pay increase granted in accordance with the revenue receipts provision of the collective bargaining agreements. An investigation of this claim by Personal Services **001-42662-1120-0000** determined that money was appropriated for this expenditure by appropriation No. State Contribution Retirement System **001-42662-1161-**000 and that a total of **$646.32** and none, respectively (funds available for transfer) was remaining in this appropriation at the time of the lapsing of said appropriation. The amount of **$344.80** which was due would have been paid in the regular course of business had the claim been presented to the proper office at the appropriate time. The sole reason said claim was not previously paid is due to the lapse of the appropriation for the period during which the debt was incurred, the same having been confirmed by the written report of the Department of Corrections a copy of said report being attached to the joint stipulation of the parties.

We find that Claimant is entitled to back salary in the gross amount of **$320.00** plus employer contributions of **$24.80** for a total employe benefit of **$344.80.**

It is, therefore, ordered that Claimant, Raymond C. Maier, be and is hereby awarded the total employee benefit of **$344.80** to be disbursed and credited in accordance with our above finding.

(No. 78-CC-2039 — Claimant awarded $180.00.)

CATHY **GRANDERSON,** Claimant, *v.* STATE **OF** ILLINOIS, Respondent.

***Opinion filed May 31,** 1979.*

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of *John J.* ***Beard*** *v.* ***State*** *of* ***Illinois, 32 Ill.Ct.Cl.***__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC **14** Collective Bargaining Agreement. The effective dates of the agreement are July **1,** 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section **4** on page **62** of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section **4** the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly

passed House Bill **3237** which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section **4** of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

> 'Amounts paid from appropriations for personal service of any officer or employe of the State, * * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate *Ill. **Rev.** Stat., Ch. 127, para. **145.***

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill **for** the sole purpose of the payment of this lump sum retroactive payment to these

employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk II, a classification on the RC **14** bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section **4** of the RC **14** contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days **of** the end of Fiscal Year 1978.

This Claimant filed his claim on October **6,** 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October **14,** 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Cathy Granderson, was employed by the Department of Administrative Services. This Claimant, as was ***Mr. Beard,*** **was** employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $180.00 plus the State's contribution to the State Employee's Retirement System and the

F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-2075—Claim dismissed.)

DARROLD ALLEN, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed January 10,1978.

PRISONERS AND *INMATES—Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen **or** damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas* ***u. State, 32 Ill.Ct.Cl.***__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling* ***u. State, 32 Ill.Ct.Cl.1,*** we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas u. State, supra,* and *Doubling u. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. **78-CC-2092** — Claimant awarded **$240.00.)**

HELEN L. **DORAN**, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed ***May 31,*** 1979.

STATE EMPLOYEES BACK SALARY CASE — Retroactive salary increase based *on* collective bargaining agreement.

SAME — *Arbitration.*

PER CURIAM.

In the case of *John J. Beard u. State of Illinois,* ***32*** *Ill.Ct.Cl.*__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC **14** Collective Bargaining Agreement. The effective dates of the agreement are July 1, 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section **4** on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of **$10.00** per month for each **$10,000,000.00** 'excess' of actual revenues over projections as determined under Section **3,** up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year **1978,** and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July **1, 1978.** Employees not on the active payroll for the full **12**

months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section **4** the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that **$40.00** per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill **3237** which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. **145** prohibit the retroactive pay envisioned by Article XXXIII, Section **4** of RC **14** Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. **145** paraphrased provides in essential part as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargain-

ing agreement, the relevant section does not violate *Ill. Rev. Stat., Ch. 127, para. 145.*

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk II, a classification on the RC 14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section 4 of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case

is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Helen L. Doran, was employed by the Department of Corrections. This Claimant, as was *Mr.* ***Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $240.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-2145—Claim dismissed.)

STEVEN CHINN, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed January 10,1979.

PRISONERS AND INMATES—Bailment. Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In ***Bargas u. State, 32 Ill.Ct.Cl.***__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of ***Doubling u. State,*** **32** *Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in ***Bargas u. State, supra,*** and ***Doubling u. State, supra,*** the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. **78-CC-2191 — Claimant awarded $40.00.)**

RESSIE JEANETTE WEST, Claimant, *v.* **STATE OF ILLINOIS, Respondent.**

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of ***John J. Beard u. State of Illinois, 32 Ill.Ct.Cl.***__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC 14 Collective Bargaining Agreement. The effective dates of the agreement are July 1, 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate *Ill.* ***Rev. Stat.,*** *Ch. 127, para. 145.*

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk II, a classification on the RC 14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article **XXXIII,** Section **4** of the RC 14 contract agreement provides that such employees are entitled only to a

lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Ressie Jeanette West, was employed by the Department of Corrections. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $40.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 78-CC-2266 — Claimant **awarded** $905.88.)

RYG & STAHLY IMPLEMENTS, Claimants, *v.* STATE OF ILLINOIS, Respondent.

***Order filed April** 18, 1979.*

This cause is before the Court on the motion **of** Respondent to withdraw a motion to dismiss hereto-

fore filed. In support of its motion, Respondent states that the motion to dismiss was filed through inadvertance, and that a departmental report received from the Department of Conservation shows that the claim herein should be allowed.

As departmental reports are prima facie evidence of the matter set forth therein, the Court finds that there is no disputed issue of material fact, and that Claimant is entitled to judgment.

It is therefore ordered that Respondent be, and hereby is, granted leave to withdraw its motion to dismiss.

It is further ordered that Claimant be, and hereby awarded the sum of $905.88 in full satisfaction of its claim.

(No. **79-CC-0035—Claimant awarded $460.00.)**

LOWELL M. **LEE,** Claimant, *v.* **STATE OF** ILLINOIS, Respondent.

Opinion filed May 31, *1979.*

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of *John J.* ***Beard v. State*** *of Illinois,* ***32 Ill. Ct.*** *Cl.*__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC 14 Collective Bargaining Agreement. The effective dates of the agreement are July **1,** 1977, to June **30,** 1979. The relevant provision is found in Article XXXIII, Section 4 on page **62** of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section **3,** up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full **12** months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end **of** the Fiscal Year to the Employer.'

Pursuant to said Article **XXXIII,** Section **4** the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. **145** prohibit the retroactive pay envisioned by Article **XXXIII,** Section **4 of** RC **14** Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. **145** paraphrased provides in essential part as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate

principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate Ill. Rev. Stat., Ch. 127, para. **145.**

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20, 1977, to January **31,** 1978, as a Clerk II, a classification on the RC **14** bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section **4** of the RC **14** contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Lowell M. Lee, was employed by the Department of Labor. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $460.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 79-CC-0131—Claimant awarded $11,819.59.)

JAMES E. O'GRADY, Claimant, *v.* **STATE** OF ILLINOIS, Respondent.

Opinion filed May 31, 1979.

APPROPRIATIONS—***Expressly required by law.***

PER CURIAM.

This claim coming on to be heard on the joint stipulation of the parties hereto, and the Court being fully advised in the premises;

This Court finds that this claim is for the costs incurred by Claimant for the apprehension of fugitives pursuant to the extradition process authorized by the Governor of the State of Illinois. An investigation of this claim by the Department of Law Enforcement determined that money was appropriated for this expenditure by appropriation No. 011-45402-1200-02-00 and that a total of $32.07 was remaining in this appropriation at the time of the lapsing of said appropriation. Although the balance of the above appropriation is less than the amount claimed, sufficient funds existed at all other times when the individual obligations comprising the total claim were incurred. The following figures show that the Department of Law Enforcement was able to pay these obligations had bills been submitted at the time the obligations arose:

Amount of Claims Submitted For:		Fund Balance at the End of:	
September, 1977	- $ 745.72	September, 1977	- $187,993.18
October, 1977	- $ 543.76	October, 1977	- $167,273.42
December, 1977	- $1,459.27	December, 1977	- $136,625.94
January, 1978	- $1,061.13	January, 1978	- $128,898.77
March, 1978	- $2,060.20	March, 1978	- $ 85,405.02
April, 1978	- $ 636.27	April, 1978	- $ 50,295.96
May, 1978	- $ 991.24	May, 1978	- $ 40,199.67
June, 1978	- $4.332.00	June, 1978	- $ 17,794.90
Total Claim	- $11,819.59		

The amount due of $11,819.59 would have been paid in the regular course of business had the claim been presented to the proper office at the appropriate time, as shown in the written report of the Department of Law Enforcement, a copy of said report being attached to the joint stipulation of the parties. The $17,794.90 remaining at the end of the fiscal year, except for $32.07, was expended on other obligations the bills for which were presented to the Deparlment before Claimant submitted its vouchers for the instant claim.

While it appears that the Department has incurred obligations in excess of its appropriation, the Court is cognizant of the fact that it is not feasible for the Department to accurately estimate the amount of money that will be required during the course of a fiscal year for the apprehension and return of fugitives. This is due to the fact that the number of fugitives varies every year and the fact that no predictable pattern of frequency can be formulated. Similarly, the time and effort, and therefore the cost to apprehend a fugitive, varies with each fugitive and depends upon the location involved. This is evidenced by the attachments to the complaint indicating destinations as close as Indiana and as far as Los Angeles, California.

It is hereby ordered that the sum of **$11,819.59** be and is hereby awarded to Claimant, James E. O'Grady, in full satisfaction of any and all claims presented to the State of Illinois under the above captioned cause.

(No. 79-CC-186 — Claimant awarded $178.70.)

KAY MARIE GRILLOT, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — *Retroactive salary increase based on collective bargaining agreement.*

SAME — *Arbitration.*

PER CURIAM.

In the case of *John J. Beard v. State of Illinois, 32 Ill. Ct. Cl.* __, the Respondent stipulated, in part, as follows:

"This case arises out of an RC **14** Collective Bargaining Agreement. The effective dates of the agree-

ment are July 1, 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all

services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate Ill. Rev. Stat., Ch. 127, para. 145.

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20, 1977, to January 31, 1978, as a Clerk 11, a classification on the RC 14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section 4 of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their

making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the *Beard* case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Kay Marie Grillot, was employed by the Department of Labor. This Claimant, as was *Mr. Beard,* was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $178.70 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 79-CC-0209—Claim dismissed.)

RUSSELL CLARK, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed February 23, 1979.

PRISONERS AND INMATES—Bailment. Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas v. State*, **32** *Ill.Ct.Cl.*__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling v. State*, **32** *Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas v. State, supra,* and *Doubling v. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 79-CC-0210—Claim dismissed.)

GORDON A. MUELLER by IRENE GUSTAFSON, Claimant,
v. STATE OF ILLINOIS, Respondent.

Order filed **February** *23,1979.*

PRISONERS AND INMATES — Bailment. Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused **by** the negligence of employees of the State of Illinois.

In *Bargas u. State,* ***32*** *Ill.Ct.Cl.*__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling v. State,* ***32*** *Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas u. State, supra,* and *Doubling u. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 79-CC-0259—Claim dismissed.)

PAUL THEDFORD, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed March 2, 1979.

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas v. State,* **32** *Ill.Ct.Cl.*__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling u. State,* **32** *Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas u. State, supra,* and *Doubling v. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 79-CC-0260 — Claimant awarded $40.00.)

GARRY E. BYUS, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of ***John J. Beard v. State of Illinois, 32 Ill. Ct. Cl.***, the Respondent stipulated, in part, as follows:

"This case arises out of an RC 14 Collective Bargaining Agreement. The effective dates of the agreement are July 1, 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually

settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. **145** prohibit the retroactive pay envisioned by Article XXXIII, Section **4** of RC **14** Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. **145** paraphrased provides in essential part as follows:

> 'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, **or** a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate Ill. Rev. Stat., Ch. 127, para. 145.

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his pow-

ers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20, 1977, to January 31, 1978, as a Clerk 11, a classification on the RC 14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section **4** of the RC **14** contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October **6,** 1978 (not within the original **60** days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Gary E. Byus, was employed by the Department of Mental Health. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $40.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 79-CC-0265—Claim dismissed.)

WILLIAM EDWARD SHATTO, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed March 2, 1979.

PRISONERS AND INMATES — Bailment. Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas* ***u. State, 32 Ill.Ct.Cl.***—, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling* ***u. State, 32 Ill.Ct.Cl.1,*** we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his

transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas u. State, supra,* and *Doubling u. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 79-CC-580 — Claimant awarded $240.00.)

KATHRYN L. JONES, Claimant, *v.* **STATE OF ILLINOIS,** Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — *Retroactive salary increase based on collective bargaining agreement.*

SAME — *Arbitration.*

PER CURIAM.

In the case of *John J. Beard u. State of Illinois,* ***32 Ill. Ct. Cl.*** *__,* the Respondent stipulated, in part, as follows:

"This case arises out of an RC **14** Collective Bargaining Agreement. The effective dates of the agreement are July **1,** 1977, to June **30,** 1979. The relevant provision is found in Article XXXIII, Section **4** on page **62** of the Agreement which reads as follows:

'**All** employees in the bargaining unit shall receive ***a*** lump sum payment **of** $10.00 per month **for** each $10,000,000.00 'excess' of actual revenues over

projections as determined under Section *3,* up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be appliedretroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978 will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section **4** the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. **145** prohibit the retroactive pay envisioned by Article XXXIII, Section **4** of RC **14** Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. **145** paraphrased provides in essential part as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group

shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate *Ill. Rev. Stat., Ch. 127, para. 145.*

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequent legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John Beard,* was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk 11,a classification on the RC 14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section 4 of the RC 14 contract agreement provides that such employees are entitled only to a lump sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978

(not within the original 60 days), however, the Director of Personnel extended the filing date to October **14,** 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, Kathryn L. Jones, was employed by the Department of Public Aid. This Claimant, as was ***Mr. Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $240.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. **79-CC-0623 — Claimant awarded $440.00.)**

JOHN E. MCDOWELL, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion filed May 31, 1979.

STATE EMPLOYEES BACK SALARY CASE — ***Retroactive salary increase based on collective bargaining agreement.***

SAME — ***Arbitration.***

PER CURIAM.

In the case of *John J.* ***Beard v. State*** *of Illinois,* ***32*** *Ill.Ct.Cl.*__, the Respondent stipulated, in part, as follows:

"This case arises out of an RC 14 Collective Bargaining Agreement. The effective dates of the agreement are July 1, 1977, to June 30, 1979. The relevant provision is found in Article XXXIII, Section 4 on page 62 of the Agreement which reads as follows:

'All employees in the bargaining unit shall receive a lump sum payment of $10.00 per month for each $10,000,000.00 'excess' of actual revenues over projections as determined under Section 3, up to a maximum of $50.00 per month (a maximum payment of $600.00 for the year).

Any such payment shall be applied retroactively to all employees for all time paid during Fiscal Year 1978, and the monthly increase shall be added to the base rates for all classifications and steps set out in Appendix A, effective July 1, 1978. Employees not on the active payroll for the full 12 months of Fiscal Year 1978 shall be entitled to the lump sum retroactive payment on a pro-rated basis. Any employee who has voluntarily quit or been discharged during Fiscal Year 1978will be required to make claim for retroactive payments due within 60 days of the end of the Fiscal Year to the Employer.'

Pursuant to said Article XXXIII, Section 4 the employees' union demanded a lump sum payment to the employees. The Department resisted the amount of the increase demanded and the matter was eventually settled by an arbitrator who ruled that $40.00 per month was to be paid retroactively to each employee for each month of service served during the Fiscal Year 1978. Subsequently, the Eightieth General Assembly passed House Bill 3237 which provided the funds for the payment of the retroactive lump sum payment to the employees.

The issues before this Court are as follows:

1. Does Ch. 127, para. 145 prohibit the retroactive pay envisioned by Article XXXIII, Section 4 of RC 14 Collective Bargaining Agreement?

2. May the Director of Personnel agree to and abide by an arbitrator's decision?

Chapter 127, para. 145 paraphrased provides in essential part as follows:

'Amounts paid from appropriations for personal service of any officer or employee of the State,* * *, shall be considered as full payment for all services rendered between the dates specified in the payroll * * * which payment would constitute in fact an additional payment for work already performed and for which remuneration had already been made, except that wage payments made pursuant to the application of the prevailing rate principle or based upon the effective date of the collective bargaining agreement between the State, or a State agency and an employee group shall not be construed as an additional payment for work already performed.'

In view of the fact that the retroactive pay provided for in the collective bargaining agreement was based upon the effective date of the collective bargaining agreement, the relevant section does not violate *Ill.* ***Rev.*** *Stat., Ch. 127, para.* ***145.***

As to the second issue, as to whether the Director of Personnel has the authority to agree to and abide by arbitration, Respondent would like to point out the following. Nowhere in the Personnel Code is the Director given the authority to delegate or relegate his powers or responsibilities to determine or negotiate working conditions, etc. However, as set forth earlier, the facts in this claim are that the General Assembly passed an appropriation bill for the sole purpose of the payment of this lump sum retroactive payment to these employees, thereby ratifying and thereby validating by subsequest legislation the actions of the Director of Personnel and making moot the question as to his authority to submit to arbitration.

The Claimant in the instant case, *John* ***Beard,*** was employed by the Department of Public Aid during Fiscal Year 1978 from July 20,1977, to January 31,1978, as a Clerk II, a classification on the RC 14 bargaining unit. Inasmuch as this Claimant was not in active status for all 12 months of Fiscal Year 1978, Article XXXIII, Section 4 of the **RC** 14 contract agreement provides that such employees are entitled only to a lump

sum retroactive payment on a prorata basis for the number of months worked contingent upon their making claim for the retroactive benefits within 60 days of the end of Fiscal Year 1978.

This Claimant filed his claim on October 6, 1978 (not within the original 60 days), however, the Director of Personnel extended the filing date to October 14, 1978."

This Court adopts the comments of the Respondent, in the above stipulation, insofar as the ***Beard*** case is analogous to the present case, as the position of this Court on the law.

The Claimant in the instant case, John E. McDowell, was employed by the Department of Labor. This Claimant, as was *Mr.* ***Beard,*** was employed for only a portion of the period of the retroactive benefits and is, therefore, entitled to only a prorata payment.

Accordingly, there is hereby awarded to Claimant the amount of $440.00 plus the State's contribution to the State Employee's Retirement System and the F.I.C.A. From the aforesaid award to Claimant there shall be deducted amounts for the Claimant's Federal and State income tax withholding and amounts for the Claimant's contributions to the State Employees' Retirement System and to F.I.C.A.

(No. 79-CC-0631—Claim dismissed.)

RAYMOND J. FRANCHESHINI, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Order filed April 9, 1979.

PRISONERS AND INMATES—*Bailment.* Complaint failed to state a cause of action where there was no allegation that Claimant's property was delivered into the possession of Respondent, but alleged rather that the property was stolen or damaged in Claimant's cell.

PER CURIAM.

Claimant, an inmate of an Illinois penal institution, has brought this action to recover the value of certain items of personal property of which he was allegedly possessed while incarcerated. Claimant contends that his property was lost, misplaced, stolen or destroyed while he was imprisoned, and that the loss of his property was proximately caused by the negligence of employees of the State of Illinois.

In *Bargas v. State, 32 Ill.Ct.Cl.*__, this Court held that the State of Illinois does not owe a duty to inmates of its penal institutions to safeguard property which inmates keep in their cells. In the companion case of *Doubling v. State, 32 Ill.Ct.Cl.1,* we further held that only where the State takes actual physical possession of the property of an inmate, as during the course of his transfer between penal institutions, does a duty arise to use reasonable care in protecting the inmate's property.

The complaint in this action does not allege that Claimant's property was delivered to agents of the State, but rather that the property disappeared or was damaged in Claimant's cell. Under our reasoning in *Bargas v. State, supra,* and *Doubling v. State, supra,* the complaint herein fails to state a claim upon which relief can be granted.

It is therefore ordered that this cause be, and hereby is, dismissed.

(No. 79-CC-0772 — Claimant awarded $50.16.)

MARY C. FORTIN, Claimant, *v.* STATE OF ILLINOIS, Respondent.

Opinion fded **June** 27, *1979.*

STATE EMPLOYEE BACK SALARY CLAIMS—Payment of back pay due because of administrative oversight is not additional payment for work already performed.

PER CURIAM.

This cause comes before this Court as a result of a reconsideration of a job audit by the Director of Personnel. This claim is for retroactive pay as a result of the reallocation of the Claimant's job reclassification.

The Respondent, represented before this Court by the Office of the Attorney General, submitted a stipulation which is as follows:

"Now comes the Respondent by William J. Scott, Illinois Attorney General, William E. Webber, Assistant Attorney General of Record and stipulates in the above captioned matter as follows:

1. This case arises as a result of a reconsideration of a job audit. The reallocation was approved by the Director of Personnel and pursuant to Rule 1-30 was held to be effective on March 16, 1976.

2. The issue before this Court in this case is whether the awarding of retroactive salary as a result of a reallocation of job classification violates the prohibitions set forth in *Ch.* 127, *para. 145* which in part provides as follows:

> 'Amounts paid from appropriations for personal service of any officer or employee of the State . . ., shall be considered a full payment for all services rendered between the dates specified in the payroll. . . and no additional sum shall be paid. . . which payments would constitute in fact and additional payment for work already performed and for which remuneration had already been made, . . .'

3. The above issues were dealt with fully in the case of *Claire Crawford, 32 Ill. Ct. Cl.*__, and is dispositive of the issues presented by this case.

4. The Court in *Claire Crawford, supra,* decided that the misclassification amounted to an administrative error and that an award should be granted consistent with the Department of Personnel's application of Rule 1-30.

5. Wherefore, Respondent consents to an award in the amount of $50.16 subject to appropriate added benefits and deductions and withholdings as required by law and the rules and regulations of the State of Illinois for retirement, F.I.C.A. and income tax withholdings."

This Court concurs with the Attorney General and hereby grants an award to Mary C. Fortin in the amount of $50.16 subject to the appropriate added

benefits and deductions and withholdings as required by laws, rules and regulations of the State of Illinois for retirement, F.I.C.A. and income tax withholdings.

CASES IN WHICH ORDERS OF DISMISSAL WERE ENTERED WITHOUT OPINIONS

4361	Wilburn Williamson
4473	John E. Edwards
4507	Peter Albert and Mary Albert
4508	Frank Scarcelli
4509	Clyde R. McMillin and Catherine McMillin
4544	Hildegard Ross
4628	Raymond Davis
4656	Roy E. Miller
4657	Mrs. Lee Miller
4829	Edward Piotrowski and Ann Piotrowski
4909	Raymond F. Suerig and Ruth J. C. Suerig
5038	Joseph Nastasio, A/K/A Anthony Noletti
5075	Elizabeth Gribbon
5112	Donald Vruels and Margaret E. Vruels
5158	Clidell Stevenson
5162	Eugene F. Shockey
5204	John Hegarty
5330	Eldon Kuhn
5369	Juanita M. Wall
5468	Mabel Louise Harrington
5490	Vera G. Roberts
5647	Jerry Betta
5562	Anthony A. Bloemer
5582	John Botica
5806	Sylvia M. Novak
5847	Edward Harold Lockhart
7047	Gateway Transportation Co., Inc., a corporation, Home Insurance Company
73-92	Donald E. Burkett
73-147	Joan Adams
73-297	Wayne Sales Financial Corporation

73-332	Anna Harrison
74-6	George P. Baker
74-7	Zelma Showers
74-68	James V. Gongaware
74-472	Arthur Kaplan
74-474	Scott Zirlin
74-517	John Sinclair
74-675	Emil Moreno and Ida Moreno
74-787	Mobil Oil Corporation
74-802	Mobil Oil Corporation
75-111	Colleen Martinec
75-472	Ray M. Baker
75-654	Carl Tantillo, Dorthy Tantillo, Patrick Tantillo, and Violet Tantillo
75-1100	Elna A. Rowe
75-1199	Catherine Touchton, Etc.
75-1408	James E. Brown
75-1482	Gary Baert
76-6	Priscilla L. Cole
76-39	Air Illinois, Inc.
76-73	Harlandale State Bank
76-137	Marilyn A. Mozockie
76-141	Michael J. Howlett, Secretary of State
76-221	Litsinger Motor Co.
76-315	Canteen Corporation
76-399	Edgewater Hospital, Inc.
76-435	Foster G. McGaw Hospital
76-496	Addressograph Multigraph, Inc.
76-637	Barbara Koch
76-650	Wayne D. Pacyna
76-661	Springfield Produce, Inc.
76-662	James Earl McPhail
76-796	Ailleen Barbara Mahan
76-935	West Publishing Co.
76-937	Sheraton Inn
76-938	Sheraton Inn
76-939	Sheraton Inn
76-941	Sheraton Inn
76-942	Sheraton Inn
76-943	Sheraton Inn
76-944	Sheraton Inn

76-948 Sheraton Inn
76-972 Southwestern Illinois Coal Corporation
76-977 The Catholic Charities of the Archdiocese of Chicago Department of Social Services, An Illinois not-for-profit Corporation
76-1057 Samuel Patch
76-1069 Joseph Much and Bernice Much
76-1118 Sheraton Inn
76-1124 Nichols Harbor Service, Inc., an Illinois Corporation, Talbot, Bird & Co., Inc., a Corporation, and Northwestern National Insurance Co., a Wisconsin Corporation
76-1126 County of Champaign
76-1131 Stacy Mathews
76-1140 David L. Graves Et Al
76-1296 Everett L. Mitchell, Jr.
76-1297 Edward Rataj
76-1351 Plains Television Corporation
76-1353 Plains Television Corporation
76-1405 Joseph J. Duffy Co.
76-1413 C & C Specialty Distributors
76-1420 Jo Anne Clark
76-1431 W. W. Barnhart Co.
76-1448 Office Supply Co., Inc.
76-1467 John Lumpkin, Jr.
76-1487 Ellis E. Reid
76-1492 Victoria Hlado
76-1501 Michael Reese Hospital and Medical Center
76-1503 Emmy Andri, M.D. & Associates
76-1511 69th & Ashland Currency Exchange, Inc.
76-1512 Sheraton Inn
76-1513 Sheraton Inn
76-1583 Methodist Medical Center of Illinois
76-1591 Sheraton Inn
76-1606 Joan O'Brien
76-1658 Huston-Patterson Corporation
76-1674 Smoot Oil Co., Inc.
76-1686 Methodist Medical Center of Illinois
76-1690 Huston-Patterson Corporation
76-1700 Barnes Hospital
76-1749 Jacksonville Automotive Supply Co.
76-1773 American District Telegraph Co.

76-1813	Sheraton Inn
76-1836	Barnes Hospital
76-1858	Armand V. Partipilo
76-1955	Edward Witkus
76-1965	Air Illinois, Inc.
76-1966	Air Illinois, Inc.
76-2013	Ernst & Ernst
76-2072	Dawsons Home Center
76-2090	Allstate Insurance Co.
76-2114	Central Illinois Light Co.
76-2171	Hawkeye Security Insurance Co.
76-2218	Illinois Bell Telephone Co.
76-2261	Pontiac Center, Inc.
76-2262	Barnes Hospital
76-2312	Barnes Hospital
76-2492	Rosalie Wolf
76-2578	Edwin and Ethel Marshall
76-2588	Memorial Medical Center
76-2709	Norman Dachman
76-2780	MFA Mutual Insurance Co., Inc.
76-2801	Donald Bonomo, M.D.
76-2859	Alexander Smith Academy
76-2986	Howard Johnsons Motor Lodge
76-2999	Irwin Schier
76-3067	Carolyn Woods
76-3184	Woodhaven Learning Center
76-3186	Henshaw Newspaper Delivery
76-3217	Wilbert Jackson
77-106	Wayne Doyle
77-122	Riveredge Hospital
77-136	First National Bank of Wilmington
77-159	Gertrude C. Carnow
77-192	Richard Kane
77-249	Foster G. McGaw Hospital
77-288	Foster G. McGaw Hospital
77-301	David W. Mack, M.D., S.C.
77-338	Foster G. McGaw Hospital
77-341	Kenosha Memorial Hospital
77-362	Emergency Room Associates, S.C.
77-376	Jean De Savieu
77-399	Foster G. McGaw Hospital

77-415	Foster G. McGaw Hospital
77-422	St. Mary Hospital
77-438	Bernard E. Gutierrez
77-465	Bergwall Productions, Inc.
77-523	Barnes Hospital
77-563	Padco Community Hospital
77-653	Stanley E. and Linda Banks
77-671	Foster G. McGaw Hospital
77-672	Foster G. McGaw Hospital
77-673	Foster G. McGaw Hospital
77-775	Hyland Electrical Supply Co., Inc.
77-812	Barnes Hospital
77-814	Stephen Will
77-816	Raymond P. Nolan
77-889	Robert W. Harper, D.D.S.
77-916	Agnes M. Schroen
77-951	Houser Commission, Inc.
77-972	Charles E. Johnson, Et Al
77-987	Foster G. McGaw Hospital
77-989	Foster G. McGaw Hospital
77-990	Foster G. McGaw Hospital
77-991	Foster G. McGaw Hospital
77-992	Foster G. McGaw Hospital
77-993	Foster G. McGaw Hospital
77-994	Foster G. McGaw Hospital
77-995	Foster G. McGaw Hospital
77-996	Foster G. McGaw Hospital
77-997	Foster G. McGaw Hospital
77-998	Foster G. McGaw Hospital
77-999	Foster G. McGaw Hospital
77-1000	Foster G. McGaw Hospital
77-1001	Foster G. McGaw Hospital
77-1002	Foster G. McGaw Hospital
77-1003	Foster G. McGaw Hospital
77-1004	Foster G. McGaw Hospital
77-1005	Foster G. McGaw Hospital
77-1006	Foster G. McGaw Hospital
77-1037	Foster G. McGaw Hospital
77-1046	Foster G. McGaw Hospital
77-1047	Foster G. McGaw Hospital
77-1048	Foster G. McGaw Hospital

77-1064	Foster G. McGaw Hospital
77-1065	Foster G. McGaw Hospital
77-1066	Foster G. McGaw Hospital
77-1067	Foster G. McGaw Hospital
77-1068	Foster G. McGaw Hospital
77-1069	Foster G. McGaw Hospital
77-1070	Foster G. McGaw Hospital
77-1071	Foster G. McGaw Hospital
77-1072	Foster G. McGaw Hospital
77-1073	Foster G. McGaw Hospital
77-1115	Foster G. McGaw Hospital
77-1116	Foster G. McGaw Hospital
77-1117	Foster G. McGaw Hospital
77-1118	Foster G. McGaw Hospital
77-1119	Foster G. McGaw Hospital
77-1120	Foster G. McGaw Hospital
77-1121	Foster G. McGaw Hospital
77-1122	Foster G. McGaw Hospital
77-1123	Foster G. McGaw. Hospital
77-1124	Foster G. McGaw Hospital
77-1129	Turnstyle Family Center
77-1131	Turnstyle Family Center
77-1133	Turnstyle Family Center
77-1134	Turnstyle Family Center
77-1135	Turnstyle Family Center
77-1137	Turnstyle Family Center
77-1138	Turnstyle Family Center
77-1139	Turnstyle Family Center
77-1140	Turnstyle Family Center
77-1143	Turnstyle Family Center
77-1146	Turnstyle Family Center
77-1147	Turnstyle Family Center
77-1157	Michael Reese Hospital
77-1299	Patricia A. Ross, Ted L. Ross, Karen M. Ross, Nancy D. Ross, and Mary P. Ross
77-1332	Foster G. McGaw Hospital
77-1333	Foster G. McGaw Hospital
77-1482	AAMED, Inc.
77-1500	Eddie Watts
77-1509	Foster G. McGaw Hospital
77-1572	Foster G. McGaw Hospital

77-1579 St. Mary's Hospital of Kankakee
77-1590A Emile McMahon
77-1646 CMD Construction Co.
77-1675 Jessie Owens
77-1688 Thomas J. Lewison, Donna M. Lewison, and Sean Lewison
77-1692 Dr. Patricia Santucci
77-1721 Paul Paulsen
77-1741 Honorable Iner A. Anderson, Regional Superintendent of Schools, Marshall and Putnam Counties
77-1757 Wanda Kowalski
77-1817 Emilio Mireles
77-1825 Lyle W. Freund
77-1826 Robert J. Taylor
77-1830 Michael G. Brust
77-1840 Glash Drugs
77-1873 Gregory Pierce
77-1908 John C. Vyn
77-1915 Baskin Clothing Co.
77-1937 Gordon R. Hedlin ,
77-1941 Health & Hospitals Governing Commission of Cook County
77-1957 Alpha C. Epperson
77-1958 Donna Queen
77-1970 A. B. Quinton Anderson
77-1999 Vernon Daugherty
77-2033 Joan Carrel
77-2054 Utility Stationery Stores, Inc.
77-2094 Aurora T. Espino
77-2211 Tillie Browne
77-2234 Lillie Brown & Nemroy Montgomery
77-2237 Deloris Norris
77-2250 Mercy Hospital & Medical Center
77-2253 Jackson Park Hospital
77-2259 Robert Pearson
77-2289 Mary Orkis
77-2305 Jackson Park Hospital
77-2340 Judson College
77-2386 Cintas Corporation
77-2440 Sharyn Dittus
77-2450 Foster G. McGaw Hospital
77-2488 Standard Oil Division
77-2498 Chapin Hall For Children

78-68	The Honorable William Thompson, Regional Superintendent Lake Zurich School District 95
78-96	Metal Air Corporation
78-100	Jessie Blasingame
78-112	Marjorie Rockwell
78-118	Jackson Park Hospital
78-147	Elliott State Bank
78-200	Big Three Movers
78-223	Aaron P. Meltzer, D.P.M.
78-274	Kishwaukee Community Hospital
78-295	Foster G. McGaw Hospital, Loyola University of Chicago
78-300	Timothy F. Moore
78-303	L. Susan Draftz
78-317	Dale R. Elmshaeuser
78-373	Marathon Oil Co.
78-399	Thomas A. Meadows
78-435	Deborah Montgomery
78-458	James Powell
78-497	Rockford Memorial Hospital
78-517	Randall L. McDaniel
78-534	Robert Lee Bucker
78-558	USA Chem., Inc.
78-570	Commonwealth Edison Co.
78-616	La Salle Hotel Corporation
78-639	Wilbur L. Fike
78-657	Connie B. Ryan
78-681	Linda J. Anderson
78-708	Klingberg Schools
78-715	Kenneth Bell, Jr.
78-724	Freeport Memorial Hospital
78-762	Springfield Sanitary District
78-812	Warren M. Kenyon, Jr.
78-857	Willie C. Edwards
78-858	Jacqueline Hawkins
78-867	Darrick Motley
78-920	Nilda Marcial
78-921	Nilda Marcial
78-922	Nilda Marcial
78-923	Nilda Marcial
78-924	Nilda Marcial
78-925	Nilda Marcial

78-929	Sammons Communications of Illinois, Inc.
78-937	Thomas P. Regan, M.D.
78-957	Marshall Andresen
78-1002	Judy Rushing
78-1033	Salvador Munoz
78-1035	McDonough District Hospital
78-1051	The Board of Trustees of the University of Illinois
78-1070	Eugene Nesbitt
78-1081	Tom Ciavirelli
78-1084	Guy S. Giovannetti
78-1093	James Jordan
78-1107	Foster G. McGaw Hospital
78-1116	Darryl Van Duch
78-1138	H. Burton Schatz
78-1205	Lakeland College
78-1243	James Barksdale
78-1251	S. Meltzer & Sons
78-1253	Alfred H. Schwarz
78-1264	Marvin Good
78-1350	Arthur P. Etten
78-1352	Willie L. Smith
78-1362	Rick Campbell
78-1371	John Einsiedel
78-1398	Neuropsychiatry, S.C.
78-1411	Felton Chase
78-1433	Aids Ambulance Service, Inc.
78-1475	Millard M. Morris
78-1478	Nagi Zacuzomo
78-1490	Eugene Thompson
78-1507	Harold R. McDonald
78-1513	Carle Clinic Association
78-1522	Norman Van Kampen, Et Al
78-1581	Bob Shelton
78-1589	Donald Gillmore
78-1639	Verna Koelker
78-1672	Mars Signal Light Co.
78-1677	Christie Clinic
78-1735	University of Chicago
78-1769	University of Chicago
78-1823	Ying-Pang Lee
78-1929	Thomas Drog

78-1930	Michael Zaker
78-1940	Horizon Ecology Co.
78-1944	Willie Burns
78-2096	Dallas Arvik
78-2134	Loyola Medical Practice Plan
78-2144	Bobbie Gunnell
78-2178	Angeline G. Mida
78-2182	Shirley Robinson
78-2186	Sarah Rauster
78-2211	James More
78-2218	Clarence Eugene Wilson
78-2262	Konstantin Haensel
78-2276	Little Co. of Mary Hospital
78-2299	George J. Mentgen
79-33	William Zimmerman
79-40	Karl Mehnert
79-136	St. Therese Hospital
79-150	Joseph Gonzalez
79-212	Edward J. Leardi
79-243	Michael Paul Goold
79-251	Barbara J. Turner and Richard Turner
79-266	Commonwealth Edison Co.
79-271	Central Office Equiprnent Co.
79-278	Central Office Equipment Co.
79-279	Central Office Equipment Co.
79-281	Central Office Equipment Co.
79-287	Central Office Equipment Co.
79-383	Carle Clinic Association
79-486	Neuropsychiatry, S.C.
79-488	Neuropsychiatry, S.C.
79-514	Anthony McKibbins
79-518	Bonnie Ervin
79-523	Frederick Smith
79-566	Stephen C. Brems

DISMISSED CLAIMS OF CORPORATIONS WHICH ARE FILED PRO SE

Where a claim is filed in the name of a corporation by and through an individual, acting as its duly authorized agent, who is not an attorney licensed to practice law in this State or who is such an attorney but not employed by said corporation at that capacity, the claim is dismissed pursuant to Ill.Rev.Stat., Ch. 32, secs. 411, 414 and 415, controlling case law in Illinois, and pursuant to Rule 4 of this Court.

75-643	West Publishing Co.
75-1038	Sandy Brewner
76-269	Preiser Scientific, Inc.
76-1876	St. Joseph Hospital
76-1992	St. Joseph Hospital
76-2154	St. Joseph Hospital
76-2634	St. Joseph Hospital
76-3161	Bismarck Hotel
77-61	Bums Security Services, Inc.
77-117	St. Joseph Hospital
77-140	Illinois Office Supply Co.
77-186	Lutheran Child & Family Services
77-664	Bums Security Services, Inc.
77-871	Hinkley & Schmidt
77-1497	St. Joseph Hospital
77-1513	Burnham City Hospital
77-1823	Loyola University Medical Center
77-1950	St. Anthony's Memorial Hospital of the Third Order of St. Francis
77-1963	Texaco, Inc.
77-1991	Skills, Inc.
77-2045	Memorial Medical Center
77-2062	Browning-Fems Industries Inc.
77-2134	Sun Electric Corporation
77-2170	Kroch's & Brentano's
77-2235	LPS Associates of Carbondale, Inc.

77-2330	Rockford Memorial Hospital
77-2388	Ramada Inn
77-2465	Ramada Inn
78-6	Service Supply Co., Inc.
78-22	H. Kensig, Inc., etc.
78-42	Western Baptist Hospital
78-69	Medical Center Clinic of Paris, Ltd.
78-102	A. B. Dick Products Co. of Cape Girardeau
78-227	Rollins Orkin Pest Control Inc.
78-250	Xerox Corporation
78-323	Central Illinois Light Co.
78-347	Ramada Inn
78-358	Mine Safety Appliances
78-407	Cole-Parker Instrument Co.
78-430	Lutheran Child & Family Services
78-431	Allyn & Bacon, Inc.
78-437	Standard Oil Division, Amoco Oil Co.
78-456	The State Journal Register
78-462	Foster Ivan Siebert
78-508	Acco Bristol Division
78-509	Acco Bristol Division
78-531	Mid America Chapter American Red Cross
78-532	Mid America Chapter American Red Cross
78-536	Sun Oil Co.
78-537	Sun Oil Co.
78-578	Carolina Biological Supply Co.
78-579	Don Schubert Enterprises
78-583	Princeton University
78-613	Matthews Transfer Co.
78-617	First National Bank of Geneva as trustee of Evah L. Rogers, Trust No. 448
78-631	Central Illinois Light Co.
78-645	Village Treasurer of Westville
78-656	Pfizer, Inc.
78-659	Illinois Masonic Medical Center
78-661	Burnham City Hospital
78-676	Metalcraft, Inc.
78-682	Central YMCA School
78-687	Delta Air Lines, Inc.
78-703	Chevelle Inc., Francis Barry
78-711	Cintas Corporation

78-716	Everett J. Hedrick, Champaign County Sheriff
78-725	Texaco, Inc.
78-729	Union Electric Co.
78-736	Trans World Airlines, Inc.
78-743	Motorola Communications & Electronics, Inc.
78-755	IBM Corporation
78-773	Holloway Heating & Air Conditioning
78-778	The Brown Schools
78-780	Forest Heights Lodge
78-783	Credit Bureau of Springfield, Inc.
78-804	Anchor Office Supply Co.
78-820	Union Oil Company of California
78-830	Union Oil Company of California
78-831	Union Oil Company of California
78-832	Union Oil Company of California
78-833	Union Oil Company of California
78-834	Union Oil Company of California
78-835	Union Oil Company of California
78-836	Union Oil Company of California
78-853	Village of Time Clerk, Silver Hatcher
78-874	Southwestern Bell Telephone Co.
78-875	Texaco, Inc.
78-876	Data General Corporation
78-883	American Airlines, Inc.
78-884	Martin Luther Home
78-885	Savin Business Machines Corporation
78-890	Shelbyville Daily Union, Inc.
78-901	Star-Line Enterprises, Inc.
78-905	Genrad Inc.
78-908	IBM Corporation
78-912	Harper & Row Publishing
78-928	Continental Oil Co.
78-1027	Holiday Inn — Collinsville
78-1036	ADT Security Systems
78-1054	29th Street Mr. G., Inc.
78-1061	Winchester-Western
78-1064	Midwest Industrial Truck, Inc.
78-1082	Whipple Walgreen Drug
78-1153	B. F. Goodrich Co., Inc.
78-1163	Eastern Illinois Telephone Corporation, Northern District
78-1166	Debbie's School of Beauty Culture, Inc.

78-1178	The Reece Corporation
78-1210	Columbia College
78-1248	Bowman Distribution, Barnes Group, Inc.
78-1421	LaGrange Chrysler-Plymouth Co.
78-1495	Hynson, Westcott & Dunning
78-1506	Newark Electronics
78-1588	Scientific Products, Division of American Hospital
78-1604	Decision Data Computer Corporation
78-1626	Sargent-Sowell, Inc.
78-1660	Village of Roselle
78-1694	Cheshire/a Xerox Co
78-1695	Cheshire/a Xerox Co
78-1696	Cheshire/a Xerox Co
78-1697	Cheshire/a Xerox Co
78-1698	Cheshire/a Xerox Co
78-1768	Orthopaedic & Arthritis Clinic of Rockford, Ltd.
78-1824	Holiday Inn of Mitchell, S.D.
78-1834	Ramada Inn
78-1837	**Cook's** Office Equipment, Inc.
78-1921	Allegheny Airlines, Inc.
78-1951	Bismarck Hotel
78-1962	Nuclear Medical Laboratories, Inc.
78-2002	Oklahoma Rig & Supply Co., Inc.
78-2056	Aids Ambulance Service, Inc.
78-2127	Berz Ambulance
78-2222	Graue-Swicki Motor Co.
78-2223	Cincinnati Time Recorder Co.
78-2245	Covenant Press
78-2255	DSG, Inc.
78-2256	Taft Hotel Aegean Hotel, Inc.
79-15	Midlothian Walgreen Agency Drugs
79-59	Bismarck Hotel
79-79	Tri County Home Health Service
79-90	Graybar Electric Co.
79-144	Datalog, A Division of Litton
79-148	Polaroid Corporation
79-178	Graymills Corporation
79-247	Uptown Sales, Inc.
79-250	Ancha Electronics, Inc.
79-257	Anina Travel Service
79-309	Gestetner Corporation
79-417	Disco Oil Co.
79-428	Apcoa, Inc.
79-448	Certi Serv, Inc.

CONTRACTS — LAPSED APPROPRIATION

When the appropriation from which a claim should have been paid has lapsed, the Court will enter an award for the amount due Claimant.

75-588	Space, Inc.	$ 140.64
75-760	Edgewater Hospital, Inc., a non-profit corporation	3,499.54
75-814	C. R. Ware Oil Co.	117.06
75-899	Edgewater Hospital, Inc. a non-profit corporation	2,387.62
75-1066	Augustana Hospital and Health Care Center	1,089.44
75-1067	Augustana Hospital and Health Care Center	534.20
75-1068	Augustana Hospital and Health Care Center	1,175.24
75-1069	Augustana Hospital and Health Care Center	213.68
75-1070	Augustana Hospital and Health Care Center	320.52
75-1071	Augustana Hospital and Health Care Center	352.68
75-1072	Augustana Hospital and Health Care Center	117.56
75-1073	Augustana Hospital and Health Care Center	587.80
75-1074	Augustana Hospital and Health Care Center	213.68
75-1075	Augustana Hospital and Health Care Center	2,777.84
75-1076	Augustana Hospital and Health Care Center	1,388.92
75-1086	The Salvation Army	21,504.19
75-1096	Edgewater Hospital, a non-profit corporation	4,950.93
75-1130	Edgewater Hospital, a non-profit corporation	1,868.58
75-1502	County of Cook	38,800.00
76-40	Air Illinois, Inc.	994.05
76-507	Dean Griffler	16.34
76-731	West Publishing Co.	205.00
76-778	Dr. R. Riera	335.00
76-843 and 76-1181 (Consolidated under 76-1774)	West Publishing Company	160.00
76-1263	Rush-Presbyterian —St. Luke's Hospital	17,569.80
76-1338	Vickers Petroleum Corporation	23.18
76-1374	West Side Organization Health Services Corporation	12,501.57
76-1385	Computer Machinery Corporation	1,698.20
76-1394	Computer Machinery Corporation	1,244.84
76-1423	Roderick W. Pugh, PH.D.	65.00
76-1666	North Aurora Center	194.00
76-1741	Helen Densch, Pope County Treasurer	1.562.49

76-1774	North Aurora Center	20,000.00
76-1912	Carmen Alonzo d/b/a Carmen Movers	1,500.00
76-1978	Air Illinois, Inc.	92.00
76-2073	Lake Forest College	7,333.99
76-2196	Salvation Army	16,666.90
76-2227	C and G Research, Inc.	1,224.00
76-2344	Frank P. Lentz	750.00
76-2425	St. Leonard's House	4,574.43
76-2443	Thomas R. Meites	2,541.96
76-2458	Walter L. Adams, Michael E. Fox, Et Al	962.50
76-2529	University of Chicago	2,056.55
76-2569	Jewel Food Stores	340.00
76-2648	Saint Francis Hospital of Evanston, Inc.	10,015.41
76-2651	GTE Information Systems Incorporated	35,040.08
76-3068	Thomas A. Dew, M.D.	50.00
76-3143	P. D. Q. Printing Service	966.55
76-3175	Lutheran Welfare Services **of** Illinois	6,707.16
77-16	Motorola, Inc.	862.95
77-34	Addressograph Multigraph Corp.	4,082,69
77-131	Gaskill & Walton	722.17
77-225	Ronnie's Audio Visual	2,714.40
77-241	University of Barber Styling	860.00
77-263	Walter Lawson Children's Home	5,684.52
77-342	Memorial Hospital	600.00
77-369	Memorial Hospital	600.00
77-400	Darlene Fogerty	20.00
77-427	Elim Christian School	6,479.56
77-800	Ridgeway Hospital, Inc.	3,297.10
77-828	Klingberg Schools	6,623.47
77-841	Patrick Smothers	100.08
77-861	St. Cloud Children's Home	2,296.95
77-936	Ruby Palmer	4,309.45
77-971	Anoka County Social Service	3,536.06
77-1050	Commonwealth Edison Company	695.21
77-1182	Associated Services & Supply	3,030.30
77-1258	Standard Truck & Trailer Rental, Inc.	3,152.98
77-1269	John R. Lietzau	460.42
77-1272	Illinois Central Gulf Railroad Company	4,146.27
77-1518	Motorola, Inc.	609.00
77-1555	Near North Rentals, Inc.	1,208.90

77-1621	Exception of Ill., Inc., d/b/a Walter Lawson Childrens Home	541.38
77-1643	Lee King & Partners, Inc., for Herbert H. Rozoff, Assoc., Inc.	2,400.00
77-1660	Robert McRoberts	782.00
77-1724	Motorola, Inc.	327.80
77-1758	Evanston Hospital	4,551.00
77-1919	Johnson Flooring Co.	8,887.00
77-1931	Ravenswood Hospital	1,465.36
77-1932	Ravenswood Hospital	135.40
77-1946	The Catholic Charities	333.49
77-1977	Septran, Inc.	1,134.00
77-1994	Somerset House, Inc.	12,420.22
77-2043	Scholle Corp.	177.25
77-2050	Scholle Corp.	262.50
77-2051	Scholle Corp.	140.00
77-2052	Scholle Corp.	580.00
77-2053	Scholle Corp.	385.00
77-2059	Step, Inc.	1,800.00
77-2065	Poe's Camera Co., Inc.	1,320.64
77-2121	Robert H. Cook	1,327.73
77-2125	Anthony L. Brown	80.00
77-2156	Security Products Division, Federal Signal Corporation	789.75
77-2178	Misericordia Home	3,190.16
77-2184	George D. Hardin	4,929.00
77-2213	Bell & Gustus, Inc.	78.00
77-2252	Klingberg Schools	449.70
77-2265	Lutheran Child & Family Services	144.00
77-2293	Leonard J. Chapman	129.92
77-2306	Jackson Park Hospital	2,050.70
77-2307	Jackson Park Hospital	829.00
77-2308	Jackson Park Hospital	632.50
77-2311	West Publishing Company	28.00
77-2318	Meadows Sheltered Care, Inc.	736.00
77-2325	Klingberg Schools	10,979.66
77-2334	Lutheran Welfare Services of Illinois	3,032.72
77-2343	Galo Lim Tan, M.D.	150.00
77-2346	Uarco, Inc.	409.14
77-2350	General Electric Company	2,452.00

77-2358	Convalescent Home of the First Church of Deliverance	4,578.00
77-2359	David T. Waller D/B/A Teleproducts	2,517.75
77-2377	Klingberg Schools	244.83
77-2379	I. B. M. Corporation	123.10
77-2383	Rock Island Franciscan Hospital	600.00
77-2433	Grand Stage Lighting Company	2,443.00
77-2434	City of Chicago	505,342.04
77-2437	Purolator Courier Corp.	103.44
77-2463	Carle Foundation Hospital	350.94
77-2509	Jose Miranda	17.68
77-2513	Eastman Kodak Company	16,820.85
77-2536	A T & T Longlines	17,994.45
77-2552	John E. Howell	45.00
77-2558	Flair Business Interiors	6,227.32
77-2566	Columbia Video Systems	2,606.80
78-16	The Hon. Richard Martwick, Regional Supt., Argo Summit School District 104	13,398.40
78-31	DePaul University	1,866.00
78-44	Root Brothers Mfg. & Supply Company	105.00
78-49	St. Mary of Providence School	10,157.24
78-58	Katherine Manning	1,350.00
78-94	Chester Transfer, Inc.	181.89
78-111	Donald K. Beltz, Jr.	338.08
78-114	Jackson Park Hospital	105.00
78-117	Jackson Park Hospital	361.25
78-132	Pal Business Forms Co.	11,895.60
78-136	Community Memorial Hospital	80.00
78-139	El Primer Paso Day Care Board of Directors, Inc.	433.00
78-160	St. Mary's Hospital	1,102.30
78-162	Peoria County Service Co.	510.00
78-206	General Electric Company	1,066.00
78-225	General Electric Company	7,021.00
78-228	General Electric Company	3,882.00
78-251	Otis Elevator Company	6,555.32
78-254	City of Chicago (Police Department)	2,449.01
78-315	Lawrence Hall School for Boys	606.62
78-345	Eastman Kodak Company	539.00
78-346	Computer Transmission Corp.	126.00
78-349	Joseph Smerko, C. P. Koebers Artifical Limb Co.	202.45
78-355	General Electric Company	1,753.00

78-361	Baltimore Paint & Chemical Co., Div. of Dutch Boy, Inc.	58,735.60
78-364	B & L Properties	25.00
78-375	Uarco, Inc.	6,990.70
78-376	Scientific Products	428.95
78-382	Larkin Home for Children	2,047.36
78-392	Scott, Foresman & Co.	3,947.99
78-393	McGraw — Hill Book Co.	1,122.11
78-397	Acme Visible Records, Inc.	919.35
78-398	Harris Corporation	7,674.90
78-415	Mochon, Schutte, Hackworthy, Juerisson, Inc.	5,970.27
78-416	Mochon, Schutte, Hackworthy, Juerisson, Inc.	10,835.77
78-433	Phillips Brothers, Inc.	4,682.00
78-436	Centralia Container Corporation	1,493.70
78-440	Hinsdale Sanitarium & Hospital	3,268.45
78-441	Elizabeth Mayo	1,606.00
78-444	REO Movers and Van Lines, Inc.	298.00
78-446	Klingberg Schools	2,001.01
78-467	Memorial Medical Center	858.27
78-475	Kowa Graphics, Inc.	2,281.89
78-512	Kay Nelson's Children's World, Arrowhead School	135.00
78-525	Allendale School for Boys	3,896.02
78-527	A. D. McCoy, M.D., L. A. Klafta	650.00
78-541	Rittoff s Hardware	397.35
78-553	Comten, Inc.	3,288.00
78-557	Capital Auto Leasing Co.	600.00
78-560	Marlin Kirshenbaum	51.95
78-562	Commonwealth Edison Company	1,009.52
78-564	Commonwealth Edison Company	148.67
78-568	Commonwealth Edison Company	314.20
78-572	Commonwealth Edison Company	267.96
78-580	Hewlett Packard Co.	3.260.86
78-592	through	
78-598	(Consolidated) Flink Company	65,016.00
78-611	Forest W. Price	200.00
78-621	Right Girl Temporary Services, Inc.	965.37
78-632	Afro Youth Community	2,337.00
78-636	James P. Boyle, III	68.56
78-642	Silver Burdett Company	13,732.41
78-646	Goldie B. Floberg	859.22
78-658	Morton Krass d/b/a D. S. Haigh & Sons	348.45

78-668	Board of Trustees of Southern Illinois University	19,921.66
78-671	Jeanine Schultz Memorial School	1,800.00
78-674	Dr. Donald H. Holder, M.D.	24.00
78-677	Ascott House	132.16
78-688	Francis R. Prock, Jr.	140.00
78-720	J. B. Lippincott	2,491.93
78-727	Houghton Mifflin Company	9,134.91
78-730	Reporting Services	40.66
78-740	Nauman, Inc.	1,400.00
78-749	St. Elizabeth's Hospital	7,427.32
78-752	Community College District 517, Known as Lake Land College	1,756.33
78-756	Midwest Court Reporting Service	70.00
78-757	Midwest Court Reporting Service	142.06
78-758	Midwest Court Reporting Service	93.00
78-759	Midwest Court Reporting Service	217.00
78-760	Midwest Court Reporting Service	524.10
78-761	Midwest Court Reporting Service	139.45
78-763	Rodney J. Blackman	1,100.00
78-764	A. A. Matoesian	213.00
78-770	The Galesburg Clinic Pharmacy Inc.	20.70
78-771	Conner Universal Company	2,340.00
78-779	University of Chicago, on behalf of the Sonia Shankman Orthogenic School of the University of Chicago	5,268.78
78-781	Lutheran Welfare Services	1,092.00
78-784	Illinois Bell Telephone Company	41.20
78-785	Illinois Bell Telephone Company	110.77
78-786	Illinois Bell Telephone Company	90.97
78-790	Illinois Bell Telephone Company	5,737.50
78-791	Illinois Bell Telephone Company	105.31
78-793	Illinois Bell Telephone Company	24.23
78-794	Illinois Bell Telephone Company	1,540.70
78-795	Illinois Bell Telephone Company	332.07
78-796	Illinois Bell Telephone Company	244.55
78-808	Jackson Park Hospital	1,758.84
78-809	Jackson Park Hospital	198.00
78-810	Jackson Park Hospital	1,962.40
78-811	Jackson Park Hospital	165.00
78-816	Northwest Suburban Special Education	780.05
78-827	Jose M. Albert, M.D.	305.00

78-845	Edward Kohlmeyer, d/b/a A-Tire County Service	105.37
78-846	Edward Kohlmeyer, d/b/a A-Tire County Service	129.20
78-847	Claude Sommerville	332.00
78-849	Richard Scribner	68.00
78-850	Board of Education of Community Consolidated School District 21	17,093.57
78-860	Wolfe, Rosenberg & Associates	759.30
78-862	Grief Brothers Corporation of Northlake, Illinois	876.30
78-866	International Harvester	20,670.93
78-868	Ford Printing, Inc.	269.70
78-869	Nelson A. Harris & Associates	1,364.00
78-873	Aggregate Equipment and Supply Company	798.00
78-882	Rock Falls Manor	3,172.00
78-898	The Standard Register Company	10,367.15
78-910	Kaleidoscope, Inc., A Corporation	14.033.87
78-913	Phillips Brothers, Inc.	6,956.00
78-917	Dwight M. Simmons	528.91
78-926	Leonard Ambulance Service, Ltd.	96.75
78-927	Nancy K. Lupo	10.00
78-932	Mercy Hospital	3,693.50
78-935	Kelly Services, Inc.	37.13
78-950	County of Lake	3,500.00
78-956	Willard W. Dickerson	6.00
78-965	Rush Anesthesiology Group	408.00
78-968	George Bokos	378.58
78-971	R. B. Evans Company	6,573.00
78-972	Mansion View Lodge, Inc.	17.82
78-974	Mansion View Lodge, Inc.	19.91
78-975	Mansion View Lodge, Inc.	71.28
78-977	Mansion View Lodge, Inc.	35.64
78-979	Mansion View Lodge, Inc.	17.82
78-980	Mansion View Lodge, Inc.	17.82
78-981	Mansion View Lodge, Inc.	20.52
78-982	Mansion View Lodge, Inc.	57.58
78-983	Mansion View Lodge, Inc.	49.68
78-985	Mansion View Lodge, Inc.	17.28
78-986	Mansion View Lodge, Inc.	17.82
78-989	Mansion View Lodge, Inc.	89.10
78-993	Little Company of Mary Hospital	62.00
78-997	Southern Illinois Hospital	418.95
78-1001	Fred E. Rawlins, M.D.	571.00

78-1003	Rock Island Franciscan Hospital	647.67
78-1004	Tyler-Hippach Glass Company	66.95
78-1006	Harcourt, Brace & Jovanich, Inc.	4,051.51
78-1011	Clarence J. Larkin, Sr., D.D.S.	200.00
78-1012	Western Union Electronic Mail, Inc.	175.75
78-1013	Western Union Electronic Mail, Inc.	1,619.73
78-1014	MacMillan Publishing Co., Inc.	2,235.88
78-1015	Holt, Rinehart & Winston	61,393.47
78-1032	Morris S. Bromberg	3,387.00
78-1041	Motorola, Inc.	77.75
78-1043	Motorola, Inc.	107.00
78-1047	Royal Industries, Inc., Signal Division	8,680.00
78-1053	Holiday Inn-Kentucky Dam	94.16
78-1055	Swedish American Hospital Assn.	100.00
78-1056	Swedish American Hospital	2,156.29
78-1065	Blue Cross Hospital Medicare Service, Inc.	316.65
78-1067	Bushcart Brothers, Inc.	935.40
78-1072	Board of Trustees — State Universities Retirement Systems	237.73
78-1076	Karen L. Curry	193.00
78-1083	Janice L. Matthews, M.D.	12.00
78-1089	Highland Medical Assoc., Ltd.	93.00
78-1096	P. S. B. Sarma, M.D.	459.00
78-1097	General Motors Corp., Truck & Coach Div.	730.00
78-1098	General Motors Corporation, Truck & Coach Div.	9,960.00
78-1099	and	
78-1100	(consolidated) Gayle J. Cozens	202.85
78-1101	ACME Visible Records	886.00
78-1105	Keith M. Sherman	505.00
78-1114	Highland House Nursing Center	156.00
78-1129	Disabato AMC & Jeep	236.86
78-1130	Disabato AMC & Jeep	88.90
78-1131	Disabato AMC & Jeep	129.27
78-1133	Disabato AMC & Jeep	226.19
78-1142	Anchor Office Supply Company	28.80
78-1143	Anchor Office Supply Company	247.50
78-1144	Anchor Office Supply Company	207.00
78-1146	Anchor Office Supply Company	42.00
78-1148	Anchor Office Supply Company	87.60
78-1152	Mercy Center for Health Care Services	56.50
78-1158	School Management Institute	2.766.00

78-1159	Chicago State University	248.00
78-1182	Western Anesthesiology Associates, Inc.	198.00
78-1185	Styrest Nursing Home	15,275.00
78-1188	Anchor Office Supply Company	332.10
78-1190	3M Business Products Sales, Inc.	3,500.00
78-1193	County of Lake	9,930.00
78-1200	Duplex Products, Inc.	2,788.57
78-1206	Robert H. Kahn	51.55
78-1208	Excepticon of Illinois, Inc. d/b/a Walter Lawson Children's Home	2,824.00
78-1209	Excepticon of Illinois, Inc. d/b/a Champaign Children's Home	1,130.00
78-1212	Charles Jenkins	110.00
78-1214	Brokaw Hospital	1,457.70
78-1215	Wapora, Inc.	1,835.75
78-1221	Follett Publishing Company	3,578.92
78-1224	Board of Trustees of Southern Illinois University	40.00
78-1230	Springfield Sanitary District	31.40
78-1232	Springfield Sanitary District	112.19
78-1233	Illinois Central Gulf Railroad Co.	2,816.28
78-1234	Metro Reporting Service, Ltd.	944.95
78-1236	Allendale School for Boys	9,068.82
78-1241	St. Mary's Hospital	515.00
78-1252	William Tao & Associates, Inc.	908.00
78-1259	Ms. Vivian Skolnick, PhD.	100.00
78-1260	Frank Besset; Frank's Wall-to-Wall Decorating	335.00
78-1274	University of Chicago Orthogenic School	5,143.13
78-1280	Midwest Law Printing Company	377.50
78-1282	Denis Martonffy, M. D.	25.00
78-1285	Shell Oil Company	61.30
78-1286	Shell Oil Company	167.26
78-1289	Rehabilitation Institute of Chicago	4,137.09
78-1290	Misericordia Home	1,314.00
78-1293	Three Star Construction Company	6,582.09
78-1308	Motorola, Inc.	71.72
78-1309	Motorola, Inc.	87.48
78-1318	Brokaw Hospital	1,548.70
78-1319	Brokaw Hospital	1,462.10
78-1320	Brokaw Hospital	602.15
78-1323	Hertz Corporation	108.78
78-1327	Jack Muse, Inc.	12,000.00

78-1328	The Brown Schools	1,038.24
78-1334	Brokaw Hospital	141.05
78-1335	Brokaw Hospital	699.30
78-1336	Rossetter Ford, Inc.	17.63
78-1344	Edwin Raphael Company	14,495.84
78-1347	Adolfo Rizzo, M.D.	100.00
78-1354	B. F. Goodrich Co.	1,315.80
78-1361	The Grove School	454.50
78-1372	Lenover Sales & Services, Inc.	295.26
78-1374	Poe's Camera Company	411.77
78-1409	Ray Graham Associates	57.42
78-1420	Blatter Motor Sales, Inc.	61.31
78-1423	Goldie B. Floberg Center for Children	324.33
78-1424	Western Baptist Hospital	769.45
78-1425	Modern Business Systems	245.62
78-1426	Sears, Roebuck & Co.	728.35
78-1431	Citibank, N.A.	1,449.00
78-1432	Art Associates, Inc.	105.10
78-1443	Goldblatt Bros., Inc.	33.99
78-1444	Goldblatt Bros., Inc.	139.81
78-1448	Dan M. Martin	467.15
78-1477	Everguard Coatings, Inc.	26.982.85
78-1486	Betty B. Straws	52.50
78-1491	Eastman Kodak Company	2,682.05
78-1501	CFS Continental, Inc., Chicago Division	169.28
78-1503	General Electric Company	895.00
78-1508	Carle Clinic Association	250.00
78-1509	Roger **A.** Kanerva	370.06
78-1521	Nancy Hoey	1,157.98
78-1525	The Thomas H. Boyd Memorial Hospital	490.98
78-1537	Bethesda Lutheran Home	1,000.00
78-1540	Robert Lindquist	67.60
78-1542	Alters & Sons, Inc.	546.02
78-1543	Alters & Sons, Inc.	34.36
78-1544	Alters & Sons, Inc.	16.40
78-1545	Alters & Sons, Inc.	217.80
78-1547	Rock Island Franciscan Hospital	1,159.70
78-1548	Juliette McCreight	187.46
78-1577	Marsha Jackson	239.59
78-1578	Rosemary C. Cavaliero	227.62
78-1584	Juliette McCreight	187.46

78-1590	William G. Fischer, Ph.D	718.25
78-1591	Sr. Salvatore Palumbo, et al	3,132.83
78-1592	Parents Magazine Films, Inc.	200.00
78-1598	Goldie B. Floberg Center for Children	270.08
78-1601	Western Illinois University	451.50
78-1620	Melvin Butler	41.25
78-1624	Allendale School for Boys	3,553.53
78-1625	Health Hospitals Governing Commission of Cook County	4,860.00
78-1629	United Cerebral Palsy of Land of Lincoln, Inc.	8,697.00
78-1630	Kankakee Industrial Supply Company	58.44
78-1631	Kankakee Industrial Supply Company	214.95
78-1637	Energy Absorption Systems, Inc.	1,759.82
78-1640	RocVale Teen Homes	467.84
78-1641	Rehabilitation & Vocational Education Program, Inc.	259.90
78-1642	Kankakee Industrial Supply Company	2,791.65
78-1645	Tsong-Chou Lee, M.D.	10.00
78-1646	Tsong-Chou Lee, M.D.	25.00
78-1649	Bonnie Sue Lowe	182.63
78-1651	Morrison-Rooney Associates, Ltd.	8,040.00
78-1652	Vera Collins	27.52
78-1653	Misericordia Home	604.60
78-1663	Hazeltine Corporation	595.00
78-1665	The Loop College by Herbert E. Comm	10.50
78-1666	Gordan Doliber	23.20
78-1670	Herbert Hill	1,800.00
78-1673	William T. Lewis	74.16
78-1678	Raymond D. Lett	55.82
78-1681	St. Mary's Hospital	3,690.85
78-1704	Ravenswood Hospital Medical Center	8,109.70
78-1705	University of Illinois at the Medical Center	311.00
78-1707	Cecil W. Ingrime, DVM	602.96
78-1713	Kankakee Industrial Supply Co.	3,110.20
78-1714	Warren Achievement Center, Inc.	1,933.70
78-1715	Warren Achievement Center, Inc.	1,632.55
78-1716	Edward Christian	29.65
78-1718	Barber-Coleman Company	730.16
78-1720	Driessen Construction Co.	11,011.50
78-1723	Allen H. Caldwell	57.00
78-1728	Fechheimer Brothers Company	674.64

78-1731	Holiday Inn of Decatur	20.48
78-1737	Douglas W. Soebbing	25.64
78-1742	Champaign Asphalt Company	516.25
78-1743	Nicholas A. Dozoryst, II	194.55
78-1746	Vernon Gross	265.80
78-1753	Downtown Motel	20.52
78-1754	Downtown Motel	41.04
78-1755	Downtown Motel	203.04
78-1756	Downtown Motel	729.00
78-1758	Robert V. Matoesian	92.20
78-1761	M. J. Kellner Company	4,055.45
78-1764	Al's Machine Shop	733.18
78-1765	Lora J. Svaniga	54.31
78-1774	Rogard's Inc.	200.07
78-1776	Welder's Supply Co.	2.01
78-1777	Thomas J. Fleming Company	629.30
78-1781	Lake Forest College	750.00
78-1782	Joseph R. Yurgin	125.00
78-1783	Western Chain Company	603.85
78-1784	Russell M. Kofoed	205.00
78-1786	Memorial Hospital of Carbondale	21.00
78-1787	Mayfair Supply Company	579.28
78-1792	Beverly Farm Foundation	1,279.17
78-1793	William J. Kornfield	516.00
78-1802	Joerns Furniture Company	8,841.20
78-1803	Eileen Subak	55.40
78-1804	John M. Cirone	466.36
78-1806	Bourbon Paint Corp.	1,320.00
78-1807	A. A. Store Fixture Co., Inc.	35,760.00
78-1808	Inner Security Systems, Inc., an Illinois Corporation	9,452.00
78-1811	E. J. LaMagdeleine	196.01
78-1814	David A. Bristow, M.D.	95.00
78-1815	Couch & Meyle, Inc.	131.00
78-1817	Kankakee Industrial Supply Co.	499.34
78-1818	Kankakee Industrial Supply Company	1,009.12
78-1820	Southern Equipment, Division McGraw Edison Company	8,936.00
78-1822	Lincoln College	2,181.00
78-1825	Sunbeam Appliance	369.00
78-1829	Gay Time Nursery Schools, Inc.	228.00

78-1835	Warren Achievement Center, Inc.	243.33
78-1838	Sherrard Power System	3,166.76
78-1840	Rush Presbyterian St. Luke's Medical Center	1,026.86
78-1844	Hagerty Brothers	14.68
78-1846	D. H. Martin Petroleum Company	367.77
78-1847	O'Brien Sales Associates	608.88
78-1848	O'Brien Sales Associates	79.50
78-1849	Illinois Institute of Technology	118.30
78-1853	Dale Color, Inc.	260.06
78-1856	Arthur G. Price, Jr.	33.75
78-1857	Roy C. Pechous	142.00
78-1860	Virginia Kerns	11.84
78-1862	IBM Corporation	121.16
78-1864	Couch & Heyle, Inc.	8.46
78-1865	Ruth Nolan & St. Mary of Nazareth Hospital Center School of Nursing	632.00
78-1866	Burrough's Corporation	732.21
78-1867	Bruce L. Carlson	135.20
78-1871	Western Chain Company	419.15
78-1872	Louis Webster	54.25
78-1875	Root Brothers Mfg. & Supply Co.	21.21
78-1879	Norma S. Linderoth	73.00
78-1880	Roscor Corporation	8,476.30
78-1882	Mrs. Cathy Schmit	102.31
78-1890	A. T. D. American Company	1,499.70
78-1891	St. Monica Hall	925.00
78-1894	D. Tepper Enterprises, Inc.	243.52
78-1898	Motorola Inc.	383.00
78-1900	Anna Czekalski	903.70
78-1901	Chicago Stock Tab Company	12,895.18
78-1905	Life Printing & Publishing Co.	112.32
78-1906	W. Gerald Fowler, M.D.	100.00
78-1908	W. Gerald Fowler, M.D.	900.00
78-1911	Henry Cade	18.85
78-1914	Misericordia Home — North	482.50
78-1927	John Egan	352.00
78-1928	MacMillian Publishing Co.	281.62
78-1931	Lance Haddix	220.00
78-1933	Eugene Dach, M.D., S.C.	270.00
78-1935	Garden City Envelope Co.	1,171.65
78-1936	Janice L. Horton	83.35

78-1937	Effingham Builders Supply Co.	1,641.29
78-1938	Watson's Office Supply, Inc.	42.80
78-1939	Watson's Office Supply, Inc.	18.05
78-1945	Coggenshall Construction Co., Inc.	1,500.00
78-1946	Katherine Shaw Bethea Hospital	168.00
78-1950	Couch & Heyle, Inc.	12.50
78-1956	Thomas R. Petrick	486.42
78-1957	Oliver L. Gilbert	269.75
78-1958	Barbara Hall	65.26
78-1959	Ronald Dow	392.73
78-1960	Edward Schneidman	78.45
78-1961	Deborah L. Green	301.08
78-1965	Henson Robinson Company	5,294.36
78-1966	Dictaphone Corporation	852.37
78-1968	Cheshire / **A** Xerox Co.	60.00
78-1969	Cheshire / **A** Xerox Co.	387.36
78-1970	Cheshire / **A** Xerox Co.	388.20
78-1971	Cheshire / **A** Xerox Co.	14.52
78-1972	Robert **J.** Noe	180.00
78-1973	Robert **J.** Noe	23.00
78-1975	Robert **J.** Noe	7.50
78-1978	Kellogg Sales Company	1,264.00
78-1979	Marillac Social Center	240.08
78-1981	Davis Temporaries	155.20
78-1985	Pitman-Moore, Inc.	1,800.00
78-1986	Small World Child Care Center	82.50
78-1987	MacMurray College	775.00
78-1988	MacMurray College	150.00
78-1989	Lutheran Welfare Services of Illinois	22,468.38
78-2006	Metro Reporting Service, Inc.	30.00
78-2008	General Electric Co.	4,496.00
78-2010	General Electric Co.	3,142.00
78-2011	General Electric Co.	569.00
78-2012	General Electric Co.	2,064.00
78-2019	Inforex, Inc.	84.00
78-2020	Inforex, Inc.	2,215.68
78-2023	Milo Lambert, d/b/a Lambert Construction Co.	3,869.14
78-2024	Yale F. Edeiken	1,137.50
78-2026	Westside Tractor Sales	51.15
78-2037	General Electric Medical Systems	664.80
78-2042	R. T. Hammel, M.D.	330.00

78-2044	Board of Education District 170, Cook County	1,300.00
78-2045	Board of Education District 194, Cook County	1,757.68
78-2046	R. A. Behrmann & Associates, Inc.	7,342.00
78-2048	Chicago & Illinois Restaurant Association	360.00
78-2054	Carol E. Reich	120.00
78-2070	David Riff	63.65
78-2074	Motorola, Inc.	104.35
78-2078	Mine Safety Appliances Company	1,604.25
78-2079	St. Mary's Hospital	266.50
78-2083	Wang Laboratories	1,615.00
78-2086	All-Steel, Inc.	151.75
78-2093	Sandra D. Mister	108.55
78-2094	Betty A. Addante	105.81
78-2095	C. W. Associates	2,514.70
78-2099	Airkem, Division of Airwick Industries, Inc.	488.84
78-2104	Petersburg Plumbing and Heating Company	497.79
78-2105	Structural Rubber Products Company	8,874.60
78-2106	Catholic Charities Diocese of Rockford, Elgin Catholic Social Service	1,025.00
78-2107	Mental Health Association of Greater Chicago	1,002.80
78-2108	King's Daughters' Home for Children	1,067.23
78-2109	Joliet Junior College, Dist. 525	99.00
78-2112	James R. Quinn	1,150.00
78-2116	O'Brien Sales Association	125.40
78-2121	Robert Bouer, M.D.	120.00
78-2140	Globe Glass & Trim Co.	285.92
78-2141	Charles McCorkle, Jr., Inc.	540.40
78-2147	Goodyear Tire and Rubber Co.	173.86
78-2148	Goodyear Tire and Rubber Co.	946.40
78-2151	MCA Games Incorporated	12,244.33
78-2154	Cambridge Instrument Company, Inc.	5,569.03
78-2155	The Quincy Technical Schools, Inc.	299.83
78-2168	F. J. Bero & Co., Inc.	616.75
78-2169	Proviso Association for Retarded Citizens	870.00
78-2173	Northrup King Co.	1,254.00
78-2180	Annie Marshall	300.00
78-2189	Baptist Hospital of Southeast Texas, Inc.	263.00
78-2190	Barbara Broome	85.81
78-2193	Taylor Ready-Mix	3,122.26
78-2198	Metal Fabricators, Inc.	2,240.00

78-2200	Donald Hawthorne, Treasurer, Woodford County, Illinois	1,435.73
78-2201	Family Service Center Sangamon County	149.50
78-2202	Glasco Electric Company	612.11
78-2203	J. S. Latta Company	11.31
78-2204	The Quincy Clinic	287.00
78-2208	Thomas J. Moore	13.95
78-2210	Carey's Furniture Company, Inc.	3,707.00
78-2214	Carey Furniture Co., Inc.	7,828.15
78-2219	Curtin Matheson Scientific, Inc.	227.81
78-2220	Florence Crittenton Home	750.00
78-2224	Louis Zahn Drug Co.	262.68
78-2228	Arthur Rubloff & Co.	648.67
78-2230	Sanitary District of Rockford	195.98
78-2233	Rosalyn Lepley, M.D.	250.00
78-2236	Joliet Junior College, Dist. 525	406.00
78-2238	Joliet Junior College, Dist. 525	469.00
78-2240	Holiday Inn Lake Shore Drive	216.20
78-2246	Camera Exchange, Div. of Roscor Corporation	549.52
78-2247	Atlas Material Handling Equipment Inc., A Corporation	118.25
78-2250	The Memorial Hospital	650.00
78-2264	Scientific Products, Div. of American Hospital Supply Corp.	256.86
78-2268	Sherman Hospital Assn.	102.90
78-2271	Chicago O'Hare Marriott Hotel	227.71
78-2273	E. Evans Ronshausen	128.16
78-2274	Educational & Institutional Cooperative Services, Inc.	1,085.37
78-2279	Weeks Auto Seat Covers	45.00
78-2281	Comstock Construction Company, Inc.	3,439.10
78-2282	University of Maryland University College	1,275.00
78-2284	Glasco Electric Co.	248.75
78-2285	Everett M. Bailey & Sons, Inc.	13,252.00
78-2293	Deborah Callaghan	516.00
78-2295	McBrides Express, Inc.	45.80
78-2300	Lapine Scientific Company	65.40
78-2309	IBM Corporation	1,008.08
78-2310	IBM Corporation	812.42
78-2311	IBM Corporation	1,181.28
78-2314	Jewish Vocational Service and Employment Center	1.152.00

78-2316	Scientific Products	394.00
79-0005	DuPage Easter Seal Treatment Center, Inc.	120.00
79-0006	Illinois Blue Print Corp.	1,204.00
79-0009	Julia Clifton	368.00
79-0017	Springfield Builders Supply	1,678.00
79-0018	John Lampros Associates, Ltd.	1,124.67
79-0025	Anchor Office Supply Co.	96.17
79-0026	Anchor Office Supply Co.	23.30
79-0028	Anchor Office Supply Co.	87.60
79-0029	Anchor Office Supply Co.	328.68
79-0031	Anchor Office Supply Co.	97.93
79-0034	West Publishing Company	108.00
79-0038	James L. Berroyer	99.30
79-0043	Southern Illinoisan, Inc.	182.00
79-0045	Dominion Consolidated Truck Lines, Ltd.	211.33
79-0046	Midwest Safety Equipment	868.00
79-0047	Bruce L. Carlson	1,014.45
79-0056	The Colonial Williams-Burg Foundation	69.00
79-0058	Motor Vacations Unlimited, Inc.	389.80
79-0064	Fisher Scientific Company	290.22
79-0068	Parkland College	175.00
79-0070	George L. Sisko	507.00
79-0073	Widmer, Inc.	577.71
79-0075	General Electric	209.44
79-0077	Latisha H. Sallis	12.88
79-0082	Servco Equipment Company	38,134.00
79-0088	Avonix, Div. of AV Electronics Inc.	675.00
79-0093	Luis Droira	137.25
79-0096	Cord Moving & Storing	825.08
79-0099	The Edgewater Hospital, Inc.	286.75
79-0101	Friedman & Koven	22,796.03
79-0103	Commonwealth Edison Co.	435.00
79-0104	Shell Oil Company	235.60
79-0106	Marco Sales, Inc.	1,382.20
79-0120	Gamal K. Garas, M.D.	108.00
79-0126	Paul D. Fischer	386.22
79-0130	Northwestern University, an Illinois Corporation	1,125.29
79-0132	Ronald Shlensky, M.D.	75.00
79-0138	International Crystal Manufacturing Co.	764.81
79-0140	Professional Food-Service Management, Lincoln Land College	70.50

79-0142	Stromberg-Carlson Corp.	189.35
79-0147	Kankakeeland Community Action Program	4,698.63
79-0152	ADT Security Systems	788.00
79-0155	Allendale School for Boys	635.76
79-0158	Bradley Bartholomew Ill. College	775.00
79-0160	Addressograph-Multigraph Corp.	177.65
79-0161	Texaco, Inc.	22.49
79-0162	Texaco, Inc.	11.03
79-0163	Texaco, Inc.	199.38
79-0164	Texaco, Inc.	26.60
79-0165	Texaco, Inc.	87.33
79-0166	Texaco, Inc.	25.63
79-0168	Texaco, Inc.	754.17
79-0171	Texaco, Inc.	50.85
79-0172	Texaco, Inc.	32.45
79-0173	Texaco, Inc.	8.07
79-0176	First National Bank, Trust #560	1,599.48
79-0179	Rockford Oral Surgery, Ltd.	40.00
79-0180	Dwight Sills	183.10
79-0185	Black and Company	107.00
79-0187	Martin Luther Home	188.24
79-0189	Richard T. Horton	140.00
79-0191	Concordia Teachers College	516.00
79-0198	Anchor Office Supply Co.	262.50
79-0203	Random House, Inc.	197.69
79-0205	Claudia Agbejinmi	28.00
79-0217	Sommer Brothers Seed Company	959.50
79-0221	Misericordia Home — North	168.00
79-0222	Vivian Culp	41.16
79-0224	Holiday Inn, Moline, Illinois	31.50
79-0225	Holiday Inn, Moline, Illinois	47.25
79-0226	Marco Sales, Inc.	345.55
79-0228	Climatronics Corp.	2,800.00
79-0229	Radonics Electronics	395.40
79-0230	RCA Corporation	564.97
79-0232	Ronald W. Olson	912.50
79-0238	Loyola University of Chicago	387.50
79-0239	Loyola University of Chicago	775.00
79-0240	Loyola University of Chicago	387.50
79-0241	Loyola University of Chicago	387.50
79-0242	Loyola University of Chicago	387.50

79-0244	Economic Opportunity Commission of St. Clair County	17,502.00
79-0258	The Camera Shop	504.93
79-0267	Central Office Equipment Co.	1,119.87
79-0269	Central Office Equipment Co.	1,268.44
79-0270	Central Office Equipment Co.	659.92
79-0272	Central Office Equipment Co.	110.00
79-0274	Central Office Equipment Co.	521.30
79-0282	Central Office Equipment Co.	652.36
79-0283	Central Office Equipment Co.	1,982.42
79-0284	Central Office Equipment Co.	397.41
79-0288	Central Office Equipment Co.	1,722.64
79-0291	Herbert E. Braun	100.02
79-0292	Dale N. Bergstrom	46.85
79-0298	Laura Jean Todaro	407.00
79-0300	Scientific Products, Div. of American Hospital	57.07
79-0305	Caryle Michel, d/b/a Michel Fertilizer Company	3,767.75
79-0308	David S. Palmer	123.75
79-0310	Starved Rock Lodge Enterprises, Inc.	564.31
79-0331	Key City Motors, Inc.	59.66
79-0332	Jacqueline G. Vance	387.50
79-0337	Leathie Steele	775.00
79-0340	Union Electric Company	1,053.56
79-0346	Maurice Wagy	995.74
79-0351	Dean Business Equipment Company	97.70
79-0352	Technicon Instruments Corp.	3,011.85
79-0357	Yvonne Turner	210.00
79-0363	Raymond P. Doyle, M.D.	54.00
79-0364	Hines-SP Springfield, Ltd.	1,404.00
79-0366	Augustana Hospital, etc.	240.00
79-0367	Dr. Gumbiner & Associates	120.00
79-0369	Anchor Office Supply Co.	34.50
79-0370	Anchor Office Supply Co.	235.85
79-0379	Joliet Globe Building Materials, Co.	822.16
79-0381	Progress Environmental Corporation	1,240.00
79-0382	Carle Clinic Association	289.00
79-0384	Ronald G. Knight	255.00
79-0386	The Goodyear Tire & Rubber Co.	679.95
79-0387	The Goodyear Tire & Rubber Co.	5,845.07
79-0388	The Goodyear Tire & Rubber Co.	46.80
79-0395	Werner Motor Company	34,000.00

79-0396	Terry Alan Sweitzer	66.00
79-0398	Simplex Time Recorder Co.	380.00
79-0422	The College Book Store	83.14
79-0441	Illinois Creamery Supply Co.	18,710.00
79-0449	Kishwaukee College	963.50
79-0457	Irene Cruz	104.25
79-0459	Livingston County Nursing Home	905.80
79-0467	Litsinger Motor Co.	18.38
79-0470	State of New York Dept. of Correctional Services of Div. of Industries	366,569.50
79-0471	St. Clair Travel Service	43.00
79-0475	Beeper Call, Inc.	391.52
79-0477	AM International, Inc., Bruning Division	324.20
79-0493	Central Office Equipment Co.	1,497.60
79-0495	Central Office Equipment Co.	2,606.43
79-0496	Central Office Equipment Co.	6,547.10
79-0502	Charles McCorkle, Jr., Inc.	99.70
79-0503	Charles McCorkle, Jr., Inc.	153.20
79-0504	Charles McCorkle, Jr., Inc.	186.50
79-0505	Charles McCorkle, Jr., Inc.	101.00
79-0506	Charles McCorkle, Jr., Inc.	56.00
79-0507	Charles McCorkle, Jr., Inc.	264.80
79-0508	Charles McCorkle, Jr., Inc.	37.50
79-0519	Jamp Special Education Services	4,818.86
79-0520	ABC-Trans National Transport, Inc.	24.98
79-0526	Airtite, Inc.	1,436.00
79-0527	New Hope Living & Learning Center, Inc.	1,152.89
79-0528	Dictaphone Corporation	245.70
79-0531	R. J. Hansen Associates, Inc.	1,800.00
79-0532	Misericordia — North	600.00
79-0533	Misericordia — North	833.00
79-0534	Hammer Residences, Inc.	94.20
79-0537	Rita Simpson	98.92
79-0540	United States Fastener Corp.	2,803.72
79-0541	United States Fastener Corp.	1,134.75
79-0542	North Central Airlines, Inc.	62.00
79-0544	Metro Reporting Services, Ltd.	30.00
79-0545	Law Bulletin Publishing Co.	162.50
79-0549	Hicklin GM Power Co., Inc.	7.56
79-0550	Hicklin GM Power Co., Inc.	386.75
79-0551	Hicklin GM Power Co., Inc.	65.66

79-0552	Hicklin GM Power Co., Inc.	11.14
79-0553	Hicklin GM Power Co., Inc.	36.82
79-0554	IBM Corporation	855.00
79-0555	IBM Corporation	1,090.94
79-0556	William F. Thornton	80.00
79-0564	The Board of Trustees of The University of Illinois	10,270.81
79-0578	Citibank, N.S.	421.81
79-0579	Sherwood Oil & Tire	67.68
79-0584	Rush Anesthesiology Group	585.00
79-0595	Ancha Electronics, Inc.	648.78
79-0600	Kaskaskia College	174.85
79-0601	Gailey Eye Clinic Ltd.	2,788.65
79-0602	Baptist Electronic Supply Co.	35.45
79-0606	Best Western-Fox Valley Inn	36.60
79-0607	Eleanor M. Lightle	210.00
79-0620	Arthur and Fay Burnside	350.00
79-0625	Chicago Sun Times, A Div. of Field Enterprises, Inc.	360.30
79-0626	Garden City Envelope Co.	1,905.56
79-0627	Kevin J. Gillogly	600.00
79-0630	Victor Stewart	1,550.00
79-0635	James E. Edwards, M.D.	210.00
79-0639	Texaco, Inc.	609.17
79-0640	Texaco, Inc.	7.21
79-0641	Texaco, Inc.	48.47
79-0642	Texaco, Inc.	45.80
79-0643	Texaco, Inc.	16.29
79-0647	Texaco, Inc.	37.62
79-0648	Texaco, Inc.	29.63
79-0650	Reliable Plumbing	387.50
79-0658	Baker and Taylor Company	109.86
79-0659	Rose M. Stark	775.00
79-0663	RCA/Mobile Communications Systems	445.00
79-0666	Illini Glass Co., Inc.	199.29
79-0671	John W. Wohnlich	23,000.00
79-0672	M. Kallis & Co., Inc.	8,305.01
79-0675	City Auto Sales Co.	590.56
79-0676	Agnes Houston	36.65
79-0692	Kathleen (Radke) Jennings	78.29
79-0699	D & G Investment Co.	2,138.05
79-0703	The Goodyear Tire & Rubber Co.	336.89

79-0712	MacCormac Jr. College	1,032.00
79-0732	Associates for Oral & Maxillofacial Surgery, Ltd.	323.39
79-0741	The Camera Shop, Inc.	88.50
79-0758	Midwest Magnetics & Systems Supply	689.95
79-0759	Amy Zahl Gottlieb	136.14
79-0760	Metal-Air Corporation	8,000.00
79-0763	Laura Soderberg	90.00
79-0766	Associated Service & Supply Co.	700.00
79-0769	Parks College of St. Louis University	775.00
79-0770	Parks College of St. Louis University	210.00
79-0771	Parks College of St. Louis University	445.00
79-0774	Metro Reporting Service, Ltd.	33.75
79-0791	Lanier Business Products, Inc.	349.50
79-0812	Friendly Chevrolet, Inc.	14,320.00
79-0814	Dr. Helen Hageboeck	82.87
79-0815	Climatronics Corporation	10,400.00

STATE COMPTROLLER ACT — REPLACEMENT WARRANTS

If the Comptroller refuses to draw and issue a replacement warrant; or if a warrant has not been paid after one year from date of issuance; persons who would be entitled under Ill.Rev.Stat., 1973, Ch. 15, sec. 210.10, to request a replacement warrant may file an action in the Court of Claims for payment.

76-135	John M. and Wada D. Martin	$ 7.00
76-138	Tony Sciuto	1.65
76-294	Lyndle T. Martin	167.70
76-717	Gerald J. Shepard	25.14
76-910	Priscilla F. Beattie	63.52
76-2167	James Wollfolk	220.00
76-3163	John L. Cain	Denied
77-212	Kaytown Drugs Co., Inc.	440.65
77-397	Patricia A. Pavlik	50.94
77-529	Peter Salerno	47.77
77-840	Jane F. Terrell	44.24
77-848	S. L. Smith	50.29
77-904	Jewel Food Stores, Div. of Jewel Companies, Inc.	374.00

77-905	Jewel Food Stores, Div. of Jewel Companies, Inc.	102.61
77-906	Jewel Food Stores, Div. of Jewel Companies, Inc.	176.57
77-1062	Maywood Foods & Liquor, Inc.	261.00
77-1107	Carrell Hutchinson, M.D.	Denied
77-1368	Mary Cass d/b/a Friendly Haven Nursing Home	1,118.40
77-1502	Muriel D. Becker	Denied
77-2072	Jewel Food Stores, Div. of Jewel Companies, Inc.	68.94
77-2073	Jewel Food Stores, Div. of Jewel Companies, Inc.	261.00
77-2074	Jewel Food Stores, Div. of Jewel Companies, Inc.	428.00
77-2075	Jewel Food Stores, Div. of Jewel Companies, Inc.	216.00
77-2076	Jewel Food Stores, Div. of Jewel Companies, Inc.	261.00
77-2077	Jewel Food Stores, Div. of Jewel Companies, Inc.	347.00
77-2135	Jewel Food Stores, Div. of Jewel Companies, Inc.	24.92
77-2335	Jewel Food Stores, Div. of Jewel Companies, Inc.	317.00
77-2427	Town of Normal	619.05
77-2508	Tower Currency Exchange, Inc.	179.63
77-2541	Maxwell Halsted Realty Corp.	Denied
78-78	Eugene P. Zolli, Personal Representative of the Estate of Mildred Ciono, deceased	437.95
78-125	River Forest State Bank	Denied
78-141	Fleet Dispatching Service	Denied
78-275	Irven Patricia Pfeifer	Denied
78-354	Louis Eugene Rovai	Denied
78-454	Noel Leonardo	Denied
78-518	Marian E. McLellan	160.28
78-519	Marian E. McLellan	160.28
78-520	Marian E. McLellan	864.33
78-521	Marian E. McLellan	568.74
78-559	John P. Kelly	Denied
78-599	Donald McAllister	Denied
78-602	Norman Centeny	Denied
78-637	Farmacia Laffitte	Denied
78-638	Vincent and Adeline Saena	Denied
78-655	Technical Dictionaries Co.	Denied
78-662	Hester W. Bishop, Adm. of the Estate of Neva N. Williams	Denied
78-665	George R. Kelley	295.05
78-667	Raquel Ruiz	Denied
78-675	Thoams H. Bills	Denied
78-683	Thomas E. Benedict	11.27
78-689	Robert S. Ubell	22.00

78-717	Evelyn A. Veach	224.96
78-719	Michael R. and Jill Bates	24.35
78-721	Margaret A. Settlemyer, Admx. of the Estate of Marie J. Kelly	42.53
78-722	Michael G. Shelly, Trustee for Frank and Esther Burton	138.00
78-726	Philip and Virginia Ellefson	Denied
78-728	Richard J. Richards	Denied
78-731	Lee Ingram	Denied
78-742	Gloria Harner	Denied
78-744	Leon & Rogene Matteson	44.29
78-775	Theodore A. Baranowski	Denied
78-776	Ruth O. Ellis	717.05
78-782	Etta Sahn, Conservator of the Estate of Helen Young	407.22
78-821	Opal Mescher	150.00
78-822	Lucille W. Worthington	Denied
78-823	Flossie A. Brown, Executor of the Will of Margaret A. Konitzer, deceased	1,503.96
78-840	Jane F. Terrell	44.24
78-843	Illinois Law Enforcement Commission	Denied
78-848	S. L. Smith	50.29
78-887	Harold D. Shapiro, Trustee for Pearl E. Cahn	300.51
78-891	Constance Roby	14.39
78-894	Purolator Courier Corp.	910.50
78-897	Sigmund B. and Marie R. Kowalski	Denied
78-900	Robert W. Hopper	24.40
78,904	Eugene Singleton	252.08
78-907	Glen A. and Phyllis A. Metalmann	7.48
78-909	Genevieve Hynko	125.47
78-915	Vicky J. Stanton	Denied
78-918	Edward K. Osborne, d/b/a "99 Variety Store"	216.00
78-948	Robert E. Wagener	18.39
78-959	James and Mary Ann Hoffman	Denied
78-960	David L. & Sharon J. Wilcoxson	Denied
78-961	David L. & Sharon J. Wilcoxson	61.28
78-963	Prairie Place Apothecary	608.62
78-966	Maynard and Grace Hestrom	1,327.95
78-991	James and Alberta Burton	108.00
78-992	Patricia J. William	Denied
78-994	Maibelle M. Christy	Denied

78-999	Robin T. Sherman	Denied
78-1007	Beulah Burt	452.88
78-1008	Daniel A. Don	2,043.74
78-1010	Marshall R. Rognstad, Adm. of Estate of Russell A. Rognstad	Denied
78-1016	William A. Bosnak	121.56
78-1022	Sandra V. Kuprenas	203.56
78-1052	Margaret R. Dofflow	Denied
78-1068	Ralph A. Belnap	55.93
78-1069	Oleary A. Flowers	11.40
78-1074	Samuel J. Betar, Admr. of the Estate of Sadie Chiesielsky	79.99
78-1079	Marguerite McMahon	32.24
78-1080	Cindy Bordes	21.63
78-1088	James and Diana Carnevale	67.39
78-1119	Richard L. Miller, Personal Representative of the Ivy L. Miller Estate	Denied
78-1121	Schlie Bros.	170.25
78-1122	Daisy L. Grimes Horton	Denied
78-1123	Evah L. Rogers	Denied
78-1124	Evah L. Rogers	Denied
78-1126	Chun Hsiung and Meilin Chang	162.00
78-1134	Eileen J. George	243.92
78-1154	Gwen E. Phillips	Denied
78-1156	George F. Stastny, Sr., et al	Denied
78-1167	Angelo G. Angeles	1,496.30
78-1176	Russell D. and Paula A. Ray	Denied
78-1186	Chicago Pneumatic Tool Co.	1,270.13
78-1191	Thomas W. and Catherine C. Murphy	Denied
78-1194	Pearl Stewart	24.00
78-1201	Neptali Medina	100.00
78-1202	Commissionaria Libraria Italo-Americana	Denied
78-1213	Estate of Anton J. Jendraszewski, deceased	Denied
78-1222	Raymond C. Baker	150.30
78-1240	Frances Kubala	Denied
78-1242	Enriqueta Bond PhD	Denied
78-1255	Susan (Sheehan) Mueller	23.88
78-1256	George H. Engel, M.D.	10.00
78-1257	Jose M. and Carmen A. Galvin	Denied
78-1258	Asanee Lertsburapa, M.D.	5.00
78-1261	Dennis A. and Suzanne Wolanski	Denied

78-1265	Village of Westville	4,361.06
78-1266	Edith Sizer	34.87
78-1277	Mantung H. Lee	430.67
78-1278	Thomas P. Quinn	21.88
78-1295	Barry Jay Katznelson	18.42
78-1300	Mark E. Catton	22.66
78-1303	Aida Villagracia	17.73
78-1316	Theodore R. Pleshe	412.34
78-1324	Linda A. Wallace	25.04
78-1348	Ascension Castor, et al	Denied
78-1356	Inex L. Dotson	25.00
78-1358	Mary V. and Michael Giblack	Denied
78-1363	Thomas A. Mineau	Denied
78-1366	Francis Ogle	2,415.30
78-1370	George J. Parrilli	2,353.31
78-1373	Village of Lake Zurich	Denied
78-1383	Victor J. and Helen L. Jakuboski	Denied
78-1384	Robert A. Chapman, M.D.	127.00
78-1385	Estate of Lucy S. Blair	78.73
78-1386	Frederick F. Nugent, Jr.	Denied
78-1387	Patrick H. McMahon, Jr.	17.07
78-1408	Richard N. Abrams, for the Estate of Elizabeth Hill, M.D.	30.00
78-1416	Mary Pauline Duffy	60.54
78-1417	63rd & Ellis Pharmacy, Inc. d/b/a 63rd & Ellis	5,468.11
78-1422	Village of North Aurora	3,732.02
78-1436	Frank and Evelyn Smith	Denied
78-1447	Stephen J. Jencius	25.01
78-1463	Elsie Siering	259.64
78-1471	Richard A. and Margaret Graczk	9.00
78-1476	Leo J. and Mabel Murphy	Denied
78-1494	Werner Goers	364.75
78-1516	Gail R. Patricia A. Dietz	46.46
78-1546	Apakorn Theinpeng, M.D.	1,225.00
78-1562	John Devlin, Admr. of the Estate of Patrick McPolin	16.00
78-1568	Kathleen M. Danison	75.00
78-1575	Gurioli Settimia	Denied
78-1580	Merle M. Christiansen	73.76
78-1594	Kenneth R. and Betty T. Berg	Denied
78-1610	Norbert and Haydee Rivera	Denied

78-1615	Etta Sahn	Denied
78-1635	Robert S. Purvis	Denied
78-1674	Dianne F. Akouris	24.78
78-1691	Clarence E. McClelland	Denied
78-1706	William Tyne	Denied
78-1708	Village of Kildeer	1,121.34
78-1721	Ellen J. Louik	381.44
78-1730	Martha Tross	Denied
78-1750	Susan J. Lieburn	Denied
78-1778	Stanley and Zinaida Cizikas	20.08
78-1780	Albert Riggins	25.20
78-1788	Alvin and Carol Reed	Denied
78-1791	Ervin and Merry Johnson	15.24
78-1877	Sandra Coffey	Denied
78-1897	Alan Richmond	Denied
78-1993	James A. and Charlotte K. Tittle	75.41
78-2028	Christian County Agriculture Fair Assn.	2,451.98
78-2029	U.L. and Pears Mitchell	96.85
78-2032	Molly Elowe, Exec. of the Estate of Jack Elowe, deceased	1,460.69
78-2033	Gary Pitonyak	Denied
78-2053	Thomas and Maureen Munz	47.18
78-2098	Myrtel Ekblad, et al	16.39
78-2160	Village of Marissa	1,414.09
78-2226	Kankakee Currency Exchange	Denied
78-2253	Ruth Patterson, by Lillian M. Ingelback, Conservator	Denied
78-2260	Phillip S. Finkel	14.49
78-2265	Michael R. and Jill E. Bates	24.35
78-2287	Mary Redmond	36.08
78-2288	Mary Redmond	445.56
78-2289	Mary Redmond	Denied
78-2290	Mary Redmond	Denied
78-2291	Mary Redmond	133.66
78-2294	John A. Chambers, Jr. and Wilma K. Chambers	49.50
79-2	City Treasurer of Auburn	3,116.85
79-4	Donald J. Wirth	Denied
79-49	Sidney Cunningham	50.00
79-65	Geneser J. Marshall	50.00
79-83	Ernest Duncan	1,582.09
79-116	Paul F. and Eileen M. Schick	Denied

79-137	General Cable Corp.	9,575.59
79-143	William G. and Doris Frank	39.05
79-188	Georgeana M. Gardner	12.70
79-218	Barbara M. Schmidt	Denied
79-246	John Prendergast	24.37
79-261	Vernon A. Steiger	Denied
79-289	Neva E. Kennedy	Denied
79-290	Joseph Melnyk	Denied
79-299	Catherine Kanzler	1,153.33
79-329	Agnes A. Melanz	8.00
79-339	Kenneth L. Williams	3.19
79-342	Patricia E. Kingston	. 50.03
79-347	Marcia Bealer Hekman	Denied
79-356	Candace Kubira	Denied
79-373	Gary M. and Maryann Phillips	45.80
79-374	Dagoberto Riveron, M.D.	2,320.00
79-391	Duane D. Hem	Denied
79-418	Weldon E. and Mildred Miget	50.56
79-446	Gary D. Graves	11.27
79-451	Herschel D. and Imogene H. Leffingwell	Denied
79-512	Lee R. Hamburg, Admr. of the Estate of George Marcus, deceased	2,501.21
79-515	Stanley Mikula	3,020.14
79-525	J. C. and Eileen Cunningham	921.57
79-538	Peter C. and Sara F. Stoecklin	101.00
79-548	Southwest Cook County Cooperative	2,632.00
79-562	Robert P. Kennedy	Denied
79-570	Village of Wenonah	251.84
79-583	Bertrand Phillips	45.04
79-603	Michael and Particia Burger	74.45
79-628	Eric Sanders	4.00
79-629	Anna Thrift	204.88
79-633	Roy C. and Patricia Blanford	Denied
79-656	Samuel R. Crispino	Denied
79-665	Kenneth Rottman	Denied
79-668	Mary Pachay, Executrix of Estate of Helen V. Sanko	448.20
79-683	David and Diane Dixon	44.00
79-686	George J. and Helen Cardani	Denied
79-687	John A. Munday	47.48
79-690	Stephanie Myers	33.96

79-693	Associated Nursing Home Consultants, Inc.	Denied
79-700	City of Carlinville	6,736.05
79-715	Catherine A. McAbee	1.7.36
79-752	Manuel and Maria De Luna	74.00
79-761	Eufemio N. Beltran, M.D.	1,092.00
79-762	Commercial Shearing, Inc.	Denied
79-789	Dennis E. and Ouida McCurtis	Denied
79-833	Mary K. Huser	178.36

CRIME VICTIMS COMPENSATION ACT OPINIONS

Where person is victim of violent crime as defined in the Act; has suffered pecuniary loss of $200.00 or more; notified and cooperated fully with law enforcement officials immediately after the crime; the victim and the assailant were not related and sharing the same household; the injury was not substantially attributable to the victim's wrongful act or substantial provocation of the victim; and his claim was filed in the Court of Claims within two years of the date of injury, compensation is payable under the Act.

74-76	Robert J. Ward	Not Compensable
75-18	Joseph Robinson, Jr.	2,171.84
75-57	Sol Goldberg	Not Compensable
75-100	Thomas M. Tarzin	5,113.64
75-114	Howard Dotson	1,362.20
75-155	Geraldine Pearson	203.02
75-165	Jacques E. Lechman	458.00
75-216	William Eddie Lutes	Not Compensable
75-226	George Redman, Sr.	Not Compensable
75-262	Jeanne M. Mulhall Boy	8,000.00
75-277	Armondo Valdez	1,178.00
75-279	Zygmunt Dubiel, Sr.	Not Compensable
75-312	Daniel Hagopian	254.50
75-342	Consolidated with 75-360	
	David Sheppard	824.02

75-350	Michael J. Holder	Not Compensable
75-360	Dorothy S. Jackson	824.02
75-390	H.C. Maynor	8,308.60
	Norbert Weber	1,691.40
75-432	Arthur J. Hansel	Not Compensable
75-463	Martin W. Neises	730.47
75-485	John C. Massie, Sr.	2,000.00
75-486	Thomas E. Young	6,206.00
75-521	Albert T. Clark	3,256.05
75-532	Alphonso Weatherall	Not Compensable
75-533	Rosetta Collins	Not Compensable
75-542	Frank Waters	1,164.00
75-565	Leona Furnell	Not Compensable
75-617	Earnest Thompson	4,933.31
75-706	Lincoln A. Demos	Not Compensable
75-707	Mary D. Rezek, Et Al.	10,000.00
75-713	Agnes E. Bookham	Not Compensable
75-726	Consolidated with 75-849	
	Richard L. Bartels for Katherine L. Bartels	1,620.08
75-733	Richard G. Hatton	398.00
75-734	Dorothy (Wilcox) Hinton	2,000.00
75-743	Markus L. Burton	Not Compensable
75-807	Aurora Vasquez	3,898.32
75-843	Bonnie Sue Hinds	10,000.00
75-846	Myrtle Peters	1,535.95
75-849	Consolidated with 75-726	
	Robert A. Rials	1,620.08
75-856	J.B. Riddle	170.00
75-920	Ramona R. Bolden	Not Compensable
75-928	Katie Shivers Cooper	10,000.00
75-941	Victor Karren	10,000.00
76-9	Helen A. Chrobak	Not Compensable
76-21	Jerry Merenivitch	4,500.00
76-25	David Garlovsky	Not Compensable
76-37	Caroline B. Cundy	Not Compensable
76-51	Pedro Gonzalez	Not Compensable
76-52	William A. Weiler	1,053.44
76-59	Felipe Alvarez	6,326.55
76-62	Clara M. Votteler	Not Compensable
76-66	Frank Fronek	1,670.55

76-68	Ida Gerber	10,000.00
76-71	Pearl Reynolds	Not Compensable
76-102	Annie Pearl Feggins	1,069.00
76-113	John T. Coffey	1,109.00
76-138	Chris Okoro	10,000.00
76-140	Astrid Gilbert	Not Compensable
76-147	Louis Woodson	Not Compensable
76-151	Tommie Hunt	Not Compensable
76-157	Florine Tucker	1,483.05
76-167	Ignacio Rodriguez	405.40
76-168	James P. Gogarty	Not Compensable
76-172	Glennis Merritt	Not Compensable
76-190	Delbert R. Mills	Not Compensable
76-206	Carol K. Hanson	Not Compensable
76-224	Ann DiDomenco	Not Compensable
76-229	Lillian Brunet	Not Compensable
76-241	Apolonja Zabraniak	4,008.05
'6-243	John T. Finnegan	Not Compensable
76-244	Robert Harris	10,000.00
76-266	Deanna F. Bupp	Not Compensable
76-273	Fredia Walker	Not Compensable
76-277	Ruth Cramer	2,674.11
76-281	Eddie Jackson	Not Compensable
76-284	E. Ione Beimensnider	Not Compensable
76-294	Lillian Davis Swope	1,418.00
76-299	David Lee Klein	601.60
76-308	Lieukennye Edmonds, Sr.	1,983.65
76-309	Julianne M. Massey	1,545.50
76-321	Jessie G. Ray	180.75
76-322	Nellie Lee	1,800.00
76-328	Joseph Harbut	Not Compensable
76-341	Charles Jones	455.00
76-344	Emilia Sapien	959.69
76-345	Richard R. Ipjian	8,314.90
76-349	Willie Cody	Not Compensable
76-357	Continental Illinois Bank and Trust Company of Chicago for Sadik and Waaris Ali	10,000.00
76-358	Michael P. Bonich	325.00
76-370	Emily F. Thomas	Not Compensable
76-381	Mary Wilkenson	Not Compensable

76-388	Ruben Pillow	24.50
76-400	Emily Bagdonas	365.41
76-403	Nancy E. Wirth	10,000.00
76-411	Carolyn Y. McQuerter	10,000.00
76-420	William H. Zinkan	Not Compensable
76-425	Barbara Toerpe	10,000.00
76-434	Daisy Clements	Not Compensable
76-441	Jesse Diaz	Not Compensable
76-444	Eva J. Drake	10,000.00
76-446	Jose E. Formoso	226.14
76-450	Alma Smith	1,685.00
76-462	James S. May	Not Compensable
76-464	Muriel Young	Not Compensable
76-466	Louis A. Bunna	Not Compensable
76-470	Anton Maska	Not Compensable
76-480	Cynthia Davis	10,000.00
76-483	Geraldine Brown	Not Compensable
76-487	Suzanne Watson	Not Compensable
76-489	Sharon C. Orrico-Bonke	10,000.00
76-499	Richard L. Wollenberg	Not Compensable
76-501	Anne Fine	Not Compensable
76-508	Paul Sanders	Not Compensable
76-510	Walter M. Komaniecki	Not Compensable
76-516	Edna Schwaegerman	1,985.65
76-520	Gwendolyn J. Johnson	592.50
76-531	Agnes Juraszek	Not Compensable
76-533	Ada Blide	1,787.20
76-543	James Jordon	1,292.27
76-545	Patti Messino	Not Compensable
76-553	Viola C. McHale	Not Compensable
76-555	Al Ben Clark	Not Compensable
76-559	Frank Fisher	Not Compensable
76-564	Davis P. Morns	Not Compensable
76-573	Mary C. Ebinger	406.38
76-584	Eunice D. Harris	1,533.75
76-587	Ann J. Coyne	10,000.00
76-590	Philip B. Laurenson	Not Compensable
76-597	Letonia Smith	1,975.32
76-619	Charles E. Johnston	2,124.27
76-633	Carlos F. Guerrero	Not Compensable
76-634	John G. Francis	897.74

76-636	Jean Rosenbaum	Not Compensable
76-639	Werner Schwesig	Not Compensable
76-640	Orlando Reyes	Not Compensable
76-643	Gwendolyn McMillen	420.70
76-645	Aritha Cooks	257.65
76-649	Marilyn Little	1,374.40
76-650	Marilyn Little	10,000.00
76-655	Barbara Olson	Not Compensable
76-659	Joan Faggins	10,000.00
76-662	Martino Aldo Santarreli	Not Compensable
76-666	Stephanie Kilarski	1,183.87
76-671	Catherine L. Sokol	Not Compensable
76-675	Wanda Turner	925.00
76-680	Sadie Bodenstein	Not Compensable
76-682	Genevieve C. Bonk	Not Compensable
76-684	Theodis Love	Not Compensable
76-687	Betty J. Bowie	Not Compensable
76-688	August H. Corbine, Jr.	Not Compensable
76-690	Ronald Stewart	Not Compensable
76-697	Verna Langston	10,000.00
76-698	Ernest E. Talbott	Not Compensable
76-706	Ann Siegal	10,000.00
76-711	Edward B. Newman	1,492.90
76-723	Maurice Tolbert	4,184.60
76-729	Easter Lockhart	800.00
76-731	Robert Julius, Et Al.	10,000.00
76-737	Laverne Harris	745.00
76-745	Marcelia D. Long	279.92
76-746	Carmelia Templin	1,598.00
76-762	Irving Hird	4,730.84
76-770	Oliver Everetts	1,200.00
76-778	Theresa Langworthy	Not Compensable
76-779	Domaso Vasguez, Jr.	Not Compensable
76-781	Sweetie Anderson	1,551.00
76-782	Judson Hall, Sr.	230.74
76-788	Theresa Ricciarelli	Not Compensable
76-789	Viola Williams	10,000.00
76-797	Jesse E. Warfield	1,308.40
76-799	Janet Cantrell	Not Compensable
76-802	Hattie W. Johnson	1,184.00
76-803	Etta Mae Johnson	Not Compensable

76-806	Eugene Hairston	Not Compensable
76-811	Charles G. Johnson	1,375.00
76-816	Arillian R. Van Collins	445.44
76-822	Darlene Jones	73.71
76-827	Raymond Suggs	Not Compensable
76-837	Christine Ann Roman	Not Compensable
76-839	Mane Rovetuso Todorich	10,000.00
76-843	Larry Wayne Farmer	5,203.10
76-852	Lawrence E. Reeves	Not Compensable
76-858	Marion Smith, Sr.	605.60
76-864	Kelly Glover	1,175.00
76-867	Mamie Lee Breitenfield	Not Compensable
76-869	Geraldine Walls	233.20
	George Willis	747.50
	Kenneth Beal	551.00
76-870	Mane Rhodes	10,000.00
76-873	Stephanie Smolinski	Not Compensable
76-875	Frank Svejnoha	1,264.32
76-878	Beatrice Chandler	Not Compensable
76-879	James Bisbikis	2,000.00
76-881	Antonio Almaraz	Not Compensable
76-882	Christine Robinson	1,314.20
76-904	Virginia Hunter	10,000.00
76-905	Elaine Wedlow	10,000.00
76-911	Filde Torres	Not Compensable
76-916	Marjorie E. Oberhofer	Not Compensable
76-921	Nancy Freer	917.50
76-924	Davida Markovic	995.31
76-928	Celia Johnson Roarke	10,000.00
76-939	George Voukidis	Not Compensable
76-950	Charles Krask	4,010.63
76-951	John W. Kinnebrew	Not Compensable
76-952	Carol Krahn	2,000.00
76-962	L. David Binns	4,000.00
76-966	Brenda Faye James	925.00
76-968	Rose Bakes	Not Compensable
76-990	Jesse L. Davis	Not Compensable
76-997	Epifanio Robles	169.00
76-998	Vance Rosetta	10,000.00
76-1003	Anne Leffler	Not Compensable
76-1006	Elmer Means	1,624.42

76-1021	Junita R. Hak	Not Compensable
76-1024	Lewis H. Deans	1,774.70
76-1026	Rose Gore	Not Compensable
76-1028	Nicholas Aiyeomoni	Not Compensable
76-1036	James Gibson	Not Compensable
76-1038	Mattie Harris	1,355.00
76-1039	James C. Franczek	8,782.15
76-1045	Moses Williams	Not Compensable
76-1048	Viola Wallace	182.32
76-1049	Pamela McClatchey	Not Compensable
76-1050	John R. Conley	Not Compensable
76-1052	Mattie Lewis	1,388.00
76-1059	Every Harmon	Not Compensable
76-1072	Theodore Charalampous	10,000.00
76-1075	Sharon E. Hayes	Not Compensable
76-1078	Edna Carter	Not Compensable
76-1079	Harold Terrell	1,649.50
76-1087	John E. Harris	Not Compensable
76-1089	Jesus A. Ramirez	Not Compensable
76-1093	Bernard J. Dimeo	Not Compensable
76-1095	D. Jean Smothers	2,000.00
76-1097	Edward Biagi, Jr.	744.25
76-1099	Dennis Gillespie	Not Compensable
76-1101	Ardenia Tillman	Not Compensable
76-1102	Robert L. Rogers	468.50
76-1118	Michael Williams	822.50
76-1119	Ronald L. Warren	Not Compensable
76-1125	Lizzie Ashford	1,066.50
76-1126	Lizzie Ashford	1,101.50
76-1130	Efren Martinez	2,464.64
76-1133	Brenda S. Brooks	Not Compensable
76-1136	Wendell P. Brownfield	Not Compensable
76-1149	Frederico Ramirez	Not Compensable
76-1150	Oscar Castaneda	8.25
76-1152	Guadalupe Gonzales	Not Compensable
76-1156	Pamela J. Kelly	Not Compensable
76-1157	Madeline Lodestro	2,787.50
76-1159	Leon Miller	Not Compensable
76-1160	Albert Porter	614.62
76-1161	Jimmie L. Roberts	10,000.00
76-1162	Gussie McFadden	Not Compensable

76-1166	Diane Lira	Not Compensable
76-1168	Beatrice Mosley	10,000.00
76-1173	Jeffery Scott Novak	1,774.66
76-1176	Lillie Tanner	10,000.00
76-1183	Ossie Mae Bates	Not Compensable
76-1184	Robert M. Garcia	Not Compensable
76-1194	Huberto Vale	Not Compensable
76-1195	Maria Zwolinski	286.48
76-1200	Peter Schmanski	1,880.44
76-1201	Mary Henderson	Not Compensable
76-1206	Lillian Santoro	Not Compensable
76-1216	Bryan J. Keegan	Not Compensable
76-1218	Larry Hester	1,602.90
76-1223	Willie Craig	Not Compensable
76-1224	Charles Martino	900.00
76-1234	Bertha Engram	Not Compensable
76-1239	Herman Armenta	569.50
76-1244	Larry A. Hoover	Not Compensable
76-1245	Harold Hines	1,745.31
76-1246	Claudia Rivera	10,000.00
76-1251	Mary Buttle	5,418.00
76-1254	Thomas Jewell	Not Compensable
76-1255	Jenny Malinowski	Not Compensable
76-1258	Lazon Goodwin	1,501.00
76-1259	Doris Brent	10,000.00
76-1263	Chester Stetz	213.55
76-1268	Valarie Elliot	637.00
76-1269	Betty J. Snider	10,000.00
76-1271	Joseph Peterka	1,393.07
76-1274	Paul T. Snarki	Not Compensable
76-1275	Curtis Edwards	10,000.00
76-1276	Robert T. Mitchell	10,000.00
76-1277	Charles Conti	Not Compensable
76-1288	John M. Scaccia	3,500.00
76-1294	Lloyd Naquin	Not Compensable
76-1295	Laura Horvat	1,535.61
76-1296	Laura Horvat	10,000.00
76-1304	Ann Simms	242.25
76-1309	Kenneth Caruso	Not compensable
76-1311	Rita Koonce Arnold	Not Compensable
76-1323	Phyllis De Louisa	10.000.00

76-1324	Claude Collins	Not Compensable
76-1325	Eddie Lee Carter, Sr.	Not Compensable
76-1333	Mark A. Surratt	Not Compensable
76-1337	Tom Hoover	Not Compensable
76-1338	Willie Jenkins	2,931.30
76-1343	Edward D. Rompa, Jr.	2,000.00
76-1344	Octavia Hadley	Not Compensable
76-1347	Gail Coffren	Not Compensable
76-1350	Arlene F. Parks	10,000.00
76-1353	Chris Rasmussen	900.98
76-1358	Jose Perez	573.20
76-1362	Dempsey Thomas	Not Compensable
76-1363	Marva L. Guidry	10,000.00
76-1367	**John** Howard	Not Compensable
76-1372	Frank K. Krchak	Not Compensable
76-1377	Jesse Johnson	Not Compensable
76-1379	Donald F. McGuinn	302.09
76-1380	Fidel Perez	Not Compensable
76-1384	Timothy Bailey	Not Compensable
76-1386	Jerry Cochran	Not Compensable
76-1388	Glynda Johnson	212.75
76-1391	Robert McBrayer and B. Wanda McBrayer	10,000.00
76-1394	Elizabeth Liggins	10,000.00
76-1398	James Wilson	97.00
76-1402	Margaret Grebas	2,000.00
76-1409	Linda Barkoozis	399.82
76-1415	Alberta Williams	Not Compensable
76-1416	Abel Nevarez	200.00
76-1417	Inetter Covington	Not Compensable
76-1421	Norma Frank	10,000.00
76-1422	Joseph H. Yarbrough	1,386.25
76-1423	Anna Santana	325.00
76-1424	Carolyn Gillenwater and Fannie Yates	Not Compensable
76-1434	Ronald Derive	1,506.45
76-1435	Leo Fleszewski	10,000.00
76-1438	Josephine Bradley	5,699.63
76-1441	Mary Y. Ellard	Not Compensable
76-1443	Barbara Lewis	1,994.25
76-1444	Annie Mae Isom	10,000.00

76-1449	Edward Rompa, Jr.	1,868.00
76-1450	Clifton Pettis	Not Compensable
76-1451	Adam Pelenski	1,139.55
76-1453	Ricky Jones	2,625.00
76-1459	Jose Garcia	1,277.57
76-1460	Edward Barnes	Not Compensable
76-1462	Mary Lamar	Not compensable
76-1463	Mollie English	148.00
76-1464	Clarence Smith	10,000.00
76-1467	Stephan Warford	Not Compensable
76-1468	Robert George Doerr	Not Compensable
76-1476	Nelson King	1,477.00
76-1478	Alan Uppstad	Not Compensable
76-1479	Rose M. Holt and John Tillmanns	1,310.25
76-1482	Rosetta Parker	10,000.00
76-1483	Agnes Latham	Not Compensable
76-1485	Jackie Gene Beck	5,080.32
76-1486	Augustine Jane Dunn	Not Compensable
76-1489	John Johnson	800.00
76-1490	William C. Rose	574.22
76-1495	Richard Parro	295.47
76-1499	Beatrice Wruk	326.40
76-1502	Irene Norton	336.40
76-1503	James T. Wolden	973.07
76-1506	John Heil	1,328.00
76-1514	Josefina Hernandez	Not Compensable
76-1515	Tom Kenny	Not Compensable
76-1516	Consolidated with 76-1450 Under 76-1450, Betty Pettis	Not Compensable
76-1519	Alberta Ridley	Not Compensable

76-1520	Rose V. Sherman	4,650.25
76-1522	Terrence M. Salmon	10,000.00
76-1523	Bonnie Anderson Gardella	1,315.00
76-1524	Donald Klein	Not Compensable
76-1525	Mildred Pierce	10,000.00
76-1526	Zelma Cobbins	1,685.00
76-1534	Shirley Hester	6,662.61
76-1535	Virginia A. Fain	10,000.00
76-1536	Herbert C. DeYoung	Not Compensable
76-1539	Cynthia Plummer	463.00
76-1541	Doris (Hood) Kennepp	4,390.59

76-1542	Rubin Johnson	600.00
76-1545	Youkhana Dinkha	1,242.00
76-1546	George Cooper	10,000.00
76-1547	Alphonso Carter	6,101.75
76-1563	Leonard Goodrum	Not Compensable
76-1567	Charles Bohme	Not Compensable
76-1568	Rita Salgado	Not Compensable
76-1570	Lillie Cofield	10,000.00
76-1572	James McDonald	Not Compensable
76-1573	Jacqueline Halusek	6,156.01
76-1576	Victoria Fanello	Not Compensable
76-1577	Edmund Williams	1,234.00
76-1579	Donald M. Phelan	Not Compensable
77-3	Essie Hale	640.00
77-7	Elsie Williams	1,113.00
77-9	Norman **K.** Dew	3,016.70
77-12	Maudester Harrison	1,153.75
77-13	Anthony Jaworowski	1,188.60
77-15	Clarence O'Connor	1,074.15
77-16	Daisy Mae Pratcher	910.00
77-19	James Williams	4,530.54
77-20	Richard Nixon	830.00
77-21	Phillip Williams	Not Compensable
77-22	Ann Grace Marjan	1.00
77-29	Barbara Lewis	2,000.00
77-30	Shirley Hood	2,000.00
77-32	Bernice Hilton	Not Compensable
77-33	Irene Eiland	583.41
77-42	Lucy Jarnagin	1,500.00
77-43	Ruth M. Denly	3,075.92
77-44	Roger Longoria	Not Compensable
77-46	Bobbie **J.** Lay, Et Al.	2,000.00
77-51	Sevasti and John Mobilos	Not Compensable
77-57	Randolph Purnell	Not Compensable
77-59	Felipe Alvarez	6,326.55
77-60	Virginia Banks	1,117.00
77-63	Mollie H. Smith	Not Compensable
77-65	Marie Williams	1,500.00
77-69	Ted Perzanowski	304.60
77-13	Frank Eltvedt	492.64
77-74	Ronald Eddinger	1,056.67

77-75	Michael Corcoran	Not Compensable
77-77	Ruby Gale Stevens	Not Compensable
77-78	Olga Durko	1,393.45
77-79	Anna Moore	10,000.00
77-80	Elsie Oleson	2,028.15
77-82	William Bowman	492.26
77-86	Christine Griebell	442.00
77-89	Robert Johnson	Not Compensable
77-91	Willie Lewis	Not Compensable
77-94	Eddie Peterson	1,699.80
77-95	Anna Petkoff	10,000.00
77-98	Cleandress Knockum	1,719.00
77-100	Rev. William H. Edmond	Not Compensable
77-106	Leonardo Lopez	329.00
77-111	Hector Mora	Not Compensable
77-112	Union National Bank of Chicago as administrator of the Estate of Clyde Moorison	Not Compensable
77-113	Donna White	296.00
77-116	Sarah Turner	Not Compensable
77-118	Consolidated with 77-390 Under 77-390 Lois Smith and Mary Jo Cool	Not Compensable
77-119	Harry Suggs, Sr.	1,553.54
77-120	Maria Louise Traczyk	Not Compensable
77-121	William Tate, Jr.	655.00
77-122	Rosette Ray	10,000.00
77-129	Juanita Carranza	10,000.00
77-133	John Adden	2,000.00
77-136	Frances Thomas	Not Compensable
77-139	Evanisto Martinez	Not Compensable
77-140	James F. Neilis	2,240.00
77-143	Sophronia Grant	Not Compensable
77-145	Carrie Henderson and Betty Walker	10,000.00
77-148	Eunie Tinon	10,000.00
77-155	Walter C. Alexander, Sr.	Not Compensable
77-157	Florine Tucker	1,483.05
77-158	Marilyn Hoke	10,000.00
77-160	Donovan Warrington	Not Compensable
77-162	Mary E. Shelley	Not Compensable
77-164	L. A. Sudduth	10,000.00
77-166	Frank Hardrick	742.13

77-170	Slavko Brzica	Not Compensable
77-180	Juan M.V. Duran	1,077.77
77-181	Lulla Belle Reed	Not Compensable
77-193	Victor Jones	444.00
77-195	Donald Kulik	Not Compensable
77-196	Joann Szczensny	1,893.81
77-198	Beatrice Schatz	918.04
77-203	Manuel Moreno	783.05
77-204	Petrus Van Der Pol	Not Compensable
77-205	Timothy Woods	Not Compensable
77-207	Julies Cohn	Not Compensable
77-211	Josie G. Tabinga	3,016.56
77-213	Boris Kosor	Not Compensable
77-215	Ora L. Wilson	Not Compensable
77-217	Stanislawa Fryzlewicz	Not Compensable
77-221	Kathleen Gilfillan	2,000.00
77-223	Mildred Stansberry	10,000.00
77-724	Richard Lee Detoffol	10,000.00
77-745	Dorothy Sherman	289.59
77-247	Kenneth G. Brewer	179.53
77-249	Willie Lewis	670.00
77-250	Earnesto Roseman	Not Compensable
77-251	Elaine Bryant	10,000.00
77-252	Shirley Roberts	Not Compensable
77-253	Laverne Woods	10,000.00
77-255	Elfreda Brownstein	1,084.84
77-256	Charlie Lee Thomas	10,000.00
77-257	Vicki Winfrey	Not Compensable
77-262	Kenneth Dixon	692.74
77-263	Mary Elizabeth D'Appolito	Not Compensable
77-265	Edward M. Lopez	Not Compensable
77-266	Anna Sheedy	Not Compensable
77-272	Walter and Gladys **Ross**	450.00
77-273	Irene Meinardi	3,519.19
77-280	Michael Hughes	1,630.00
77-284	Debra Jansen	10,000.00
77-288	Josephine Nakoff	Not Compensable
77-290	Dorothy Thompson	1,381.25
77-292	Dennis W. Sokolowski	675.85
77-296	Estelle Girot	Not Compensable
77-297	Viola Adams	1,448.00

77-300	Opal Teal	Not Compensable
77-301	Timothy Edwin Kane	1,195.90
77-302	Laura B. Johnson	1,501.00
77-306	Margarita De La Rosa	4,685.03
77-310	Louis J. McDonald, Jr.	Not Compensable
77-318	Summer Truth Goodside	Not Compensable
77-319	Glen Stephansen	342.50
77-321	Margaret C. Sallenger	10,000.00
77-325	Mitchell T. Noworolnick	611.55
77-326	Enrique and Mereida Cora	709.00
77-327	Lorriane D. Inman	Not Compensable
77-328	Carolyn A. Lindlay	10,000.00
77-329	Shirley Rughing	Not Compensable
77-330	Minnie Stokes	Not Compensable
77-333	Lucille Ford	Not Compensable
77-335	Mildred Draper	10,000.00
77-337	Emil Malattia	3,237.77
77-338	Barbara James	1,787.00
77-340	Leosha B. Luster	Not Compensable
77-342	Charles E. Rose	Not Compensable
77-344	Johnny Jones	Not Compensable
77-346	George Hampton	Not Compensable
77-351	Levi Lewis	800.00
77-354	Cliffton E. Childress	119.70
77-356	Jesse Lopez	2,020.00
77-357	Mary Morris	10,000.00
77-359	Maria Maldonado	Not Compensable
77-362	Pearline Haralson	1,436.73
77-363	Phillip M. Witkovsky	Not Compensable
77-372	Cora Harper	1,017.00
77-374	James A. Rimkus	2,386.15
77-375	Pedro Corona	Not Compensable
77-376	Charlester Crockett	Not Compensable
77-377	Angel L. Lopez	Not Compensable
77-378	Willie Gene Polk	Not Compensable
77-380	Ester Dawson	Not Compensable
77-381	Eleanor Janoski	Not Compensable
77-382	Jerry S. Overton	42.41
77-383	Amando Bruehl	2,000.00
77-384	Lois J. Osborne	5,001.24
77-387	Clarence Beecher	Not Compensable

77-388	Peter H. Bosi	Not Compensable
77-389	Olive Jackson	637.25
77-390	**Lois** Smith	Not Compensable
77-391	Lenora Jones	Not Compensable
77-392	Bildegard Laschet	Not Compensable
77-393	Gabriel **L.** Hernandez	3,865.21
77-394	Molly Lewis	1,509.13
77-395	Joseph L. Staddon	609.90
77-396	Roosevelt Phillips	147.80
77-397	Joe E. Eckolas	Not Compensable
77-401	Everett Lyle	3,735.50
77-404	Lorraine Stempin	315.50
77-405	Br. Robert Teszlewski	5,234.20
77-406	Charles Zimmerman	Not Compensable
77-407	Dorothy Lane	1,990.49
77-409	Irwin C. Epstein	Not Compensable
77-410	Bheda Bharati	10,000.00
77-413	Bennie L. Payne	246.98
77-416	Robert Frank Thompson	Not Compensable
77-421	Melissa Jefferson	Not Compensable
77-423	Gerald **O.** Stedt	616.29
77-425	Milan and Dorothy Kolar	2,027.00
77-426	Vlassios Bonatsos	1,100.00
77-429	Don Wheatley	Not Compensable
77-431	Anne **A.** Sanchez	4,831.16
77-432	Ann Martin	1,400.00
77-434	Dorothy Cornel1	Not compensable
77-435	Linda Barkoosis	Not Compensable
77-436	Thomas V. Quattrochi	2,879.97
77-438	Danny Doetch	897.67
77-445	Loucheer C. Smith	Not Compensable
77-448	Linnea S. Bahling	10,000.00
77-452	Jerry Cevala	1,746.87
77-453	Finus L. Douglas	Not Compensable
77-454	Robert Joseph Egan	530.48
77-457	Shirley Ann Cox	Not Compensable
77-460	Filiberto Meza	Not Compensable
77-469	Chester Stelmach	Not Compensable
77-473	Irene Ballinger	2,000.00
77-475	Danny Glen Bovill	3,956.50
77-481	John Oliver Beatt, Sr.	441.46

77-485	Youil K. Kanoon	Not Compensable
77-487	Joann Tucker	1,484.00
77-489	Margaret McGriggs	Not Compensable
77-493	Arthur Howard	1,652.95
77-501	Eleanor Gettings	10,000.00
77-504	Donald E. Lee	4,299 66
77-505	J. L. Nicholos	Not Compensable
77-514	Margaret Shufford	2,000.00
77-517	Flossie Stevens	1,630.00
77-518	Eva L. Weitzmann	389.74
77-527	Barbara Formenti	3,066.68
77-530	Carman Paredes	Not Compensable
77-535	Babe R. Reed	Not Compensable
77-537	Stanley L. Garrison	2,431.65
77-539	Mandel Sapero	764.41
77-541	William Johnson	56.98
77-545	Elijio Villasenor	7,300.13
77-546	Bernard Shorty	10,000.00
77-547	Andrew Demetrius	Not Compensable
77-550	Patricia Cox	Not Compensable
77-552	Marian B. Spence	Not Compensable
77-554	Annie G. Smith	1,270.00
77-555	Annie Canty	1,815.93
77-557	Gerald A. Chambers	4,596.90
77-561	Dillara M. Smart	2,079.00
77-562	Vimala Metha	10,000.00
77-563	Vimala Metha	206.00
77-564	Vimala Mehta	106.60
77-565	Vimala Mehta	141.60
77-566	Sterling Riggins	812.76
77-569	Paul Koncius	Not Compensable
77-570	Doris Daughrity	1,006.00
77-574	Agnes Wilke	Not Compensable
77-575	Julia Diaz	2,000.00
77-576	Mason Russell	8,570.54
77-577	Kent A. Trompeter	10,000.00
77-578	Alonzo Wallace	10,000.00
77-579	Virginia Mae Young	2,000.00
77-580	Patricia Williams	Not Compensable
77-582	Jessie White	Not Compensable
77-583	Roger Johnson	1,282.20

77-584	James A. Chialiva	308.78
77-591	Mattie Tarver	Not Compensable
77-594	Vicki Lee Wagon	573.80
77-595	Alice Jahn	10,000.00
77-598	Heriberto Gonzales	4,328.98
77-599	Andrew Zoleoffer	843.65
77-601	Catherine Eileen Newman	Not Compensable
77-604	Grace L. Westbrook	1,151.38
77-608	Benny T. Rogers	10,000.00
77-610	Hans Opitz	Not Compensable
77-620	Ethel Jackson	Not Compensable
77-621	Charles David Langbehn	987.00
77-625	Rigoberto Torres	10,000.00
77-627	Ollie Johnson	Not Compensable
77-631	Thomas E. Parker	Not Compensable
77-634	Ruben Leron	Not Compensable
77-637	Sherry Fornell	Not Compensable
77-638	Jeffery F. Lee	4,507.00
77-640	Pearline Griggs	Not Compensable
77-645	Aluis Berry	Not Compensable
77-647	Franklin Hinz	Not Compensable
77-652	John L. Jones	7,113.63
77-654	Chauncey Giles	Not Compensable
77-655	Constance and Richard Clarke	2,000.00
77-656	Cora Cole	Not Compensable
77-659	George Trutovsky	Not Compensable
77-662	Thomas D. Menelli	1,498.65
77-663	Hilario Martinez	1,990.49
77-664	Anne Berg	Not Compensable
77-665	Blake Voakes	261.00
77-667	William Wyatt Allen	1,006.44
77-669	Carl E. Welsh	2,000.00
77-670	Particia Walls	1,685.41
77-673	Creston Wileg	Not Compensable
77-679	Emma Bradley	Not Compensable
77-684	Alcola Turner	154.01
77-686	Jerome P. Carmichael	670.80
77-687	Edward Jasionka	Not Compensable
77-688	Sherry Fornell	Not Compensable
77-690	Ramesh M. Parmar	2,009.14
77-692	Pat Thetford	Not Compensable

77-696	Carolyn Mason	Not Compensable
77-698	Armando Viltarreal	Not Compensable
77-699	Samuel C. Wilder	Not Compensable
77-701	George Williamson	1,034.33
77-703	Lula Scott	850.00
77-706	Rosalie Taylor	10,000.00
77-709	John Paluszynski	1,522.50
77-711	Lawerence Taylor	10,000.00
77-712	Ruth Shefskey	Not Compensable
77-713	Janina Augustynska	1,467.93
77-716	Garland F. Daill, Jr.	Not Compensable
77-720	Gail Scott	Not Compensable
77-722	Sylvester Lyskawa	10,000.00
77-725	Clara Walker	Not Compensable
77-726	Fred Frogue	1,404.39
77-730	Nicholas Kesseler	2,000.00
77-731	Robert Mullins	1,946.75
77-732	James Rivers	Not Compensable
77-733	Lillian Hayes	Not Compensable
77-734	O. C. Smothers	1,243.00
77-740	Manuchehr Dayani	299.20
77-742	Sophie Dronek	2,123.68
77-743	Michael Sheftic	Not Compensable
77-746	Larry Reed	1,718.87
77-749	Kathleen Roche	Not Compensable
77-750	Denise Summers	Not Compensable
77-752	Mrs. Leonard Kotzman	Not Compensable
77-754	Bernice C. Quinn	Not Compensable
77-755	Nancy Lee Thompson	10,000.00
77-757	Mary Jean Costanza	Not Compensable
77-760	Dolores P. Warsham	1,618.59
	Timothy D. Finn	488.90
77-762	Adele Guccion	10,000.00
77-764	Timothy Dean Werley	Not Compensable
77-766	Marion L. Weston	Not Compensable
77-767	David Alday	Not Compensable
77-775	Earvin Croskett	1,865.00
77-776	Joseph McCaskey	Not Compensable
77-785	Giuliano Cosentino	Not Compensable
77-788	Neal Williams	Not Compensable
77-789	James L. Boot	1,223.46

77-795	Robert K. Martin	11.79
77-796	Curtis Dangerfield	2,000.00
77-797	Effie E. Waggoner	Not Compensable
77-798	Mary Alice Lacy	895.75
77-799	Freddie Hogan	10,000.00
77-800	Rosalie Taylor	10,000.00
77-801	Linda Lou Stevens	643.01
77-803	John R. Hamilton	1,005.42
78-5	Stanley Skrobowski	1,665.80
78-7	Clara Walker	Not Compensable
77-10	Telsa Lenhoff	541.90
78-11	Maria E. Galan	1,424.83
78-15	John Barkley	5,471.61
78-16	Paul D. Berkowitz	357.13
78-17	Rita V. Brown	1,010.09
78-18	John Laurenson	570.48
78-20	Agnes Bzdyl	Not Compensable
78-34	Emere Mapson	Not Compensable
78-36 Consolidated with 78-15 under 78-15		
	John H. Barkley	5,471.61
78-40	Don R. Ferrell	Not Compensable
78-45	Kenneth Washington	104.90
78-46	Perry L. Gibson	1,330.00
78-50	James A. Walker	7,897.06
78-52	James Gee	719.70
78-56	Dr. Harvey G. Micklin	2,000.00
78-58	Bonnie Hill	Not Compensable
78-65	Virginia Pacini	1,704.41
78-68	Phyllis M. Hengelmann	Not Compensable
78-70	Mary A. Williams	347.00
78-83	Mary Jo Eaton	Not Compensable
78-86	Robert Keith Martin	Not Compensable
78-90	Zachariah D. Michaels	729.18
78-91	Margaret Z. Michaels	91.25
78-92	Arthur Runyon	1,137.75
78-94	Edward Goldberg	1,771.00
78-95	Harry E. Moore	426.64
78-98	Herman Burnett, Jr.	1,890.92
78-99	Nancy Rimkus	Not Compensable
78-104	Cecilia Nixon	3,397.18
78-106	Enda Clarke	1,318.35

78-109	Mary Howse	Not Compensable
78-112	Lillian Kanter	10,000.00
78-113	Fred Milendez	2,098.30
78-124	Minnie C. Durheim	10.50
78-125	Dragica Milosevich	2,000.00
78-126	Philip Keil	685.70
78-127	Nibondh Ratananikom	919.50
78-128	John Schrock, Jr.	Not Compensable
78-132	Beatrice Salinas	1,773.00
78-133	Russell Ogden	2,000.00
78-140	Harold Hunter	10,000.00
78-141	Salvador Hernandez	4,223.31
78-145	Debbie Nampel	1,759.50
78-146	Mildred Roy	8,500.09
78-147	Vera Meyer	5,117.00
78-150	Dagny Andrechak	167.70
78-152	Thomas G. Barry	1,987.87
78-155	Lois Osborne	2,058.00
78-156	John L. Craig	1,587.75
78-161	Anne Elizabeth Leighty	Not Compensable
78-162	Raymond Hill	873.75
78-178	Lawrence J. Bond	10,000.00
78-179	Jesus Escobar	Not Compensable
78-183	Robert Melander	1,523.10
78-184	Gregory Ruiz	Not Compensable
78-185	Wanda M. Ortiz	10,000.00
78-193	Jeanne G. Hetzel	409.22
78-195	Barbara Morek	Not Compensable
78-198	Louise Brooks	1,315.00
78-201	Rogelio Corrall	2,923.08
78-205	Evelyn K. Edgeworth	620.50
	Charles Edgeworth	747.24
78-208	Albert J. Wykowski	420.03
78-209	Linda D. Mosely	822.73
78-210	Jean A. Crain	91.05
78-215	Sarah Johnson	1,063.00
78-217	Karen Kolosseus	Not Compensable
78-219	Douglas P. Couture	Not Compensable
78-225	Earnestine Cooper	2,000.00
78-228	Edward Meyers	Not Compensable
78-234	Mary Jane Hutchinson	687.50

78-236	Mrs. Odell Robinson	1,330.00
78-238	Nicola Haddad	1,276.00
78-240	Henry J. Dinan	10,000.00
78-241	Ted J. Prymicz	3,914.29
78-249	Hezekiah Sims	10,000.00
78-251	Theothia Dilworth	Not Compensable
78-252	Catherine Griffin	746.58
78-254	Willie Mae Peters	240.60
78-257	Gordon Norman Anderson	Not Compensable
78-259	Bessie Volturno	10,000.00
78-260	Mathilda Sorenson	48.00
78-261	Alfred J. Treb	Not Compensable
78-262	Sybil P. Hayes	753.26
78-266	Celia K. Uretsky	1,005.00
78-267	David Townsend	250.15
78-271	Cheryl B. Holmes	1,423.60
78-272	Eddie L. Carroll	2,786.63
78-274	Louise Martinez	747.83
78-275	Mabel E. Swanson	273.67
78-277	Lula Bauman	1,597.10
78-281	Dorothy Goodendorf	2,277.36
78-283	Esther Mary Brennan	1,594.81
78-284	Margie Ferry Anders	2,000.00
78-286	James B. Boswell	1,445.70
78-290	Donald Weller	733.94
78-293	Marv Louise Stokes	Not Compensable
78-300	Mary O'Connell	2,000.00
78-303	Robert A. Lazar	1,797.00
78-306	Robert M. Bellatti	10,000.00
78-311	L. C. Johnson	221.23
78-324	Fausto V. De La Cruz	250.40
78-326	Edna Cosmen	1,874.48
78-334	Glenda Wilson	2,052.92
78-336	Taiwo Solomon	622.00
78-338	Anita Kay Elsentein	Not Compensable
78-342	Lucille Sample	1,259.75
78-344	Leslie Keress	1,904.89
78-345	Mildred Schirmer	1.60
78-348	Joe Paul Rodriguez	636.85
78-350	Peter Cappelletti	3,513.50
78-353	Paulette Lindsey	1,970.23

78-357	Wilbert Perry	3,667.84
78-363	Joan Ericson	1,528.75
78-368	Sylvia E. Westphal	1,967.83
78-369	Leslie Anderson	311.96
78-373	Anna Brewer	566.41
78-376	George Carter	913.81
78-388	Leona Brown	Not Compensable
78-389	Tomma Jo Baker	1,3 17.08
78-390	Frank J. Gromer and Jean Dornhoefer	10,000.00
78-393	Juanita Murphy	Not Compensable
78-395	George Travis	Not Compensable
78-398	Robert Allen Voutsinas	8,540.92
78-404	Gary D. Betts	2,000.00
78-405	Frances Dachniwiska	Not Compensable
78-409	Rosemary Dockery	Not Compensable
78-411	Constance Margese	1,221.04
78-412	Michael J. Grippo	Not Compensable
78-414	Adolf Blazka	426.54
78-415	Paz Fernandez	404.70
78-416	Norma Jean Ticklider	2,000.00
78-417	Irene Fisher	2,000.00
78-420	Annie Ruth Caldwell	Not Compensable
78-421	Margaret Hanas	442.87
78-426	Petra Flores	2,000.00
78-428	Lorene Roberts	1,116.46
78-430	Ronald G. Butler	2,000.00
78-437	Helen Cook	Not Compensable
78-439	Frank Brick	Not Compensable
78-443	Marguerita Ackerman	882.20
78-447	Gene Wagner	1,627.25
78-449	Mary Jane Shoemaker	1,419.76
78-458	Norbert V. Lipinski	6,816.17
78-459	Curtis Smith	10,000.00
78-460	Peter J. Mackropoulos	925.65
78-462	Anthony Pennamon	356.15
78-464	Alan Norals	673.00
78-466	Pervis Vinson	2,018.34
78-467	William T. Brady	Not Compensable
78-469	Earl Elliott Grady	2,182.55
78-472	Marie Tobian	1,531.94
78-475	Hedy a/k/a Henrietta Cernicky	76.30

78-478	Gene Ventucci	Not Compensable
78-480	Sharon Stage	Not Compensable
78-487	Milby Dow, Jr.	119.00
78-499	Vincent Falcone	2,000.00
78-502	Gladys Tonika	1,583.83
78-507	Felipe Santo	4,552.84
78-508	Dorothy Weinhoeft	599.75
78-509	Willie Gene Polk	288.35
78-514	Vera Duncan Evans	1,327.00
78-518	Shirley Morton	Not Compensable
78-520	Susan Ness	10,000.00
78-525	Eleanor Gaydusek	Not Compensable
78-533	Christopher Pacelli	2,764.75
78-534	Christine Pacelli	6,796.97
78-536	John F. Gaydusek	105.21
78-547	Hatie Carr	432.27
78-548	Severo P. Perez	3,970.58
78-554	Frank Stellner	1,824.01
78-555	Mary Lois Swanson	3,620.61
78-557	Gus Van Meenen	997.81
78-558	Carol Watson	Not Compensable
78-559	Kenneth Pixler	2,000.00
78-561	Marva L. Brown	884.34
78-563	Mary Ann Dilworth	1,490.00
78-567	Jan Soedler	Not Compensable
78-575	Julia Ruth Hadnott	1,507.70
78-576	Kenneth Bobco	1,860.86
78-580	Earl Freeman	974.01
78-585	Ollie D. Agnew	2,443.11
78-587	William Russ	5,046.65
78-591	J. B. Heatherly	962.54
78-595	Mary Castaldo	Not Compensable
78-597	Stephan Rudiak	Not Compensable
78-599	Donald Shreeves	1,073.07
78-601	Diga Sanchez	10,000.00
78-622	Pamela J. Barbour	681.64
78-638	Lawrence Helming	Not Compensable
78-640	Tillie Nornberg	3,288.64
78-644	Krystyna Siadkowski	10,000.00
78-652	Willie Brooks	Not Compensable
78-656	Marshall and Frances Simmons	2,000.00

78-659	Burl R. Sinclair	332.78
78-671	Bryan Charles Wagner	Not Compensable
78-682	Cele Schwartz	10,000.00
78-684	Phil Cooper	53.47
78-685	Elizabeth Drenkhahn	2,000.00
78-687	James Renth	10,000.00
78-688	Richard M. Dumelle	1,946.95
78-690	William Harold Andrews	2,845.73
78-691	Joseph Krozel	4,662.18
78-703	Paula Arko	124.70
78-709	Bernice McGehee	37.81
78-710	Esteban Nunez	2,000.00
78-716	Richard T. Bingham	Not Compensable
78-717	Arthur Edens	603.14
78-719	Helen M. Winlock	Not Compensable
78-721	Norbert J. Paulish	2,000.00
78-726	Christine Miller	Not Compensable
78-731	William Adams	Not Compensable
78-735	George Del Rosso	231.92
78-739	Dennis Mahoney	648.99
78-750	Jennie Goldstein	763.62
78-751	Olga Jensen	51.67
78-753	Sister Mary Victory Enright, B.V.M.	1,755.55
78-764	Louise Jackson	252.06
78-772	Riley Harper	Not Compensable
78-779	Thomas E. Moody	2,217.20
78-786	Johnnie Mae Stewart	10,000.00
79-12	Marc Julian Simpson	2,235.65
79-23	Richard F. Basta	Not Compensable
78-46	Marie Carter	87.09
79-60	Susan Hugh	Not Compensable
78-118	Florentine Killackey	2,000.00
79-209	William A. Lionberg	2,000.00
79-210	George Qchmal	2,000.00
79-219	Sarah Vaught	1,115.20

STATE EMPLOYEES' BACK SALARY CASES

Where, as a result of a lapsed appropriation, mi's-calculation of overtime or vacation pay, service increase, or reinstatement following resignation, and so on, a State employee becomes entitled to back pay, the Court will enter an award for the amount due, and order the Comptroller to pay the sum, less amounts withheld properly for taxes and other necessary contributions, to the claimant.

5983	Howard W. Buck	Not Compensable
6509	Leslie H. Kent	3,020.00
73-413	Charles R. Farny	21,533.50
75-935	David Collins	Not Compensable
75-1246	Linda Mane Grace	60.07
75-1317	Steward Leon Rendleman	86.43
76-118	Duett H. Johnson	7,095.34
76-398	John T. Henry	Not Compensable
76-822	Marion Anderson	2,500.00
76-922	Mike R. Maurello	1,470.28
76-1184	Edgar Partlow	45.00
76-1859	Mayford Davis	773.55
76-2009	Daniel M. Rubino	23,062.51
76-2079	Kenneth Kirby, et al.	71,292.22
76-2339	Elenita Ayalin	7,541.77
76-2612	Richard Costable	Not Compensable
76-2882	Irwin C. Epstein	Not Compensable
77-268	Anthony Sciacca	2,105.70
77-268	Charles Rau	2,332.03
77-588	Solly S. Vaccaro	3,267.83
and		
77-587	(consolidated) Fred Peters	3,265.01
77-724	Alice H. Johnson	766.78
77-851	Joseph G. Policky	170.92
77-949	Joyce Jeanette Toy	Not Compensable
77-1269	John R. Lietzau	460.42
77-1275	Deloris Bauvia	440.07

77-1347	Major R. Coleman	114.80
77-1771	Sidney E. Sullivan	5,284.72
77-1790	Claire C. Crawford	679.23
77-2038	Jacqueline Craft	639.29
77-2106	Steven Henson	153.80
77-2107	Bobby Miller	89.03
77-2140	Mary Ann Czerkies	64.61
77-2202	Vera Hayes	527.89
77-2203	Helen M. Strubbe	523.44
77-2302	Homer Ward	46.52
77-2342	Barbara J. Melland	63.64
77-2390	Marjorie Turner	540.79
77-2418	Alvin Beamon	197.46
77-2421	James A. Flynn	5,376.16
77-2422	James O'Shea	3,373.60
77-2439	James I. McGovern	289.31
77-2470	Karen Bailek	277.71
77-2535	**Fida Zaidi**	66.31
78-18	Terrance C. Bakalla	598.48
78-19	Michael J. Schnieder	89.11
78-63	Wesley Starker	308.59
78-65	Ralph E. Wilson	90.49
78-66	Robert Majesky	109.64
78-79	Richard G. Vasquez	170.98
78-224	Annette H. Liesse	d6.35
78-269	Marjorie McGuire	560.60
78-270	Rosemary Atkins	136.29
78-302	Herman Lee	101.40
78-385	John Watson	21,474.68
78-386	Glen Taylor	9,919.99
78-387	Gilbert Stallings	15,741.16
78-388	Everett Erickson	12,725.00
78-389	Michael Zene	13,444.61
78-516	James F. Shimeall	94,689.06
78-523	John Parsons	41,413.86
78-551	Julia Schluter	192.70
78-552	Frank Sudja	28,617.94
78-591	Vivian Blythe	154.97
78-610	Robert A. Majesky	261.73
78-652	Laverne Wilson	364.66
78-678	Ideanear Wilson	303.89

78-772	Roosevelt Fleming	829.78
78-813	Harvey Steve Koon	579.97
78-837	Annabelle Pesavento, Executor of the Estate of Elio Pesavento	614.04
78-1030	Anne R. Friedbauer	165.56
78-1381	John R. Johnson	626.82
78-1382	Allan T. Marshall	792.02
78-1539	Albertine Dunlap	344.83
78-1541	Donna M. Wisemantle	158.69
78-1585	John J. Beard	294.71
78-1600	Diane Killion	500.76
78-1779	Lesa Lyn Schaive	809.85
78-1952	Jacquelyn Campbell	136.57
78-2069	James Poulos	318.23
78-2071	Coleman Riordan, deceased, Marie Riordan, Trustee	619.43
78-2130	James Waters	452.59
79-557	Dorothy M. Smalls Taylor for Eleanor J. Smalls Scavella	315.40
79-580	Kathryn L. Jones	273.14

(Case No. 00092 — Claim denied.)

IN RE APPLICATION OF GEORGE REDMAN, SR.

Opinion filed April 2, 1979.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT.

PER CURIAM.

This claim allegedly arising out of the death of a Deputy Sheriff seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act," hereafter, the Act, *(Ill. Rev. Stat., Ch. 48, Sec. 281 et seq.)*

The Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's Office pertaining to matters set forth in the application. Based upon these documents and other evidence submitted at hearings before the Court on May 11,1976 and March 15,1979, the Court finds that:

1. George Redman, Jr. died August 12,1974, at the age of 34 years;

2. The coroner's certificate of death recites the immediate cause of death as "unknown", due to or as a consequence of "hit by train," death "instant;"

3. Deputy Redman had completed his regular duty assignment on August 11, 1974, at 3:22 a.m.; and he was "off duty" on August 12, 1974;

4. To date, there is no evidence that the decedent lost his life as a result of injury received in the active performance of duties as a law enforcement officer;

5. Accordingly, Deputy Redman was not killed in the line of duty as defined in the Act.

It is hereby ordered, by reason of the foregoing, that the claim for benefits by George Redman, Sr., pertaining to the death of his son, George Redman, Jr., be, and the same, is hereby denied.

(Case No. 00111 — Claimant awarded $20,000.00.)

IN RE APPLICATION OF ROSE M. HECK.

Opinion filed April 2, 1979.

KNUPPELL, GROSSBOLL, BECKER AND TICE, by JOHN L. KNUPPLEL and JEFFREY L. FEHRENBACKER, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; VINCENT J. BISKUPIC, Special Assistant Attorney General, for Respondent.

ILLINOIS NATIONAL GUARDMAN AND MILITIAMAN COMPENSATION ACT — *Automobile accident.*

PER CURIAM.

This claim arising out of the death of a national guardsman allegedly killed in the line of duty, seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Illinois National Guardsman's and Naval Militiaman's Compensation Act," (hereafter, the Act), *Ill. Rev. Stat., Ch. 129, Sec. 401, et seq., 1975.*

The Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General's Office; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's office which substantiates matters set forth in the application. Based upon these documents and other evidence submitted at hearings before the full Court on September 21,1976, May 11,1977, and March 15,1979, the Court finds that:

1. The Claimant, Rose M. Heck, is the mother of the decedent, as stated in the application for benefits; and, in the absence of a designated beneficiary and by reason of the prior death of guardsman Tribbett's father, Section 3 (c) of the Act provides that any award shall be paid to the surviving parent;

2. The decedent, Wilfred Tribbett, age 20, was an Illinois National Guardsman, a member of the Military and Naval Department, State of Illinois, and engaged in the active performance of his duties, within the meaning of Section 401 (b) of the Act, on June 26, 1976;

3. On said date, at aproximately 9:45 a.m., within his regular duty hours and pursuant to his assignment, guardsman Tribbett was driving an Illinois National Guard truck during a 15day duty training assignment. The truck overturned in an accident, and Tribbett was trapped.beneath the vehicle. Tribbett was pronounced dead at 10:30 a.m. on June 26, 1976, and the certificate of death submitted recited the immediate cause of death as "multiple trauma," due to or as a consequence of "automobile accident;"

4. At the time of his death, guardsman Tribbett was on duty pursuant to an order entered November 10, 1975, by the Adjutant General of the State of Illinois Military and Naval Department; and Tribbett was not on active military service pursuant to an order of the President of the United States;

5. Guardsman Tribbett was killed in the line of duty as defined in Section **401** (b) of the Act;

6. The proof submitted in support of this claim satisfies all of the requirements of the Act, and the claim is therefore compensable thereunder.

It is hereby ordered that the sum of $20,000.00 be awarded to Rose M. Heck, as sole surviving parent of the deceased guardsman, Wilfred Tribbett.

(Case No. 00124 — Claimand awarded $20,000.00.)

IN RE APPLICATION OF EVA MAE CRAGGS.

Opinion filed July 25, 1978.

WILLIAM H. KNUPPEL, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; VINCENT J. BISKUPIC, Special Assistant Attorney General, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT. — *Heart attack.*

PER CURIAM.

This claim arising out of the death of an officer allegedly killed in the line of duty, seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act," (hereafter, the Act), 111. Rev. Stat., Ch. 48, Sec. 281 et seq., 1975.

The Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's Office which substantiates matters set forth in the application. Based upon these documents and other evidence submitted at hearings before the full Court on November 8, 1977 and March 15, 1978, and reviewed on June 15, 1978, the Court finds that:

1. The Claimant, Eva Mae Craggs, is the widow of the decedent and is the beneficiary who was designated by him as stated in the application for benefits;

2. The decedent, George D. Craggs, was a corporal, employed by the Illinois State Police and engaged in the active performance of his duties, within the meaning of Section 2(e) of the Act, on November 6, 1977. He

was 51 years of age;

3. On said date, at approximately 9:45 a.m., during regularly assigned duty hours, Corporal Craggs was stricken with a heart attack while issuing a traffic citation to a motorist; this traffic citation was the fifth citation by Corporal Craggs during a state police airplane to ground traffic surveillance that began at 8:00 a.m. said date. After being stricken, Officer Craggs was taken to a hospital in Havana; and, thereafter, he was transported to, and treated in, St. Francis Hospital and Methodist Medical Center, Peoria, Illinois. He died at Methodist Medical Center on November 10, 1977, after surgery. The medical certificate of death recited the cause of death as "cardiac arrest secondary to acute myocardial infarction and rupture of the interventricular septum." The evidence presented indicates that Corporal Cragg's death was caused and precipitated by his active performance of the duties required by him as a law enforcement officer for the State of Illinois;

4. Corporal Craggs was killed in the line of duty as defined in Section 2(e) of the Act;

5. The proof submitted in support of this claim satisfies all of the requirements of the Act and the claim is therefore compensable thereunder.

It is hereby ordered that the sum of $20,000.00 be awarded to Eva Mae Craggs, as widow and designated beneficiary of the deceased officer, George D. Craggs.

(Case No. 00126 — Claimant awarded $20,000.00.)

IN RE **APPLICATION OF EDNA PERISHO.**

*Opinion **filed March 15,** 1979.*

ZOLLIE O. ARBOGAST, JR., Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; **VINCENT J. BISKUPIC,** Special Assistant Attorney General, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT. — *Heart attack.*

PER CURIAM.

This claim arising out of the death of a law enforcement officer allegedly killed in the line of duty, seeks payment of compensation to the decedent's widow, pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act," (hereafter, the Act), Ill. Rev. Stat., Ch. 48, Sec. **281,** et seq., **1975.**

The Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's office which substantiates matters set forth in the application. Based upon these documents and other evidence submitted at a hearing before the full Court on November **14, 1978,** the Court finds that:

1. The Claimant, Edna Perisho, is the widow of the decedent, as stated in the application for benefits; and, in the absence of a designated beneficiary, Section **3** (a) of the Act provides that any award hereunder shall be paid to the surviving widow;

2. The decedent, Joseph Perisho, age **51,** was a "Youth Supervisor (Grade) **111,**" and an employee of the State of Illinois Department of Corrections, on March 2, **1976,** at the Illinois Youth Center, Geneva, Illinois;

3. On said date, in uniform and during regularly assigned duty hours, Perisho was within the Youth

Center, in the active performance of his duties, and responded to a call for assistance to restrain a female "student," the "student" being an inmate and person subject to confinement within the Youth Center. The subject resisted, fighting, shoving, and kicking Perisho; and, immediately after handcuffing her, while trying to fasten the cuffs to the subject's bed, Perisho collapsed with a heart attack. He died at the scene, without regaining consciousness, within ten minutes of the attack. The coroner's certificate of death recites, "recent trombosis circumflex branch of left coronary artery, due to or as a consequence of, severe coronary atherosclerosis;"

4. Perisho was **a** "law enforcement officer;'' his death resulted from the direct willful act of the confined subject as described; and he was killed in the line of duty as defined in Section 2(e) of the Act;

5. The proof submitted in support of this **claim** satisfies all of the requirements of the Act, and the claim is therefore compensable thereunder.

It is hereby ordered that the sum of $20,000.00 be awarded to Edna Perisho, as widow of the deceased law enforcement officer, Joseph Perisho.

(Case No. 00128 — **Claim** denied.)

IN RE APPLICATION OF ANDREW J. HARTELL.

*Opinion **filed November 14,** 1978.*

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT. — ***Heart attack.***

PER CURIAM.

This claim allegedly arising out of the death of a fire chief killed in the line of duty, seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act," (hereafter, the Act, Ill. Rev. Stat., Ch. 48, Sec. 281, et seq., 1977.

The Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's office which substantiates matters set forth in the application. Based upon these documents and other evidence submitted at hearings before the Court on June 15, 1978 and October 24, 1978, the Court finds that:

1. Burbank Fire Department Chief, Andrew J. Hartell, died March 6, 1977, at the age of 42 years;

2. Chief Hartell was stricken with a heart attack, in his home, at approximately 9:00 p.m. on March 5, 1977, hospitalized, and died at 1:00 a.m. on March 6, 1977, in Palos Community Hospital;

3. The medical certificate of death recited the cause of his death as "acute myocardial infarction," due to or as a consequence of "arteriosclerotic cardiovascular disease;"

4. Chief Hartell's death was not as a result of the active performance of his duties as a fireman and did not result from injury arising from violence or other accidental cause as provided in, and required by, the Act;

5. Accordingly, Chief Hartell was not killed in the line of duty as defined in the Act.

It is hereby ordered, by reason of the foregoing, that the claim for benefits by Mary J. Hartell, widow and designated beneficiary of Andrew J. Hartell, be, and the same is hereby denied.

(Case No. 00134 — Claim withdrawn.)

IN RE APPLICATION OF DELORES RILEY.

Order filed October 28, 1978.

HINSHAW, CULBERTSON, MOELMANN, HOBAN and FULLER, by KENNETH W. OLSON and JOSEPH CAMARRA, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; VINCENT J. BISKUPIC, Special Assistant Attorney General, for Respondent.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT — *Withdrawal of claim.*

PER CURIAM.

A claim for death benefits under the "Law Enforcement Officers and Firemen Compensation Act" was filed by the Claimant on August 10, 1977, alleging the death of Christopher F. Riley on January 21, 1977;

Kenneth W. Olson stating in writing on October 10, 1978, that the Claimant "has decided not to pursue this matter at this time," and the attorney for Respondent moving for an order allowing the withdrawal of said claim from consideration by this Court, without prejudice; and

The Court being fully advised in the premises;

It is hereby ordered that:

1. The motion by the attorney for Respondent is granted;

2. Leave is granted to the Claimant to withdraw said claim from the records of this Court instanter, without prejudice;

3. The Clerk of this Court is directed to record said claim as "withdrawn without prejudice," by reason of the motion aforesaid and upon entry of this order.

(Case No. 00135 — Claim denied.)

IN RE APPLICATION OF JANE I. DE MENT.

Opinion filed July 25, 1978.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT — ***Heart attack.***

PER CURIAM.

This claim, arising out of the death of a fireman seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act," (hereafter, the Act), Ill. Rev. Stat., Ch. 48, Sec. 281 et seq., 1975.

The Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's Office. Based upon these documents and other evidence submitted at a hearing on April 19,1978, and upon review on June 15,1978, the Court finds that;

1. Brookfield Fire Department Et. Richard De Ment died June 19,1977, at the age of 49;

2. He was stricken with a heart attack in the Brookfield fire station at 2:41 p.m., on June 19, 1977,

while on duty. Resuscitation efforts were begun, and he was transported at 2:44 p.m. to a hospital, where he was pronounced dead at 3:27 p.m. the same date;

3. The death certificate, signed by the doctor who attended him since August, **1974,** recites the immediate cause of death as "acute myocardial infarction," of "minutes" duration, due to or as a consequence of "coronary atherosclerosis," of "years" duration, with "hypertensive cardiovascular disease" stated as another significant condition causing death.

4. Section **2,** sub-paragraph (e) of the Act provides, in relevant part, that "killed in the line of duty" means losing one's life as a result of injury received in the active performance of duties as a fireman if the death occurs within one year from the date **of** the injury received and if that injury arose from violence or other accidental cause;"

5. Lieutenant DeMent had not responded to any fire calls or alarms and had not actively engaged in any firefighting activities prior to the time he was stricken with his heart attack; there is no evidence that his death was caused or precipitated by the active performance of any duties as a fireman;

6. Lieutenant DeMent was not killed in the line of duty as defined in the Act.

It is hereby ordered, by reason of the foregoing, that the claim for benefits by Jane I. De Ment, pertaining to the death of her husband, Richard DeMent, be, and the same is hereby denied.

(Case No. 00137 **— Claimants awarded $20,000.00.)**

IN RE APPLICATION OF KAREN KOUMOUNDOUROS.

***Opinion filed June** 27, 1979.*

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT — *Statutory constructron.* Where decedent designated that his spouse was to receive $5,000.00 and his two sons were to receive $2,500.00 each and the benefits were increased by $10,000.00 by statute, the additional $10,000.00 passes by statute to the surviving spouse.

HOLDERMAN, J.

Claimant in this matter is the widow of a police officer who was killed on September 7, 1977, while employed as a bank guard for the 1st National Bank of Lincolnwood, Lincolnwood, Illinois.

On October 23, 1972, the deceased provided a beneficiary form in which Claimant's widow was designated the sum of $5,000.00 and his two sons were designated the sum of $5,000.00. At the time the deceased provided the beneficiary form, the total benefit was $10,000.00 and provision was made for this amount.

On January 1, 1974, benefits to survivors (beneficiaries) were substantially increased from $10,000.00 to $20,000.00.

The deceased did not make any change in his beneficiary form and the question now before the Court is who is entitled to the additional $10,000.00 provided for by the increase in the death benefit.

In the amendment, effective August 31, 1976, Ch. 48, Sec. 283(a), the following language appears:

"(a) When there is a surviving spouse, the entire sum shall be paid to the spouse. . ."

The facts available show that Karen Koumoundouros is the surviving spouse of the deceased officer, James Koumoundouros.

By reason of the statutory increase, there remains $10,000.00 to be awarded by the Court, and that

$10,000.00 could not have been subject to the beneficiary form above noted. The statute is clear in providing that the "entire sum shall be paid to the spouse." Here, under the facts, the "entire sum" of necessity refers to any portion of the statutory amount not designated by the officer in the beneficiary form.

It is fundamental and does not require the citation of authority that in construing a statute the words used will be given their plain meaning and, if possible, will be so construed as to give effect to the legislative intent. In short, with this enactment, there is no ambiguity, and there is no need to construe, or to search the language used by the General Assembly in an effort to give effect to the legislative intent.

It is hereby ordered that Claimant, Karen Koumoundouros, be awarded the sum of $15,000.00, and the deceased's sons, James Koumoundouros II and Mark Koumoundouros, be awarded the sum of $2,500.00 each.

(Case No. 00141 — Claimant awarded $20,000.00.)

IN RE APPLICATION OF MARION J. WESTON.

Opinion filed November 14,1978.

PADDOCK, McGREEVY and JOHNSON, by JOHN C. TOWER, Attorneys for Claimant.

WILLIAM J. SCOTT, Attorney General; VINCENT J. BISKUPIC, Special Assistant Attorney General.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT — *Heart attack.*

PER CURIAM.

This claim allegedly arising out of the death of a police chief killed in the line of duty, seeks payment of

compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act," (hereafter, the Act), Ill. Rev. Stat., Ch. 48, Sec. 281, et seq., 1977.

The Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney general's office which substantiates matters set forth in the application. Based upon these documents and other evidence submitted at a hearing before the Court on October **24,** 1978, the Court finds that:

1. The Claimant, Marion J. Weston, is the widow of the decedent, and, in the absence of a designation of beneficiary, is the person entitled to receive benefits pursuant to the Act;

2. The decedent, Arthur L. Weston, was the police chief, employed by the Rockton Police Department, and engaged in the active performance of his duties, within the meaning of Section 2(e) of the Act, on October 27,1977. He was 52 years of age;

On said date, at approximately 9:15 a.m., Chief Weston was stricken with a heart attack immediately after having seized and arrested a burglary suspect in a residential building in Rockton. Chief Weston apprehended the suspect, an escapee from a mental health center, after calling for the assistance of other police at 8:34 a.m., reporting a "burglary in progress." The coroner's certificate of death recited the immediate cause of death as "probable myocardial infarct," due to or as a consequence of "arteriosclerotic heart disease,'' and Chief Weston was pronounced "dead on arrival" at 10:57 a.m., the same date at the hospital to which he

was taken directly from the burglary scene;

4. Chief Weston was killed in the line of duty as defined in Section 2(e) of the Act;

The proof submitted in support of this claim satisfies all of the requirements of the Act and the claim is therefore compensable thereunder.

It is hereby ordered, by reason of the foregoing, that the sum of $20,000.00 be paid to Marion J. Weston, widow of the deceased Police Chief, Arthur L. Weston.

(Case No. 00143 — Claimants awarded *$20,000.00.)*

IN RE APPLICATION OF RICHARD GESIORSKI.

Opinion filed July 25, 1978.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT — *Heart attack.*

PER CURIAM.

This claim arising out of the death of a police officer allegedly killed in the line of duty, seeks payment of compensation to the decedent's beneficiaries pursuant to the provisions of the Law Enforcement Officers and Firemen Compensation Act," (hereafter, the Act), Ill. Rev. Stat., Ch. 48, Sec. 281, et seq., 1975.

The Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's Office which substantiates matters set forth in the application. Based upon these documents and other evidence submitted at hearings before the full Court on June 15, 1978, the Court finds that:

1. The Claimant, Richard Gesiorski, age 28, and his brother, Thomas Gesiorski, Jr., age 25, are the sons of the decedent and are the beneficiaries who were designated by him as stated in the application for benefits. The decedent's wife died on October 3, 1977;

2. The decedent, Thomas Gesiorski, was a police officer employed by the Chicago Police Department and engaged in the active performance of his duties, within the meaning of Section 2(e) of the Act, on December 26,1977. He was 52 years of age;

3. On said date, at approximately 7:00 p.m., Officer Gesiorski, together with his partner, were assigned to a shooting case. The shooting victim was carried by Officer Gesiorski and other policemen, in a chair-stretcher, from the third floor of a building, down the stairway, and to St. Bernard's Hospital. As Officer Gesiorski entered the hospital emergency room, he collapsed with a heart attack and was pronounced dead at 7:30 p.m. The medical examiner's certificate of death recites the immediate cause of death as "acute coronary insufficiency in association with stress (heavy weight lifting)." The evidence presented indicates that Officer Gesiorski's death on December 26, 1977, was caused and precipitated by his active performance of the duties required of him as a police officer for the City of Chicago Police Department;

4. Officer Gesiorski was killed in the line of duty as defined in Section 2(e) of the Act;

5. The proof submitted in support of this claim satisfies all of the requirements of the Act and the claim is therefore compensated thereunder.

It is hereby ordered that the sum of $10,000.00 be awarded to Richard Gesiorksi and $10,000.00 be

awarded to Thomas Gesiorski, Jr., as sons and designated beneficiaries of the decedent, Thomas Gesiorski.

(Case No. 00146 — Claimant awarded *$20,000.00)*

IN RE **APPLICATION** OF **ERIKA SMITH.**

Opinion filed July 25, 1978.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT — ***Fall from fire truck.***

PER CURIAM.

This claim arising out of the death of a fireman allegedly killed in the line of duty, seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act," (hereafter, the Act), Ill. Rev. Stat., Ch. 48, Sec. 281, et seq., 1975.

The Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's Office which substantiates matters set forth in the application. Based upon these documents and other evidence at a review before the Court on June 15, 1978, the Court finds that:

1. The Claimant, Erika Smith, is the widow of the decedent and is the beneficiary who was designated by him as stated in the application for benefits;

2. The decedent, James M. Smith, was a firefighter, employed by the Chicago Fire Department and engaged in the active performance of his duties, within the meaning Section 2(e) of the Act, on November **24,** 1977. He was **56** years of age;

3. On said date, at approximately 5:45 p.m., firefighter Smith responded to a fire alarm at his fire station, 330 West 104th Street, Chicago, Illinois directly east of 104th Street and Howard Avenue. As the fire truck left the station, Smith was standing, and riding, on the running board at the rear of the fire truck on the driver's side. The truck turned north on Howard Avenue; and at 103rd Street and Howard Avenue, approximately one block from the fire station, firefighter Smith was noticed as missing from the truck. The truck returned to the station, and Smith was found laying in the street, at the intersection near the fire station, alongside the curb, unconscious, bleeding from his nose and mouth, with a pool of blood around his head. Smith was taken by fire department ambulance to a hospital where he was admitted at 6:15 p.m. the same day. Surgery was performed on November 26, 1977, and a trachectomy was also performed on December 4, 1977. Smith never regained consciousness and died on December 16,1977. The medical examiner's certificate of death recites the cause of death as "cranio-cerebral injury, traumatic, severe;" due to a "fall from fire truck." The fire call to which he had responded was later found to be a false alarm;

4. Firefighter Smith was killed in the line of duty as defined in Section 2(e) of the Act;

5. The proof submitted in support of this claim satisfies all of the requirements of the Act and the claim is therefore compensable thereunder.

It is hereby ordered that the sum of $20,000.00 be awarded to Erika Smith as widow and designated beneficiary of the deceased firefighter, James M. Smith.

(Case No. 00147 — **Claimant awarded** $20,000.00.)

IN RE APPLICATION OF JOSEPHINE FRIDDLE.

Opinion filed July 25, 1978.

WILLIAM STEFAN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; VINCENT J. **BISKUPIC,** Special Assistant Attorney General.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT — *Heart attack.*

PER CURIAM.

This claim arising out of the death of a fireman allegedly killed in the line of duty, seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act," (hereafter, the Act), ***Ill. Reu. Stat., Ch. 48, Sec. 281, et seq., 1975.***

The Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's Office which substantiates matters set forth in the application. Based upon these documents and other evidence submitted at a hearing before the full Court on June 15,1978, the Court finds that:

1. The Claimant, Josephine Friddle, is the widow of the decedent, and, in the absence of a designation of beneficiary, is the person entitled to receive benefits pursuant to the Act;

2. The decedent, Melvin Friddle, was a Captain, employed by the Wilmington Volunteer Fire Department, and engaged in the active performance of his duties, within the meaning of Section 2(e) of the Act, on February 5,1978. He was 62 years of age;

3. On said date, at approximately 12:30 a.m., Captain Friddle was responding to a call regarding an automobile accident. He was driving the fire department ambulance, with another fireman as a passenger, when he collapsed over the steering wheel while crossing the Kankakee River bridge. The ambulance struck the guardrail, traveling approximately 280 feet. The fireman riding with Captain Friddle was able to lift him from behind the steering wheel and control the ambulance until it could be stopped. The coroner's certificate of death recites the cause of death as "cardiac arrest due to shock while driving ambulance on duty." The evidence presented on June 15, 1978, indicates that Captain Friddle's death was caused and precipitated by his active performance of the duties required of him as a fireman for the Wilmington Volunteer Fire Department;

4. Captain Friddle was killed in the line of duty as defined in Section 2(e) of the Act;

5. The proof submitted in support of this claim satisfies all of the requirements of the Act and the claim is therefore compensable thereunder.

It is hereby ordered that the sum of $20,000.00 be awarded to Josephine Friddle, as widow of the deceased fire captain, Melvin Friddle.

(Case No. 00149 — Claimant awarded *$20,000.00.)*

IN RE APPLICATION OF MARY MCGANN.

Opinion ***filed November 14,*** *1978.*

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT — ***Heart attack.***

PER CURIAM.

This claim allegedly arising out of the death of a policeman killed in the line of duty, seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act," (hereafter, the Act), Ill. Rev. Stat., Ch. 48, Sec. 281, et seq., 1977.

The Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney general; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's office which substantiates matters set forth in the application. Based upon these documents and other evidence submitted at a hearing before the Court on October 24, 1978, the Court finds that:

1. The Claimant, Mary McGann, is the widow of the decedent, and in the absence of a designation of beneficiary, is the person entitled to receive benefits pursuant to the Act;

2. The decedent, Patrick McGann, Jr., was a Lieutenant, employed by the Chicago Police Department, and engaged in the active performance of his duties, within the meaning of Section 2(e) of the Act, on July 13,1977. He was **54** years of age;

3. On said date, at approximately 10:30 p.m., Lt. McGann was stricken with a heart attack while driving his police car from the scene of a reported "burglary in progress," where Lt. McGann had assisted in the apprehension of four youths atop a commercial building. The death certificate recited the immediate cause of death as "severe coronary atherosclerosis," and Lt. McGann was pronounced dead at 11:12 p.m., the same date at the hospital to which he had been taken immediately after being stricken;

4. Lieutenant McGann was killed in the line of duty as defined in Section 2(e) of the Act;

5. The proof submitted in support of this claim satisfies all of the requirements of the Act and the claim is therefore compensable thereunder.

It is hereby ordered, by reason of the foregoing, that the sum of $20,000.00 be paid to Mary McGann, as widow and designated beneficiary of the deceased policeman, Patrick McGann, Jr.

(Case No. 00152 — Claimants awarded $20,000.00.)

IN RE APPLICATION OF NANCY BOWLER.

Opinion filed July 25, 1978.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT

PER CURIAM.

This claim arising out of the death of a fireman allegedly killed in the line of duty, seeks payment of compensation to the decedent's beneficiaries pursuant to the provisions of the "Law Enforcement Officers and Firemen compensation Act," (hereafter, the Act), Ill. Rev. Stat., Ch. 48, Sec. 281, et seq., 1975.

The Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's Office which substantiates matters set forth in the application. Based upon these documents and other evidence at a review before the court on June 15, 1978, the Court finds that:

1. The Claimant, Nancy Bowler, is the former wife of the decedent and is one of the designated beneficiar-

ies designated by him, to the extent of 40 percent of any benefits, as stated in the application for benefits; his three children, Patrick M. Bowler, Tracy A. Bowler, and Kathleen M. Bowler, are the other beneficiaries, each to the extent of 20 percent of any benefits payable;

2. The decedent, Patrick J. Bowler, was a firefighter employed by the Chicago Fire Department and engaged in the active performance of his duties, within the meaning of Section 2(e) of the Act, on February 22, 1978. He was 39 years of age;

3. On said date, at approximately 3:00 a.m., firefighter Bowler responded to a call with the "Flying Manpower Squad 4" at a burning building. After being informed that there were people trapped on the third floor of the building, firefighter Bowler reached the third floor, became trapped in the living room and had to leap out of the third floor window, receiving multiple injuries. He was taken directly from the fire scene to a hospital where he died at 1:30 a.m. on February 24, 1978, of the injuries sustained in fighting said fire. The medical examiner's certificate of death recites the cause of death as "traumatic ruptured aorta;"

4. Firefighter Bowler was killed in the line of duty as defined in Section 2(e) of the Act;

5. The proof submitted in support of this claim satisfies all of the requirements of the Act and the claim is therefore compensable thereunder.

It is hereby ordered that the sum of $20,000.00 be awarded to the designated beneficiaries of the decedent in portions as follows:

A. Eight thousand dollars to Nancy Bowler, the former wife of the decedent, representing 40 percent of the benefits, as designated by him.

B. Four thousand dollars to Patrick M. Bowler, the son of the decedent, when Patrick M. Bowler attains majority on August 24, 1980, or, at time prior thereto upon appointment of a legal guardian for said child, said $4,000.00 representing 20 percent of the benefits, as designated by the decedent.

C. Four thousand dollars to Tracy A. Bowler, the daughter of the decedent, when Tracy A. Bowler attains majority on July 13,1982, or, at time prior thereto upon appointment of a legal guardian for said child, said $4,000.00 representing 20 percent of the benefits, as designated by the decedent.

D. Four thousand dollars to Kathleen M. Bowler, the daughter of the decedent, when Kathleen M. Bowler attains majority on December 2, 1984, or, at time prior thereto upon appointment of a legal guardian for said child, said $4,000.00 representing 20 percent of the benefits, as designated by the decedent.

(Case No. 00157 — Claimant awarded $20,000.00.)

IN RE APPLICATION OF MADELINE MCGOVERN.

Opinion fded November 14, 1978.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT — ***Heart attack.***

PER CURIAM.

This claim allegedly arising out of the death of a fireman killed in the line of duty, seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act," (hereafter, the Act), Ill. Rev. Stat., Ch. 48, Sec. 281, et seq.

The Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's office which substantiates matters set forth in the application. Based upon these documents and other evidence, the Court finds that:

1. The Claimant, Madeline McGovern, is the widow of the decedent and is the beneficiary who was designated by him as stated in the application for benefits;

2. The decedent, Daniel J. McGovern, was a firefighter, employed by the Chicago Fire Department and engaged in the active performance of his duties, within the meaning of Section 2(e) of the Act, on March 16, 1978. He was 46 years of age;

3. On said date, at approximately 3:52 p.m., firefighter McGovern was responding to a home fire alarm and on the second floor, pulling ceilings and sidewalls in the bedroom, kitchen, and hallway, when he was struck on the head by ceiling plaster. He complained of being dizzy and weak and oxygen was administered to him at the fire scene. After being transported to a hospital by ambulance, he was pronounced dead at 5:10 p.m. the same date. The medical examiner's certificate of death recited the immediate cause of death as "coronary trombosis," due to or as a consequence of "arteriosclerotic cardiovascular disease" and "inhalation of smoke and soot;"

4. Firefighter McGovern was killed in the line of duty as defined in Section 2(e) of the Act;

5. The proof submitted in support of this claim satisfies all of the requirements of the Act and the claim is therefore compensable thereunder.

It is hereby ordered, by reason of the foregoing, that the sum of $20,000.00 be paid to Madeline McGovern, as widow and designated beneficiary of the deceased Chicago fireman, Daniel J. McGovern.

(Case No. 00158 — Claimant awarded $20,000.00.)

IN RE APPLICATION OF PEGGY CONKLE.

Opinion filed August 29,1978.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT — *Prisoner uprising.*

PER CURIAM.

This claim allegedly arising out of the death of a correctional officer killed in the line of duty, seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act," (hereafter, the Act), Ill. Rev. Stat., Ch. 48, Sec. 281, et seq., 1977.

The Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's Office which substantiates matters set forth in the application. Based upon these documents and other evidence submitted, the Court finds that:

1. The Claimant, Peggy Conkle, widow of the decedent, and in the absence of a designation of beneficiary, is the person entitled to the duty death benefits as provided by the Act;

2. The decedent, Robert J. Conkle, age 22, was employed as a Correctional Officer, by the Pontiac

Correctional Center, Department of Corrections, State of Illinois, and engaged in the active performance of his duties, within the meaning of Sec. 2(e) of the Act, on July 22,1978;

3. On said date, at approximately 9:30 a.m., Officer Conkle, during regularly assigned duty hours, was stabbed to death during a riot by prison inmates at the Pontiac Correctional Center. The coroner's certificate of death recites the immediate cause of death as "bilateral hematothorax," due to or as a consequence of "multiple stab wounds," with an approximate interval between onset and death of "minutes." The coroner's certificate recites death by "homicide," with Conkle having been stabbed by "unknown person(s);"

4. Correctional Officer Conkle was killed in the line of duty as defined, and required by, Section 2(a) and 2(e) of the Act;

5. The proof submitted in support of this claim satisfies all of the requirements of the Act and the claim is therefore compensable thereunder.

It is hereby ordered, by reason of the foregoing, that the sum of $20,000.00 be paid to Peggy Conkle, widow of the deceased correctional officer, Robert J. Conkle.

(Case No. 00159 — **Claimant awarded** $20,000.00.)

IN RE APPLICATION OF SANDI COLE.

Opinion filed September 12,1978.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT — ***Prisoner uprising.***

PER CURIAM.

This claim allegedly arising out of the death of a correctional officer killed in the line of duty, seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act," (hereafter, the Act), Ill. Rev. Stat., Ch. **48,** sec. **281,** et seq., **1977.**

The Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's office which substantiates matters set forth in the application. Based upon these documents and other evidence submitted, the Court finds that:

1. The Claimant, Sandi Cole, widow of the decedent, and in the absence of a designation of beneficiary, is the person entitled to the duty death benefits as provided by the Act;

2. The decedent, Stanley E. Cole, age **47,** was employed as a Correctional Officer, by the Pontiac Correctional Center, Department of Corrections, State of Illinois, and engaged in the active performance of his duties, within the meaning of Section 2(e) of the Act, on July **22,1978;**

3. On said date, at approximately **9:30** a.m., Officer Cole, during regularly assigned duty hours, was stabbed to death during a riot by prison inmates at the Pontiac Correctional Center. The coroner's certificate of death recites the immediate cause of death as "bilateral hemato-pneumothorax," due to or as a consequence of "multiple stab wounds," with an approximate interval between onset and death of "minutes." The coroner's certificate also recites death by "homicide," with Cole having been attacked and stabbed by "unknown person(s);"

4. Correctional Officer Cole was killed in the line of duty as defined, and required by, Sections 2(a) and 2(e) of the Act;

5. The proof submitted in support of this claim satisfies all of the requirements of the Act and the claim is therefore compensable thereunder.

It is hereby ordered, by reason of the foregoing, that the sum of $20,000.00 be paid to Sandi Cole, widow of the deceased correctional officer, Stanley E. Cole.

(Case No. 00160 — Claimant awarded $20,000.00.)

IN RE APPLICATION OF MELBA JEAN THOMAS.

Opinion filed September 12, 1978.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT — *Prisoner uprising.*

PER CURIAM.

This claim allegedly arising out of the death of a correctional officer killed in the line of duty, seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act," (hereafter, the Act), Ill. Rev. Stat., Ch. 48, Sec. 281, et seq., 1977.

The Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's office which substantiates matters set forth in the application. Based upon these documents and other evidence submitted, the Court finds that:

1. The Claimant, Melba Jean Thomas, widow of the decedent, and in the absence of a designation of beneficiary, is the person entitled to the duty death benefits as provided by the Act;

2. The decedent, William N. Thomas, age 49, was employed as a Correctional Officer, by the Pontiac Correctional Center, Department of Corrections, State of Illinois, and engaged in the active performance of his duties, within the meaning of Section 2(e) of the Act, on July 22, 1978;

3. On said date, at approximately 9:30 a.m., Officer Thomas, during regularly assigned duty hours, was stabbed to death during a riot by prison inmates at the Pontiac Correctional Center. The coroner's certificate of death recites the immediate cause of death as "puncture wound of apex of left ventricle of heart," with approximate interval between onset and death of "minutes." The coroner's certificate also recites death by "homocide," with Thomas having been attacked and stabbed by "unknown person(s);"

4. Correctional Officer Thomas was killed in the line of duty as defined, and required by, Sections 2(a) and 2(e) of the Act;

5. The proof submitted in support of this claim satisfies all of the requirements of the Act and the claim is therefore compensable thereunder.

It is hereby ordered, by reason of the foregoing, that the sum of $20,000.00 be paid to Melba Jean Thomas, widow of the deceased correctional officer, William N. Thomas.

(Case No. 00165 — Claimant awarded $20,000.00.)

IN RE APPLICATION OF NORMA CEARLOCK.

Opinion filed April 2, 1979.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT — *Automobile accident.*

PER CURIAM.

This claim arising out of the death of a volunteer fireman allegedly killed in the line of duty, seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act," (hereafter, the Act), Ill. Rev. Stat., Ch. 48, Section 281, et seq., 175.

The Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's office which substantiates matters set forth in the application. Based upon these documents and other evidence submitted at a hearing before the full Court on March 15, 1979, the Court finds that:

1. The Claimant, Norma Cearlock, is the widow of the decedent, as stated in the application for benefits, and the beneficiary designated by him pursuant to a form executed on February 26, 1975;

2. Delbert DeWayne Cearlock, age 42, was a volunteer fireman and a member of the Vandalia Fire Department in the active performance of his duties as a fireman on December 13, 1978;

3. On said date, at approximately 11:30 p.m., Cearlock was a passenger in a Vandalia Fire Department watertank truck, traveling to the scene of a fire, when the truck went out of control and overturned, killing

Cearlock at the accident scene. The coroner's certificate of death submitted recited that Cearlock's death resulted from "injuries received from accident;" and he was pronounced dead at 11:45 p.m. the same night;

4. Cearlock was a volunteer fireman, and he was "killed in the line of duty" as defined in Section 2(e) of the Act;

5. The proof submitted in support of this claim satisfies all of the requirements of the Act, and the claim is therefore compensable thereunder.

It is hereby ordered that the sum of $20,000.00 be awarded to Norma Cearlock, widow and designated beneficiary, of the deceased volunteer fireman, Delbert DeWayne Cearlock.

(Case No. 00166 — Claimant awarded $20,000.00.)

IN RE APPLICATION OF ARLINE SORBY.

Opinion filed May 23, 1979.

JAMES J. REIDY, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; FRANCIS M. DONOVAN, Assistant Attorney General, for Respondent.

LAW ENFORCEMENT OFFICERS AND FXREMEN COMPENSATION ACT — *Fall from fire truck.*

PER CURIAM.

This claim, arising out of the death of a fireman killed in the line of duty, seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act," (hereafter, the Act) Ill. Rev. Stat., Ch. 48, Sec. 281, et seq., 1977.

The Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General, a written statement of the decedent's supervising officer, and a report by the Illinois Attorney General's office which substantiates matters set forth in the application. Based upon these documents and other evidence submitted at a hearing before the full Court on April 19,1979, the Court finds as follows:

1. That the Claimant, Arline Sorby, is the wife of the decedent, and in the absence of a designated beneficiary, Section 3(a) of the Act provides that any award hereunder shall be paid to the surviving widow.

2. That the decedent, Robert C. Sorby, was a 24 year veteran of the Chicago Fire Department and was engaged in the active performance of his duties, within the meaning of Sec. 2(e) of the Act, on October 10,1978.

3. Fireman Sorby began his regular 24-hour duty assignment at 8:00 a.m. and at 3:12 p.m. on October 10, 1978, and Sorby and others assigned to Engine Company Ten responded to an alarm of an "oil spill." While proceeding to the scene, Sorby fell from the engine truck on which he was riding, and he struck his head on the street. Fireman Sorby, unconscious, was taken to Resurrection Hospital and admitted at 4:00 p.m. He never regained consciousness and was pronounced dead at 7:40 a.m. on October 29, 1978. The medical examiner's certificate of death recites the immediate cause of death as "severe skull fracture with intracranial and intracerebral hemorrhage."

We find, therefore:

a) **that Fireman Sorby was killed in the line of duty as defined in Section** 2(e) of **the Act; and**
b) **that the proof submitted in support of this claim satisfies all of the requirements of the Act, and the claim *is* therefore compensable thereunder.**

It is hereby ordered that the sum of $20,000.00 be, and is hereby awarded to Arline Sorby, as wife and beneficiary of the deceased fireman, Robert C. Sorby.

(Case No. 00168 **— Claimant awarded** $20,000.00.)

IN RE APPLICATION OF IMOGENE BOSAK

***Opinron filed May 25,* 1979.**

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT.

PER CURIAM.

This claim, arising out of the death of a policeman killed in the line of duty, seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act," (hereafter, the Act), Ill. Rev. Stat. Ch. 48, Sec. 281, ***etseq.,*** 1977.

The Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General; a written statement of the decedent's supervising officer; and a report by the Illinois Attorney General's office which substantiates matters set forth in the application. Based upon these documents and other evidence submitted at a hearing before the full Court on April 18, 1979, the Court finds as follows:

1. That the Claimant, Imogene Bosak, is the wife of the decedent, and in the absence of a designated beneficary; Section 3(a) of the Act provides that the entire sum shall be paid to the surviving spouse.

2. That the decedent, William P. Bosak, was a police officer employed by the Chicago Police Department and was engaged in the active performance of his duties, within the meaning of Sec.2(e) of the Act, on March 3, 1979.

3. That on said date, Officer Bosak and his partner, Roger Van Schaik, began their regular duty assignment at 8:00 a.m. They were wearing civilian type dress and drove in an unmarked Chicago Police Department vehicle. At approximately 4:16 p.m. on March 3, 1979, the officers made a traffic stop at 1123 West 115th Street in Chicago, Illinois. While both officers were outside of their vehicle, another car drove up and stopped next to the police car. The occupant of this car, later learned to be Kenneth Allen left his auto and began shooting at the two police officers. Allen, after shooting both officers a number of times, fled the scene and was apprehended shortly thereafter. Officer Bosak was pronounced dead on arrival at Roseland Hospital at 4:40 p.m. The medical examiner's certificate of death recites the immediate cause of death as a bullet wound in the heart.

We find, therefore:

a) that Officer Bosak was killed in the line of duty as defined in Section 2(e) of the Act; and

b) that the proof submitted in support of this claim satisfies all of the requirements of the Act, and the claim is therefore compensable thereunder.

It is hereby ordered that the sum of $20,000.00 be, and is hereby awarded to Imogene Bosak, surviving spouse of the deceased police officer, William P. Bosak.

(Case No. 00169 — Claimant awarded $20,000.00.)

IN RE APPLICATION OF ANN VAN SCHAIK.

Opinion filed May 31, 1979.

LAW ENFORCEMENT OFFICERS AND FIREMEN COMPENSATION ACT.

PER CURIAM.

This claim, arising out of the death of a policeman killed in the line of duty, seeks payment of compensation to the decedent's beneficiary pursuant to the provisions of the "Law Enforcement Officers and Firemen Compensation Act," (hereafter, the Act), Ill. Rev. Stat., Ch. 48, Sec. 281, ***et seq.***, 1977

The Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Attorney General, a written statement of the decedent's supervising officer, and a report by the Illinois Attorney General's office which substantiates matters set forth in the application. Based upon these documents and other evidence submitted at a hearing before the full Court on April 18, 1979, the Court finds as follows:

1. That the Claimant, Ann Van Schaik, is the wife of the decedent, and in the absence of a designated beneficiary, Section 3(a) of the Act provides that any award hereunder shall be paid to the surviving widow.

2. That the decedent, Roger Van Schaik, was a police officer employed by the Chicago Police Department and was engaged in the active performance of his duties, within the meaning of Sec.2(e) of the Act, on March 3, 1979.

3. That on said date, Officer Van Schaik began his regular duty assignment at 8:00 a.m. He and his partner, William Bosak, were wearing civilian type dress and drove in an unmarked Chicago Police Department vehicle. At approximately 4:16 p.m. on March 3, 1979, the officers made a traffic stop at 1123 West 115th Street in Chicago, Illinois. While both officers were outside of their vehicle, another car drove up and stopped next to the police car. The occupant of this car, later learned to be Kenneth Allen, left his auto and

began shooting at the two police officers. Allen, after shooting both officers a number of times, fled the scene and was apprehended shortly thereafter. Officer Van Schaik was pronounced dead at 4:45 p.m. at Roseland Community Hospital. The medical examiner's certificate of death recites the immediate cause of death as a bullet wound in the brain.

We find, therefore;

a) that Officer Van Schaik was killed in the line of duty **as** defined in Section 2(e) of the Act; and

b) that the proof submitted in support of this claim satisfies all of the requirements of the Act, and the claim is therefore compensable thereunder.

It is hereby ordered that the sum of $20,000 00 be and is hereby awarded to Ann Van Schaik, surviving spouse of the deceased police officer, Roger Van Schaik.

(No. 75-CV-0057—Claim dismissed.)

IN RE APPLICATION OF SOL GOLDBERG

Opinion filed April 6, 1979.

Pierce & Goldman, by Allen S. Pierce, Attorney for Claimant.

WILLIAM **J. SCOTT,** Attorney General; by ORISHA KULICK, Assistant Attorney General, for Respondent.

CRIME VICTIMS COMPENSATION ACT - ***Abatement.*** A cause of action under the Act does not survive the death of the Claimant.

POCH, J.

This matter comes before this Court on Respondent's motion to dismiss the claim on the grounds that a claim for compensation under the "Crime Victims Compensation Act" does not survive the death of the Claimant.

Claimant filed his claim for benefits under the "Crime Victims Compensation Act" on July 29, 1974. There were several hearings on this matter, and during the pendency of the claim, the Claimant, Goldberg, died of causes unrelated to his original injury. He apparently had a heart attack on July 13,1977 which caused his death.

The Court has never rendered an opinion on this claim, and upon the Claimant's death, the Attorney General moved to dismiss the claim on the grounds that a claim for compensation under the "Crime Victims Compensation Act" does not survive the death of the Claimant.

The statute which the Court must consider is the "Survival Act" which is found in Ill. Rev. Stat. 1977, Ch. 110-1/2, Sec. 27-6. That statute sets forth the Acts which, in addition to common law, survive the death of a party. The Court must determine whether or not the "Crime Victims Compensation Act" is therefore one of those which does survive the death of the Claimant.

There is no doubt that the Crime Victims Compensation Law was unknown at common law and thus is a purely statutory cause of action. It is clear that a statutory cause of action does not survive unless declared by statute to do so.

The case before the Court is a claim for an award in a Statutory Court and is not an adversary proceeding against a defendant as in a tort action.

In the instant case, the "Crime Victim Compensation Act," Section 11 (Ill. Rev. Stat. Ch. 70, Sec. 81) provides as follows: ". . . Compensation due under this Act may not be assigned, pledged, encumbered, released or commuted. . . ." It is clear that the compensa-

tion cannot be assigned, and that the drafters of the law in the Legislature did not wish it to survive because no mention is made in the Act that it survive the death of the Claimant.

In this case, the Claimant, Sol Goldberg, died prior to the adjudication on the merits of his claim. Goldberg claim did not survive his death because it is not an "action" to recover damages for the injury to the person. It is rather a statutory creation allowing a Claimant to seek compensation from the State.

Since the Crime Victim's Act is totally silent as to survival, it is a strict statutory action which terminates and abates at the death of a Claimant.

It is therefore the finding of the Court that the **claim of Sol Goldberg abated upon his death and the** motion of the State to dismiss this claim is hereby granted.

(No. **75-CV-0743 — Claim denied.)**

IN RE APPLICATION OF MARKUS L. BURTON

Opinion filed October 23, 1978.

CRIME VICTIMS COMPENSATION ACT — ***Failure to cooperate with law enforcement officials.***

SAME — **Burden of proof.**

POCH, J.

This claim arises out of an alleged criminal offense occurring on November 24, **1974,** at **2233** S. Federal Ave., Chicago, Illinois. The Claimant seeks compensation pursuant to the terms of the, "Crime Victims Compensation Act,'' hereafter referred to as the Act *(Ill. **Rev.** Stat, 1975, Ch. 70, Sec. 71, et.seq.).*

Based on the investigatory report of the Attorney

General this Court denied the claim on August 1, 1977, on the ground that the Claimant did not cooperate with law enforcement officers in the apprehension and prosecution of the offenders. The Claimant objected to this order and requested a hearing on the merits of his claim. The claim was assigned to a Commissioner for the taking of evidence. On February 22,1978, a hearing was held before Commissioner Leo J. Spivack where the following facts were established by a preponderance of the evidence:

The Claimant, Marcus L. Burton, was the victim of a violent crime as defined in Sec. 2(c) of the Act to wit: Aggravated Battery *(Ill. Rev. Stat., Ch. 38, Sec. 12-4).*

The Claimant incurred various medical and hospital bills after part of which were reimbursed and/or paid by insurance the net amount paid or owed by the Claimant was $295.05.

The Claimant was employed at the time of the offense and earned in excess of $500.00 per month. He was disabled due to his physical injuries from November 24,1974, to March 30,1975, for a total of 126 days. The Claimant did not establish his loss of earnings and did not return to work due to alleged but unsubstiantated claims of psychological disability due to this incident. During this period of disability the Claimant received $2,979.34 in disability payments.

The Act requires the Claimant to be an innocent victim of a violent crime and to cooperate fully with the law enforcement officials in the apprehension and prosecution of the offenders. In this case the Claimant gave various and conflicting reports to police concerning the events leading to his injury. The Claimant also refused to view police photos in order to establish the identity of his assailant. In his notice of intent to file a

Claim for benefits under the Act the Claimant made statements concerning the events which were materially different than he gave at the hearing on this claim. The competent and credible evidence does not establish by a preponderance that the Claimant cooperated fully in the apprehension of his assailants. The conflicting evidence and the refusal to cooperate with police officers precludes the Claimant's recovery. The Claimant has not met the required condition precedent to his right to compensation under the Act. The Claimant's failure to cooperate with police and the lack of credible evidence to support his claim require that it be denied.

It is hereby ordered that the claim of Marcus L. Burton be and the same is hereby denied and that the order denying this claim of August 1, 1977, stands.

(No. **75-CV-0928** — Claimant **awarded** $10,000.00.)

IN RE APPLICATION OF KATIE SHIVERS, Claimant, WILLIE COOPER, Deceased Victim..

Opinion filed October 25, 1978.

ROBERT FRANKENSTEIN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General; BARBARA GILLERAN-JOHNSON, Assistant Attorney General, for Respondent.

CRIME VICTIMS COMPENSATION ACT — ***Funeral expenses incurred by nonrelative.***

PER CURIAM.

This claim arises out of an incident that occurred on December 18, 1974. Katie Shivers, co-habitant of the deceased victim, Willie Cooper, and mother of his dependent children, seeks compensation pursuant to

the provisions of the, "Crime Victims Compensation Act," hereafter referred to as the Act, *(Ill.* ***Rev. Stat.,*** *ch. 70, §71,* ***et seq.).***

the Court, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. The Claimant's deceased co-habitant, Willie Cooper, age 36, was a victim of a violent crime as defined in §72(c) of the Act, to wit: Murder *(Ill.* ***Rev. Stat.,*** *Ch.* ***38, §9-1).***

2. On December 18, 1974, the victim was shot during the course of an armed robbery of his gas station. The incident occurred at 2675 E. 75th Street, Chicago, Illinois. The victim was taken to South Shore Hospital where he was pronounced dead on arrival.

3. The Claimant seeks compensation for funeral expenses and for loss of support for her two children, Denardo Shivers Cooper, age 11; and Willie Rahsaan Cooper, born July 5, 1975.

4. The Claimant incurred funeral and burial expenses as a result of the victim's death in the amount of $2,600.00. However, according to §73(a) of the Act, a person is eligible for compensation for funeral expenses provided that he is related to the victim.

5. The Claimant, Katie Shivers, was not related to the deceased victim.

6. The Claimant's two minor children, children of the deceased, were totally dependent upon the victim for support.

7. That §74 of the Act states ". . . loss of support shall be determined on the basis of the victim's average monthly earnings for the six months immediately preceding the date of the injury or on $500.00 per month, whichever is less."

8. That prior to his death, the victim was self-employed and his average monthly earnings were $1,944.06.

9. That the victim was 36 years of age at the time of the crime. According to the U.S. Department of Health, Education, and Welfare, ***Vital Statistics of the United States,*** 1973, Life Tables, Volume II, his life expectancy would have been 71.4 years. The projected loss of earnings for 35.4 years is in excess of $10,000.00 which is the maximum amount compensable under §77(e) of the Act.

10. That §77(d) of the Act provides for **a** deduction of $200.00 plus the amount of benefits, payments or awards payable under the "Workmen's Compensation Act," ***(Ill. Reu. Stat.,*** *Ch.* ***48,*** *§138.1,* ***et seq.),*** from local governmental, State or Federal funds or from any other source except annuities, pension plans, Federal Social Security benefits and the net proceeds of the first $25,000.00 of life insurance paid or payable to the Claimant.

11. After making all the applicable deductions under the Act, the Claimant's children's loss is in excess of the $10,000.00 maximum award allowed in §77(e) of the Act.

12. That the Claimant, Katie Shivers is not entitled to an award for funeral expenses.

13. The Claimant's interest would be best served if the award hereunder would be paid to her pursuant to

the alternative provisions of §78 of the Act.

It is therefore, hereby ordered that the sum of $10,000.00 be and is hereby awarded to Katie Shivers, on behalf of Denardo and Willie Cooper, children of Willie Cooper, an innocent victim of a violent crime to be paid and disbursed to her as follows:

Twenty equal monthly payments of $500.00 each to be paid to Katie Shivers for the use and benefit of Denardo Shivers Cooper and Willie Rahsaan Cooper, minor children of **the** deceased victim, Willie Cooper.

(No. 76-CV-0062 — Claim denied.)

IN RE APPLICATION OF CLARA M. VOTTELER

Order filed October 23, 1978.

CRIME VICTIMS COMPENSATION ACT — ***Reckless Conduct.***
SAME — ***Statutory construction (Section 2(c))***

POCH, J.

This claim arises out of a criminal offense which occurred on March 30, 1975, at 124th Street and Halsted Avenue. Claimant seeks compensation pursuant to the provisions of the "Crime Victims Compensation Act," hereafter referred to as "the Act." *(Ill. Rev. Stat., Ch. 70, Sec. 71, et seq.)*

Based on the Investigatory Report of the Attorney General this Court denied the claim on November 3, 1976. The Court found that the Claimant's husband's death was caused by being struck and killed by a hit and run driver and therefore the Claimant's husband was not killed as the result of being the victim of a violent crime as defined in Sec. 2(c) of the Act. The Claimant objected to this Order and requested a hearing on the merits. The claim was assigned to a Commissioner and a hearing was held before Commis-

sioner Leo J. Spivack on May 17, 1978, where the following facts were established by a preponderance of evidence:

The Claimant was married to Christopher Votteler and on March 30, 1975, her husband was struck by a hit and run driver as he was crossing the street on his way home. As the result of his injuries Christopher Votteler subsequently died. There was no evidence adduced to show the incident was deliberately caused. No one was ever arrested or charged with his death.

In order for a Claimant to be eligible for compensation under the Act there must be proof that the injury or death was the result of one of the violent crimes defined in Sec. 2(c) of the Act. In this case there is no proof that the victim came under the scope of any of those enumerated crimes of violence. Therefore the Claimant is not entitled to compensation under the terms of the Act.

There has been no evidence presented to cause the Court to modify or vacate the Order denying the claim.

It is hereby ordered that the Order of November 3, 1976, shall stand and the claim of Clara M. Votteler be and the same is hereby denied with prejudice.

(No. 76-CV-0224 — Claim denied.)

IN RE APPLICATION OF ANN DI DOMENICO

Order filed September 14, 1978.

CRIME VICTIMS COMPENSATION ACT — *Compensable injuries.* Pain and suffering is not a compensable loss.

POCH, J.

This claim arises out of a criminal offense which occurred on March 13, 1975, at 1310 West Addison Street, Chicago, Illinois. The Claimant seeks compensation pursuant to the provisions of the "Crime Victims Compensation Act,'' hereinafter referred to as the Act ***(Ill. Rev. Stat.,*** *Ch.* ***70, Sec. 71, et seq.).***

Based on the investigatory report of the Attorney General and other documentary evidence this Court entered on order denying the claim on December 9, 1977. The Claimant objected to the order and sought a full hearing on the merits of her claim.

This claim was assigned to a Commissioner of this Court for the taking of evidence. At said hearing the Claimant testified in support of her claim.

Based on the preponderance of evidence adduced at said hearing, the Claimant was a victim of a violent crime defined in Sec. 2(c) of the Act, to-wit: Robbery.

As the result of her injuries the Claimant incurred a hospital bill from Illinois Masonic Hospital for $11,779.60 and a physician's bill from Dr. Walter Schwartz for $500.00. Both bills were paid in full by Medicare benefits. At the time the Claimant was receiving public aid benefits.

While totally disabled from March 13, 1975, to June 30,1975, the Claimant was not employed and had not been employed for over ten years before the incident. Therefore, she suffered no loss of earnings.

The Claimant suffered serious injuries causing pain and suffering but this is not a compensable loss under the Act.

Since the Claimant incurred no loss of earnings and incurred no pecuniary loss she is not entitled to

any award. Based on the foregoing evidence her claim must be denied.

It is hereby ordered that the order of this Court of December 9,1977, stand the claim of Ann Di Domenico be, and the same is hereby denied.

(No. **76-CV-0466 — Claim denied.)**

IN RE APPLICATION OF MICHAEL BUNNA

Opinion filed October 23, 1978.

CRIME VICTIMS COMPENSATION ACT — ***Wrongful act or substantial provocation.***

POCH, J.

This claim arises out of a criminal offense which occurred on August 3,1975, at 5010 South Wood Street, Chicago, Illinois. The Claimant seeks compensation pursuant to the provisions of the "Crime Victims Compensation Act," hereafter referred to as the Act *(Ill. Rev. **Stat., Chapter** 70, **Section** 71 **et seq.).***

Based on the investigatory report of the Attorney General of the Court denying the claim on March 2, 1977, on the ground that the Claimant's injury was attributable to his wrongful act. The Claimant objected to this order and the claim was assigned to a Commissioner Leo J. Spivack, where the following facts were established by a preponderance of the evidence.

The Claimant was the victim of a violent crime as defined in Section 2(c) of the Act, to wit: Aggravated Battery ***(Ill. Reu. Stat., Chapter 38, Section 12-4).***

While the Claimant incurred medical and hospital expenses as the result of his injury the Claimant suffered his injury as the result of his wrongful act. The evidence is uncontradicted that the Claimant had been

drinking with friends and gone to Cornel1 Park after it had been closed to the public and had entered the pool when it was closed in violation of Park District Ordinances. While unlawfully on the premises the Claimant and his friends were involved in an altercation with other persons which led to Claimant's injuries.

Section 3(f) of the Act provides that a person is entitled to compensation under the Act if the injury was not substantially attributable to the victim's wrongful act or substantial provocation of the assailant.

The Claimant has not proved that he is entitled to compensation under the Act. His injury is substantially attributable to his wrongful acts. Therefore his claim must be denied.

It is hereby ordered that the Order of March 2,1977 denying the claim of Louis A. Bunna shall stand and the claim of Louis **A.** Bunna be and is hereby denied.

(No. **76-CV-0483 — Claim denied.)**

IN RE APPLICATION OF GERALDINE BROWN

Order filed September 28,1978.

CRIME VICTIMS COMPENSATION ACT — ***Wrongful act*** *or* ***substantial prouocation.***

POCH, J.

This claim arises out of a criminal offense that occurred on November 29, 1974, at 900 West Argyle Street, Chicago, Illinois. Geraldine Brown, the former wife of the victim, Donald C. Schumacher, seeks compensation pursuant to the provisions of the "Crime Victims Compensation Act", hereafter referred to as the Act. (Ill. Rev. Stat., Ch. 70, Sec. 71, et seq.)

The Claimant, Geraldine Brown, seeks compensation for loss of support for the two minor children of the victim. The Court on December 2, 1976, denied the claim of Geraldine Brown based on the investigatory report of the Attorney General. The Claimant objected to the denial of her claim and the claim was assigned to a Commissioner of the Court for the taking of evidence. On October 26, 1977, a hearing was held before the Commissioner. The evidence adduced at the hearing established that the victim, Donald C. Schumacher was the victim of a violent crime, to-wit: Murder (Ill. Rev. Stat., Ch. 38, Sec. 9-1).

Claimant seeks compensation for loss of support for the two minor children of the parties pursuant to a decree of divorce entered by the Circuit Court of Cook County calling for child support payments of $40.00 per week for the support of the two children.

While the decedent was the victim of a violent crime the evidence clearly shows that the deceased substantially provoked his assailant. The deceased had brought two prostitutes, one a female and one a male impersonating a female, to his apartment where he became involved in an argument with the male. The female prostitute tried to stop the fight and was kicked by the deceased who was then fatally stabbed by the male prostitute. Said acts of the decedent were in violation of Section 3(F) of the Act and foreclose compensation to the Claimant, Geraldine Brown.

Based on the foregoing facts, it is hereby ordered that the Claimant, Geraldine Brown, is not entitled to an award and that the order of December 2,1976, denying said claim is in full force and effect.

(No. **76-CV-0839 — Claimant awarded $10,000.00)**

IN RE APPLICATION OF MARIE ROVETUSO TODORICH, Claimant; **ANTHONY** Rovetuso, Deceased Victim.

Opinion filed October 25, 1978.

CRIME VICTIMS COMPENSATION ACT — ***Limit on funeral expenses.***
SAME — ***Death of recipient of periodic support benefits.***

PER CURIAM.

This claim arises out of an incident that occurred on October 10,1975. Marie Rovetuso, widow (now married) of the deceased victim, Anthony Rovetuso, seeks compensation pursuant to the provisions of the "Crime Victims Compensation Act,'' hereafter referred to as the Act, ***(Ill. Rev. Stat., Ch.*** 70, §*71,* ***et seq.).***

This Court has carefully considered the application for benefits submitted on the form prescribed **by** the Court, and an investigatory report of the Attorney General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. The Claimant's deceased husband, Anthony Rovetuso, age 45, was a victim of a violent crime as defined in §72(c) of the Act, to wit: Murder ***(Ill. Rev. Stat., Ch. 38,*** *§9-1).*

2. On October 10,1975,the victim was shot during the course of an armed robbery. The incident occurred on the street at 3956 W. Lake Street, Chicago, Illinois, The victim was taken to Loretto Hospital where he subsequently died of his wounds.

3. The Claimant **seeks** compensation for funeral expenses and for loss of support for the victim's stepson, Matthew Bowman, age 16.

4. Funeral and burial expenses were paid by the Claimant in the amount of $3,409.00, of which $2,000.00 is deemed compensable by the Court.

5. The Claimant's son (victim's step-son) was dependent upon the victim for support.

6. That 974 of the Act states ". . .loss of support shall be determined on the basis of the victim's average monthly earnings for the six months immediately preceding the date of the injury or on $500.00 per month, whichever is less."

7. That prior to his death, the victim was employed by Sarcol, Inc. and his average monthly earnings were $1,243.51.

8. That the victim was 45 years of age at the time of the crime. According to the U.S. Department of Health, Education and Welfare, ***Vital Statistics of the United States, 1973,*** Life Tables, Volume 11, his life expectancy would have been 72.5 years. The projected loss of earnings for 27.5 years is in excess of $10,000.00 which is the maximum amount compensable under §77(e) of the Act.

9. That §77(d) of the Act provides for a deduction of $200.00 plus the amount of benefits, payments or awards payable under the "Workmen's Compensation Act," ***(Ill. Rev. Stat.,*** *Ch.* 48,9138.1, ***et seq.),*** from local governmental, State or Federal funds or from any other source except annuities, pension plans, Federal Social Security benefits and the net proceeds of the first $25,000.00 of life insurance paid or payable to the Claimant.

10. The Claimant has received $61,680.01 from life insurance policies as a result of the victim's death, of

which $36,680.01 can be counted as applicable deductions.

11. After making all the applicable deductions, under the Act, the Claimant's loss is in excess of the $10,000.00 maximum award allowed in §77(e) of the Act.

12. The Claimant has complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

13. The Claimant's interest would be best served if the award hereunder would be paid to her pursuant to the alternative provisions of §78 of the Act.

It is therefore, hereby ordered that the sum of $10,000.00 be and is hereby awarded to Marie Rovetuso Todorich, widow of Anthony Rovetuso, an innocent victim of a violent crime to be paid and disbursed to her as follows:

(a) $2,000.00 to be paid to Marie Rovetuso Todorich;

(b) Sixteen equal monthly payments of $500.00 each to be paid to Marie Rovetuso Todorich for the use and benefit of Matthew Bowman, step-son of the deceased victim, Anthony Rovetuso.

Supplemental Opinion

This cause coming on to be heard on the motion of Respondent for entry of an order terminating periodic support payments, which are being made pursuant to this Court's order of March 30,1976, to Marie Rovetuso Lodovich for the use and benefit of Matthew Bowman, the minor step-son of the deceased victim.

The Court has been advised that Matthew Bowman died prior to the expiration of those periodic support payments.

It is therefore ordered that the periodic support

payments awarded to Matthew Bowman terminate forthwith.

(No. 76-CV-0878 — Claim denied.)

IN RE APPLICATION OF BEATRICE CHANDLER

Opinion filed December 22, 1978.

MICHAEL D. GOLDEN, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General for Illinois.

CRIME VICTIMS COMPENSATION ACT — Loss *of support.* Money obtained by deceased victim in the form of Public Aid benefits is not considered "earning" for computation of loss of support.

POLOS, C.J.

This is an action under the "Crime Victims Compensation Act," *(Ill. Rev Stat. Ch.* **70,*para.*** 71, ***et seq.),*** hereafter the Act.

The Court has carefully reviewed the application for benefits submitted herein, the investigatory report of the Attorney General of Illinois, a stipulation entered into between the parties, and a transcript of evidence taken in this cause on August 2, **1978,** before a Commissioner of this Court.

On consideration thereof, this Court finds as follows:

1. Claimant was, on and before September **4,1974,** married to one Ben Chandler.

2. On September **7, 1974,** the said Ben Chandler was a victim of a violent crime as defined by Section 2(c) of the Act, to wit "murder."

3. The said Ben Chandler in no way contributed to or incited said crime.

4. Claimant and the decedent had, on the date of his death, one minor child.

5. Claimant and the deceased were separated on the date of his death, but no suit for dissolution of marriage had been filed.

6. The deceased was unemployed at the time of his death, and had been unemployed for more than six months last preceeding the date of his death, and was a recipient of Public Aid during said period.

7. Claimant has fully complied with all technical provisions of the Act.

8. Claimant did not pay any monies on account of medical, hospital and/or funeral expenses incurred by the deceased or his estate, and does not seek reimbursement therefore.

The sole issue before the Court is whether Claimant is entitled to compensation for loss of support under the foregoing facts.

Section **4** of the Act, (Ill.Rev. Stat. Ch. 70, para 74), provides as follows:

"Pecuniary loss to an applicant under this Act resulting from injury or death to a victim includes in the case of injury, appropriate medical expenses or hospital expenses, loss of earnings, loss of future earnings because of a disability resulting from the injury, and other expenses for treatment by Christian Science practitioners and nursing care appropriate thereto; and, in addition ***in the case of death, funeral and burial expenses and loss of support to the dependents of the victim. Loss of earnings, loss of future earnings and loss of support shall be determined on the basis of the victim's average monthly earnings for the 6 months immediately preceding the date of the injury or on $500.00 per month, whichever is less.*** Nothing in this Section authorizes the making of child support payments for the benefit of a child conceived as a resuslt of the rape of its mother. Pain and suffering shall not be considered in determining pecuniary loss. Pecuniary loss does not include property damage."

It is clear from Section **4** of the Act that as a condition to the right of a dependant to recover for loss of

support in the case of death, the loss of support must first be established, and it must further be established that the victim had some earnings during the six month period preceding his death. It will be noted that the statute provides that loss of support "shall be determined'' on the basis of the victims average monthly earnings for that period.

Here, the record is clear that the deceased had been unemployed for six months preceding his death. Claimant argues however that the deceased was a recipient of Public Aid during said period, and that amounts received from Public Aid were "earnings" within the meaning of the Act.

However, we adopt the ordinary and common definition of the word "earnings" i.e. "something earned as compensation for labor or the use of capital." Webster, Third New Int. Dictionary, **1976,** page **714.** Proceeds of public charity can by no stretch of the imagination be deemed compensation for labor or capital.

Since the Act dictates that the amount of any award for loss of support be determined solely upon the basis of victims earnings for the six months preceding his death, and since Ben Chandler did not have earnings within that six month period, we are compelled to hold that an award for loss of support cannot be made in this cause.

It is therefore ordered that this claim be, and hereby is denied.

(No. **76-CV-0936** — Claim **denied.)**

IN RE APPLICATION OF JEAN ROSENBAUM

Order filed May 22,1979.

CRIME VICTIMS COMPENSATION ACT — *Burden of proof*. Claimant bears the burden of proving that her injuries were the proximate result of a violent crime.

SAME — *Medical Expenses*.

SAME — *Damage to personal property*.

POCH, J.

This claim arises out of a criminal offense which occurred on November 3, 1975, at or near 543 North Waller Avenue, Chicago, Illinois. The Claimant seeks compensation pursuant to the applicable provisions of the "Crime Victims Compensation Act,'' hereafter referred to as the Act, (Ill. Rev. Stat., Ch. 70, Sec. 71, ***et seq.)***.

Based on the investigatory report of the Attorney General the claim was denied on December 27,1977, for Claimant's failure to prove a pecuniary loss of more than $200.00 as the result of the violent crime as required by Sec. 3(b) of the Act. At the request of the Claimant, who objected to this order, the claim was assigned to a Commissioner for a full hearing on the merits. On September 6,1978, a hearing was conducted by Commissioner Leo J. Spivack, at this hearing the following facts were established by a preponderance of the evidence:

The Claimant was the victim of a violent crime as defined in Sec. 2(c) of the Act, to wit: Robbery (Ill. Rev. Stat., Ch. 38, Section 18-1).

As the result of the injury to her knee suffered in the robbery, the Claimant was treated at Michael Reese Hospital as an outpatient for which services she was billed $26.00 of which $15.00 was paid by insurance, leaving the net amount of $11.00 being paid by the Claimant.

At the time of the criminal offense the Claimant

was employed by the Chicago Board of Education and by the Federal Government. She had been so employed for more than six months before the offense. In November 1975 she earned the sum of $499.59 and did not loose any time or earnings from her employment as the result of the criminal offense.

The Claimant alleges that she developed a hearing loss which she attributes to this offense. At the hearing the Claimant was unable to produce any admissable or credible evidence, to support her contention. No medical evidence was offered by her to support her contention. The evidence offered by the Claimant was not sufficient to prove any causal connection between the criminal offense and the subsequent hearing loss.

The Claimant has failed to prove by competent and credible evidence that as a result of the criminal offense she incurred medical or hospital expenses or compensable loss of earnings in excess of $200.00 as required by the provisions of Section 3(b) of the Act. Any claim for loss or damage to her personal property is barred by the provisions of Section 4 of the Act. Therefore, the Claimant is not entitled to compensation pursuant to the Act.

It is hereby ordered that the order of December 27, 1977, denying the claim of Jean Rosenbaum stand and remains in full force and effect.

(No. 76-CV-0968 — Claim denied.)

IN RE APPLICATION OF ROSE BAKES

Order filed March 22, 1979.

DONALD HUBERT, Attorney for Claimant.

WILLIAM J. SCOTT, Attorney General for Illinois; **FAITH SALSBURG,** Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT — *Failure* to cooperate with law enforcement officials.

SAME — *No* compensation allowed for pain and suffering.

POCH, J.

This claim arises out of a criminal offense which occurred on December 3, 1975, at Addison, Illinois. Claimant seeks compensation pursuant to the applicable provisions of (111. Rev. Stat., Ch. 70, Sec. 71, et seq.), ("Crime Victims Compensation Act," hereafter referred as the Act.")

The claim was filed on May 10,1976. Based upon the investigatory report of the Attorney General and other documentary evidence the Court on July 10,1978, denied the claim for failure to fully cooperate with law enforcement officials. Claimant requested a hearing on the merits.

Commissioner Leo J. Spivack on December 19, 1978, at Chicago, Illinois conducted the hearing.

At the hearing the following facts were established by a preponderance of the evidence:

1. Claimant's decedent, husband Ned Bakes, was a victim of a violent crime, as defined in Section 2(c) of the Act, to wit: "Murder."

2. Claimant has failed to comply with all pertinent provisions of the Act and does not qualify for compensation thereunder, to wit:

(a) On December 3,1975, Detective Edward Ley, in the company of two other officers, attempted to interview Claimant to further his investigation of the crime but **was ordered out of Claimant's house.**

The Claimant conceded that his medical and hospital expenses were paid by Illinois Department of Public Aid.

Section 3(b) of the Act requires that a Claimant suffer a pecuniary loss of $200.00 or more as defined in the Act which is attributable to a violent crime causing injury. Compensation for pain and suffering is specifically excluded from any award. In the case the Claimant did not incurring pecuniary loss as defined by the Act and is therefore not entitled to compensation. His claim shall be denied.

It is hereby ordered that the order of January **31,** 1978 denying the claim of Rose Bakes shall stand and the claim is denied with prejudice.

(No. 76-CV-0997 — Claimant awarded $169.00.)

IN *RE* APPLICATION OF EPIFANIO ROBLES, Claimant, ROBERT C. **ROBLES,** Deceased Victim.

Opinion filed August 31,1978.

ROBERTA STRICKLER, Attorney for Claimant.

WILLIAM **J.** SCOTT, Attorney General; BARBARA GILLERAN-JOHNSON, Assistant Attorney General, for Respondent.

CRIME VICTIMS COMPENSATION ACT —*Reckless Conduct.*

PER CURIAM.

This claim arises out of an incident that occurred on January 8, 1976. Epifanio Robles, father of the deceased victim, Robert C. Robles, seeks compensation pursuant to the provisions of the "Crime Victims Compensation Act," hereafter referred to as the Act, *(Ill.* ***Rev.*** *Stat., Ch. 70,971,* ***et seq.).***

This Court has carefully considered the application for benefits submitted on the form prescribed by the Court, and an investigatory report of the Attorney

General of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted to the Court, the Court finds:

1. The Claimant's deceased son, Robert C. Robles, age 18, was a victim of a violent crime as defined in §*72(c)* of the Act, to wit: Reckless Conduct *(Ill.* ***Rev. Stat., Ch. 38,*** *§12-5).*

2. That on January 8, 1976, at 2150 West North Avenue, Chicago, Illinois, the victim was shot and killed with a bullet fired from a gun in the offender's possession. Prior to the incident, the offender had been showing the gun to the victim. The victim's body was taken to St. Elizabeth Hospital where he was pronounced dead on arrival.

3. The Claimant seeks compensation under the Act for funeral expenses only. The Claimant was not dependent.

4. Claimant incurred funeral and burial expenses as a result of the victim's death in the amount of $869.00.

5. That §77(d) of the Act provides for a deduction of $200.00 plus the amount of benefits, payments or awards payable under the "Workmen's Compensation Act," ***(Ill. Rev. Stat., Ch. 48,*** §138.1, et seq.), from local governmental, State or Federal funds or from any other source, except annuities, pension plans, Federal Social Security benefits and the net proceeds of the first $25,000.00 of life insurance paid or payable to the Claimant.

6. The Claimant has received $500.00 in reimbursements as a result of the victim's death that can be counted as applicable deductions:

Public Aid	$300.00
United Christian Community Service	$200.00

7. The Claimant has complied with all pertinent provisions of the Act and qualifies for compensation thereunder.

8. The Claimant is entitled to an award based on the following:

Funeral Expenses	$869.00
Less Deductible	-200.00
Public Aid	$300.00
United Christian Community Service	200.00
Total	$169.00

It is hereby ordered that the sum of $169.00 be and is hereby awarded to Epifanio Robles, father of Robert C. Robles, **an** innocent victim **of** a violent crime.

(No. **76-CV-1277 — Claim** denied.)

IN RE APPLICATION OF CHARLES CONTI

Order filed October 23, 1978.

CRIME VICTIMS COMPENSATION ACT — ***Failure to cooperate with law enforcement officials.***

POCH, J.

This claim arises out of a criminal offense that occurred on October 11,1975,in the 2600 block of North Southport Ave., Chicago, Illinois. The Claimant seeks compensation pursuant to the provisions of the "Crime Victims Compensation Act," hereafter referred to as the Act *(Ill. **Rev. Stat.,** Ch. 70., Sec. 71, et seq.).*

Based on the investigatory report of the Attorney General the claim was denied on January 31,1978, on the ground that the Claimant did not incur a pecuniary loss of $200.00 or more atributable to a violent crime.

The Claimant objected to this order and requested a full hearing on the merits. This claim was assigned to a Commissioner and a hearing was held on August 9, 1978, before Commissioner Leo J. Spivack where the following facts were established by a preponderance of the evidence:

The Claimant, Charles Conti, was the victim of a violent crime as defined in Sec. 2(c) of the Act to wit: Aggravated Battery *(Ill. Rev. Stat., Ch. 38, Sec. 12-4).*

As the result of being beaten and robbed on October 11, 1975, the Claimant incurred medical and hospital expenses in the treatment of his broken jaw and head injuries. He seeks compensation for only these expenses. He suffered no loss of income because he had been unemployed for over six months prior to the offense.

On or about December 6, 1975, Detective Ley called Claimant to set up an interview date but was told that Claimant, on advice of counsel, was to make no statement or give any information.

(c) On or about December 6, 1975, Sargent James Tellme, in charge of the homocide investigation, detailed officers to interview Claimant. Such interview was never had, due to the officers inability to contact Claimant.

3. Claimant has not cooperated fully with the authorities in and about the investigation of the crime and the apprehension of those responsible, as is required by the letter of the statute.

Based on the foregoing, the Court finds no reason to modify its order of July 10, 1978.

(No. 76-CV-1344 — Claim denied.)

IN RE APPLICATION OF OCTAVIA HADLEY

Order filed July 28, 1978.

CRIME VICTIMS COMPENSATION ACT — ***Statutory construction of Section 2(c) of the Act.***

SAME — ***Burden of proof.***

POCH, J.

This claim arises out of an alleged criminal offense that occurred on April 26,1975, in Chicago, Illinois as a result of which Claimant seeks compensation pursuant to the provisions of the "Crime Victims Compensation Act," *(Ill. Rev. Stat., Ch. 70, Sec. 71, et seq.),* hereafter referred to as the Act.

On November 30,1977, this Court entered an order denying the claim for Claimant's failure to establish that an alleged crime occurred. Said denial was based upon the investigatory report of the Attorney General.

The Claimant has asked for a hearing from the denial of her claim. The case was assigned to a Commissioner of this Court for the taking of evidence at the hearing before the Commissioner on June 21,1978. The Claimant stated that on April 29, 1975, she was employed at Square D Electric Company and returned to work on that day after being off work for some time due to illness. When she went to work she claimed "they were putting some type of chemicals around my work area that made me drunk." The Claimant stated that "the chemicals" were the crime against her. No one was ever charged or arrested as the result of this alleged criminal conduct. The Claimant conceded that she is under psychiatric care at the University of Illinois on an out-patient basis.

The Court finds that, on the basis of the evidence adduced that the Claimant is not a victim of a violent crime as defined in Sec. 2(c) of the Act.

The Claimant is not entitled to compensation under the Act because of her failure to prove that she is a victim of a violent crime.

The Court therefore finds that there is no reason to modify its order of November 30, 1977, denying recovery to Claimant.

(No. 77-CV-0077 — Claim denied.)

IN RE APPLICATION **OF RUBY** GALE STEVENS

Opinion filed September 5, 1978.

JAMES DEWULF, Attorney for Claimant.

WILLIAM **J. SCOTT,** Attorney General for Illinois; GEORGE M. SCHAFER, Assistant Attorney General.

CRIME VICTIMS COMPENSATION ACT — ***Wrongful act or substantial prouocation.*** Where Claimant's decedent was engaged in hitchhiking and died as a result of a gunshot wound inflicted by assailant as he was leaving assailant's automobile, his death was substantially attributable to his wrongful act.

PER CURIAM.

This claim arises out of an incident that occurred on June 23, 1976. Ruby Gale Stevens, mother of the deceased victim, seeks compensation pursuant to the provisions of the "Crime Victims Compensation Act," hereafter referred to as the Act, (Ill. Rev. Stat., Ch. 70, §71, ***et seq.).***

This Court has carefully considered the application for benefits submitted on the form prescribed and furnished by the Court, and a report of the Attorney General of the State of Illinois which substantiates matters set forth in the application. Based upon these documents and other evidence submitted before the Court, the Court finds:

1. That the Claimant's deceased son, Stephen Eric Skibba, age **16,** was allegedly a victim of a crime of violence, as set forth in sec. 2(c) of the Act, to wit: Murder (Ill. Rev. Stat., Ch. 38, §9-1).

2. That on June 23,1976, Claimant's son was shot by James R. Michels as he was attempting to leave the assailant's automobile after the victim had accepted a ride while hitch-hiking.

3. That sec. 3(f) of the Act provides that a person is entitled to compensation under the Act if the injury to or death of the victim was not substantially attributable to the victim's wrongful act.

4. That it appears from the investigatory report and police report that the victim's death was attributable to his wrongful act of hitch-hiking in violation of Ill. Rev. Stat., Ch. 95.5, sec. 11-1006.

5. That the Claimant's claim does not meet a required condition precedent for the right to compensation under the Act.

It is hereby ordered that the claim of Ruby Gale Stevens be, and is hereby denied.

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