1996 WL 51194
Only the Westlaw citation is currently available.
United States District Court, S.D. New York.

James BENJAMIN, et al., Plaintiffs,
v.
Michael P. JACOBSON, et al., Defendants. and related cases

No. 75 Civ. 3073 (HB). | Feb. 7, 1996.

**Opinion**

***OPINION AND ORDER***

BAER, District Judge:

***1** These two matters came on to be heard by me as a consequence of a ruling in *Benjamin v Sielaff* which has spawned a dispute between the parties touching the status of two prisoners and whether they are entitled to payment. That decision held that any member of the plaintiff's class held as a new admission inmate in a non-housing area for more than 24 hours would collect $150 from the defendant and for each additional 12-hour period or any portion thereof, an additional $100. Similarly that decision concluded that an overload inmate being transferred between facilities and held in a non-housing area for more than 12 hours was entitled to be paid $150 and for each additional 12-hour period or any portion thereof, an additional $100. The Office of Compliance Consultants found that both plaintiffs were entitled to compensation in the amount of $150 each.

In connection with my review, I read an April 11, 1991 letter from OCC to Judge Lasker, an April 17, 1991 letter from Legal Aid to Judge Lasker, and a March 12, 1993 memorandum from OCC to Nancy Reese, all in connection with inter-facility transfers and the housing violation orders in general. I have also reviewed certain information regarding the fine structure and OCC's oversight role. In addition, I have reviewed the four-page letter from Ralph McGrane, Assistant Chief ISCD to Paul Nicoll stating the reasons for contesting the proposed fines along with a decision from late last year by the Hon. Carol E. Huff in an Article 78 proceeding challenging the denial of reimbursement for housing of certain defendants in City correctional facilities. Finally I have reviewed a January 4, 1996 letter from plaintiff's attorneys, Dale Wilker and John Boston. While all of the above made interesting reading, none of them has changed my common sense concept that a detainee is a detainee is a detainee. Put another way, I find that both plaintiffs were members of the class. The fact that they were sentenced inmates serving state time and thus in a "dual status" is irrelevant to the determination of membership in the class. They both had charges pending against them for which they were required to be in one or another New York City criminal courts and were detained on Rikers Island pending the resolution of those charges or "open counts." In my view whether the Department had or had not a facility for housing sentenced prisoners, would make no difference. The plaintiffs were being held on Rikers Island as a consequence of open charges on which they had not been sentenced and as such, they come within the class. I have signed both orders.

SO ORDERED.