

1995 WL 453470

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United States District Court, S.D. New York.

James BENJAMIN, et al., Plaintiffs,  
v.  
Benjamin J. MALCOLM, et al., Defendants.  
And Related Cases.

No. 75 Civ. 3073 (HB). | Aug. 01, 1995.

**Attorneys and Law Firms**

John Boston, New York City, NY, for plaintiffs.

Thomas Bergdall, New York City, NY, for defendants.

**Opinion**

**MEMORANDUM AND ORDER**

BAER, District Judge.

\*1 I have read the correspondence between OCC and the Department and listened to the arguments advanced by each side at a conference on Tuesday, July 18, 1995. The matter concerns whether a fine is to be levied against the Department in accordance with the July 11, 1991, order of the Hon. Morris E. Lasker. There are other orders leading up to this July decision, but it is this order that seems to govern the present controversy. (See particularly orders of December 14, 1990, December 21, 1990, and June 11, 1991.) The July 11, 1991, order reads in pertinent part:

Beginning February 1, 1992

defendants shall pay into the registry of the court sufficient funds to pay compensatory fines to any member of the plaintiff class who is confined to a non-housing area or combination of such areas for more than 12 hours while being transferred from one Department of Correction facility to another.

This controversy surrounds an inmate, [name deleted], who is being transferred between facilities and was held in a non-housing area for more than twelve hours. The Department of Correction posits that in this case the inmate was responsible for the delay by having instigated two altercations with other inmates. All participants required medical attention. Understandably the victims are examined and treated first. In a word, at some juncture, the decision was made to transfer inmate, the instigator, before the transfer was completed, more than twelve hours had elapsed. The only question for decision is whether the clock should have been allowed to run against the Department during a period of time for which the prisoner himself was responsible.

It is interesting to note that in a December 21, 1990, Judgment, there is language that while related to housing new admissions is analogous to the transfer case before me. There, we read where the fine "... resulted from unforeseen, non-routine circumstances beyond defendants' control, no such payment shall be required ..."

I conclude that the fact pattern here presents unforeseen, non-routine circumstances for which a fine is inapplicable.