

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MOHAMED A. EL-TABECH,) 4:04 CV3231
) plaintiff,)
))
) MOTION FOR A
V.) TEMPORARY RESTRAINING
) ORDER
HAROLD CLARKE, et al.,)
) Defendants.)

FILED
U.S. DISTRICT COURT
DISTRICT OF NEBRASKA
04 NOV - 1 PM 11:11
OFFICE OF THE CLERK

COMES NOW the plaintiff, Mohamed A. El-Tabech and pursuant to FRCP Rule 65(b), and NEBR 65.1 moves this Court For the issuance of a Temporary Restraining order enjoining defendants Paul Church, Francis Britten, and Mary Carmichael, their employees, assistants, staff, and subordinates from their acts in denying plaintiff meals, by deliberately placing non-Kosher Food items on his Food trays with total disregard to plaintiff's health, and religious rights. plaintiff has no choice, but to avoid the meals served in their entirety causing plaintiff rapid weight loss, and health deterioration. The defendants have started their deliberate acts since plaintiff started the Fasting of the Holy Month of Ramadan which started on October 15, 2004, and will end

on November 13, 2004. In Support of this Motion and application plaintiff states:

1. Irreparable harm and injury to plaintiff's Constitutionally protected religious rights and health will result without the issuance of this Motion.

2. Notice to the defendants is not required, as the irreparable harm will continue by the time a hearing is set on the matter.

3. The primary defendant in charge of the Food Service, Paul Church, has failed to answer or defend, and a Motion for a default judgment is pending before this Court (Filing No. 39).

4. The issuance of the Motion comes at no cost to the defendants, or any fees associated with adhering to the order. ALL that is required is to avoid placing Non-Kosher meats, animal byproducts, and food mixed with said items on plaintiff's Food trays during meals.

5. The issuance of this Motion is not to be taken in lieu of the relief sought by plaintiff in the Complaint (Filing No. 1), or to be considered a partial relief; only bare means to temporarily allow plaintiff the ability to finish his mandatory period of Fasting which ends November 13, 2004, and prevent the added harm, injury and damage to his religious rights and health.

6. The only challenge to plaintiff's religious diet by the defendants in their pending motion

to dismiss (Filing No. 45) which plaintiff is in the process of responding to, is only a comment ".... plaintiff complains that the Food is not up to his standard..." Defendants' Brief at page 14 (Filing No. 47). Thus, other than defendant Paul Church, who has defaulted, the two other defendants have failed to defend against plaintiff's assertions. 7 plaintiff's affidavit in support of this Motion is incorporated hereto.

WHEREFORE, plaintiff prays this motion be granted and a Temporary Restraining order issue enjoining defendants Paul Church, Francis Britten, and Mary Carmichael, their employees, assistants, staff, and subordinates, from placing or including in the food trays provided to plaintiff non-Kosher food items specifically meat, gravy, Jello, pudding, and any food mixed with any of the aforementioned items.

Dated this 28th day
of October, 2004.

Respectfully submitted,



Mohamed A. EL-Tabech
plaintiff, pro se

Tecumseh State Correctional Institution
2725 North Highway 50
P.O. Box 900
Tecumseh, NE 68450

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MOHAMED A. EL-TABECH,) 4:04 CV 3231
) plaintiff,)

v.)

HAROLD CLARKE, et al.,)
) Defendants.)

AFFIDAVIT IN
SUPPORT OF MOTION
FOR A TEMPORARY
RESTRAINING ORDER

STATE OF NEBRASKA)
) SS.
COUNTY OF JOHNSON)

Mohamed A. EL-Tabech, hereinafter affiant,
after being first duly sworn upon oath deposes
and states:

1. That affiant is the plaintiff in the
above captioned case.

2. That affiant, as part of his adherence
to his religious beliefs has been fasting the
holy month of Ramadan for (41) forty one years,
last (20) twenty of which in prison. Out of the
twenty years, seven of which in solitary
confinement. Out of the seven, the last three
including this year's fast have been at TSCI
SMU.

3. That affiant totally relies on the

defendants, specifically Paul Church, Francis Britten, and Mary Carmichael, through their employees, assistants, staff, and subordinates to provide him with meals during the Holy Month of Ramadan.

4. That the Fasting of Ramadan is a Mandatory Tenet of affiant's orthodox belief. It is among other obligations done by consuming a meal prior to dawn, remaining without Food and water (and other human necessities) during the day, and eating a meal after sunset.

5. That the Month of Ramadan started this year on October 15, 2004, and will end on November 13, 2004.

6. That the prison staff bring the Food to affiant at the times stated in (4.) and affiant has no other alternatives, to sustain his needs of Food for sustenance of his health during Ramadan, but through what the prison staff provide.

7. That as stated in the Complaint, Affiant is denied Kosher meals by the defendants.

8. That affiant in the last two years Fasted Ramadan, and the defendants avoided and did not place non-Kosher Food items during Ramadan on affiant's two trays a day.

9. That affiant reminded the religious Coordinator of the mandatory avoidance of placing any non-Kosher Food item on the

trays as it would desecrate the entire tray and meal and makes it prohibited from consumption.

10. That the religious coordinator advised affiant in a response dated October 14, 2004, that affiant needs to let Aramark i.e. Paul Church know about the concern.

11. That affiant through SMU staff has advised Aramark and its employees, defendants Francis Britten, and Mary Carmichael, that affiant can not consume meals with non-Kosher items placed on the tray, but the defendants are indifferent to affiant's religious rights and health. See Exhibit "A" attached hereto.

12. That most of the meals served include meat, and the serving of the meals are done through a tight tray where the steam from the meat saturates the entire meal and provide droplets of meat steam on non-Kosher food items.

13. That affiant has been denied meals to sustain his health, and reasonably sustaining his health since October 15, 2004, has been an impossible task as affiant has been refusing the deliberately and intentionally placed non-Kosher food items on his trays without any choice or consideration.

14. That it is affiant's belief that

the defendants are denying him meals as a form of retaliation for the complaint filed against them by him.

15. That a simple proof of affiant's assertion in (14.) above is the fact that non-Kosher Food items were not placed on his Food trays the last two Ramadans at TSCI, SMU. The pending complaint against the defendants was not pending then.

16. That the defendants are being deliberately indifferent to affiant's weight loss and health deterioration as a result of affiant's refusal to take the trays as offered.

Taking the trays as offered would be a violation of affiant's beliefs, and would violate the sanctity of Fasting by touching, consuming, or having anything to do with non-Kosher Food.

17. That affiant did not request from the defendants any Food items to replace the items that he can not have on the tray.

Affiant's only request was to avoid placing the non-Kosher items on the tray specifically, meat, gravy, jello and pudding. The issue of Kosher preparation which is before the Court has not been raised with the defendants. Affiant believes that his request is reasonable, feasible at no cost

to the defendants.

[Handwritten Signature]
AFFIANT

SUBSCRIBED AND SWORN TO, before me, this
28th day of October, 2004.



SEAL

Johnson
County

[Handwritten Signature]
NOTARY PUBLIC

EMERGENCY
1-4

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES

GRIEVANCE FORM

Step One

CHIEF EXECUTIVE OFFICER

INSTRUCTIONS:
TYPE OR USE BALL POINT
PEN. IF MORE SPACE IS
NEEDED, USE ATTACHMENT
SHEET IN TRIPLICATE.

From: EL-TABECH, MOHAMED, A.H.A. 36752 TSCI/SMU/C4
LAST NAME, FIRST, MIDDLE INITIAL NO. FACILITY/HOUSING UNIT

Part A - INMATE REQUEST/CONCERN:

At approximately (3:30 P.M.) 1530 hrs. I was advised by SMU Case Worker, that the Kitchen is going to put ALL prohibited from consumption food items on my Ramadan Tray, which will cause me irreparable harm, as I will not be able to accept it, due to the very grave and offensive violation of the religious Tenet I adhere to, which is Orthodox Islam. It is a proof of intolerance by Aramark-paul Church and TSCI- Francis Britten, as such acts of placing prohibited food on my Tray is very offensive, especially during the very-most sacred month of Ramadan, but it is also violation of Administrative Regulation 108.01, II-H which states: " -- Any inmate may abstain

10-18-2004

DATE

[Signature]
SIGNATURE OF REQUESTOR

1700 hrs. 5:00 P.M.

Part B - RESPONSE AND REASONS FOR DECISION REACHED

The information contained in your grievance does not meet the criteria, which governs emergency grievances as you are in no immediate danger of being subjected to a substantial risk of personal injury or serious or irreparable harm. Aramark staff has agreed for the month of Oct. during Ramadan not to serve pork products for the evening and morning meals. If you choose not to accept your tray advice staff you are refusing your meal.

You may re-submit via the routine grievance procedure as outlined in DCS Rule #2.

10-19-04

DATE

[Signature]
CHIEF EXECUTIVE OFFICER

Exhibit
cc A
page 1

ORIGINAL: TO BE RETURNED TO INMATE AFTER COMPLETION.

EMERGENCY
2-4

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES

GRIEVANCE FORM

Step One

CHIEF EXECUTIVE OFFICER

INSTRUCTIONS:
TYPE OR USE BALL POINT
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SHEET IN TRIPLICATE.

From: EL-TABECH, MOHAMED, A.H.A. 36752 TSCI/SMU/C4
LAST NAME, FIRST, MIDDLE INITIAL NO. FACILITY/HOUSING UNIT

Part A - INMATE REQUEST/CONCERN:

From religiously prohibited foods without jeopardizing that nutritional adequacy... So Paul Church and Warden Britten, are violating DCS own rules by denying me my rights to exercise my religious beliefs and my rights under ATR 108.01. It is the most absurd and stereotyping ignorant concept held by many uninformed individuals, that only pork is prohibited from consumption, or being placed on the Tray. Any food item that is an animal byproduct not slaughtered the kosher way is prohibited from consumption, or being in touch with the tray* i.e. Meat, gravy, Jello, and pudding (fish and Tuna are the only exceptions). Additionally, it is an irreparable harm to my health

10-18-2004

DATE

(1500 hrs 5:00 P.M.)

* Holy Quran: Chapter 6: Verse 121
Chapter 6: Verse 3

[Signature]
SIGNATURE OF REQUESTOR

Part B - RESPONSE AND REASONS FOR DECISION REACHED

The information contained in your grievance does not meet the criteria, which governs emergency grievances as you are in no immediate danger of being subjected to a substantial risk of personal injury or serious or irreparable harm. Aramark staff has agreed for the month of Oct. during Ramadan not to serve pork products for the evening and morning meals. If you choose not to accept your tray advice staff you are refusing your meal.

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Exhibit
4A
page 2

10-18-04

DATE

[Signature]
CHIEF EXECUTIVE OFFICER

ORIGINAL: TO BE RETURNED TO INMATE AFTER COMPLETION.

Part C - RECEIPT

Return to: _____
LAST NAME, FIRST, MIDDLE INITIAL NO. FACILITY/HOUSING UNIT

I acknowledge receipt this date of a complaint from the above inmate in regard to the following subject: _____

DATE

RECIPIENT'S SIGNATURE (STAFF MEMBER)

(SEE REVERSE SIDE FOR INSTRUCTIONS FOR APPEAL TO DIRECTOR OR DIRECT SUBMISSION TO DIRECTOR)

EMERGENCY
3-4

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES
GRIEVANCE FORM

Step One
CHIEF EXECUTIVE OFFICER

INSTRUCTIONS:
TYPE OR USE BALL POINT
PEN. IF MORE SPACE IS
NEEDED, USE ATTACHMENT
SHEET IN TRIPLICATE.

From: EL-TABECH, MOHAMED, A.H.A. 36752 TSCI/SMU/C4
LAST NAME, FIRST, MIDDLE INITIAL NO. FACILITY/HOUSING UNIT

Part A - INMATE REQUEST/CONCERN:

and welfare, as I am being denied proper nutrition, by jeopardizing my nutritional adequacy in avoiding the meal in its entirety due to prohibited food on ~~the~~ ^{the} tray. It is also a discrimination as well as, a proof of intolerance, when the General population can avoid placing offensive food on their trays, and clearly stated Memorandums at SMU provide those who are not fasting, the opportunity to avoid placing non-Kosher items or any other items ^{on the tray} for their own personal choice. I have a compelling reason i.e. religion. I have been practicing the religion and observing the Holy Month for (41) forty one years! The last two were here at TSCI, and I was 10-18-2004 able somehow to manage avoiding the placement
DATE SIGNATURE OF REQUESTOR
1700 hrs. 5:00 p.m.

Part B - RESPONSE AND REASONS FOR DECISION REACHED

The information contained in your grievance does not meet the criteria, which governs emergency grievances as you are in no immediate danger of being subjected to a substantial risk of personal injury or serious or irreparable harm. Aramark staff has agreed for the month of Oct. during Ramadan not to serve pork products for the evening and morning meals. If you choose not to accept your tray advice staff you are refusing your meal. You may re-submit via the routine grievance procedure as outlined in DCS Rule #2.

Exhibit
A
page 3

10-18-04 H. J. Ramsey
DATE CHIEF EXECUTIVE OFFICER

ORIGINAL: TO BE RETURNED TO INMATE AFTER COMPLETION.

Part C - RECEIPT

Return to: _____
LAST NAME, FIRST, MIDDLE INITIAL NO. FACILITY/HOUSING UNIT

I acknowledge receipt this date of a complaint from the above inmate in regard to the following subject: _____

DATE RECIPIENT'S SIGNATURE (STAFF MEMBER)

(SEE REVERSE SIDE FOR INSTRUCTIONS FOR APPEAL TO DIRECTOR OR DIRECT SUBMISSION TO DIRECTOR)

NEBRASKA DEPARTMENT OF CORRECTIONAL SERVICES

GRIEVANCE FORM

Step One

CHIEF EXECUTIVE OFFICER

EMERGENCY
4-4

INSTRUCTIONS:
TYPE OR USE BALL POINT
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NEEDED, USE ATTACHMENT
SHEET IN TRIPLICATE.

From: EL TABECKH, MOHAMED, A.H.A. 36752 TSCI/SMU/C4
LAST NAME, FIRST, MIDDLE INITIAL NO. FACILITY/HOUSING UNIT

Part A - INMATE REQUEST/CONCERN:

of prohibited by religious Tenets Food items on the tray, with few rectified mistakes.
Additionally, a pending suit against Paul Church and Warden Britten is in the Federal Court, dealing with Failure to provide, and denial of Kosher meals. To blatantly cause me irreparable harm to my religious rights (and health) shows retaliation by Aramark and TSCI for exercising my religious rights.

It behooves Aramark and TSCI to provide me with a tray today, Monday, October 18, 2004, by sunset time, which does not have any meat, gravy, Jello, and pudding on it, especially when it is an hour and a half before sunset. Hate, intolerance, and ignorance of my belief seems to be the case.

[Signature]
SIGNATURE OF REQUESTOR

DATE
10-18-2004
1700 hrs. 5:00 PM

In the way I am being served my trays.

Part B - RESPONSE AND REASONS FOR DECISION REACHED

The information contained in your grievance does not meet the criteria, which governs emergency grievances as you are in no immediate danger of being subjected to a substantial risk of personal injury or serious or irreparable harm. Aramark staff has agreed for the month of Oct. during Ramadan not to serve pork products for the evening and morning meals. If you choose not to accept your tray advice staff you are refusing your meal. You may re-submit via the routine grievance procedure as outlined in DCS Rule #2.

Exhibit
page 4

DATE
10-18-04

[Signature]
CHIEF EXECUTIVE OFFICER

ORIGINAL: TO BE RETURNED TO INMATE AFTER COMPLETION.

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DATE

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(SEE REVERSE SIDE FOR INSTRUCTIONS FOR APPEAL TO DIRECTOR OR DIRECT SUBMISSION TO DIRECTOR)