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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA

Alexandria Division

RICHARD HENDERSON,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Civil Action No. 82-0944-AM
	)	
G. KISER, Security Captain,	)	
Powhatan Correctional Center,	)	
	)	
Defendant.	)	

MEMORANDUM OPINION

I. Factual Background

Plaintiff Richard Henderson was incarcerated at Powhatan Correctional Center during the period of time pertinent to this complaint. He has since been transferred to the Virginia State Penitentiary. He has filed a section 1983 action against G. Kiser, a security captain at the Powhatan Correctional Center. See 42 U.S.C. § 1983 (1976). The plaintiff seeks to recover monetary damages for time lost from a work assignment and a declaratory judgment against the policy and practices of work assignment at the prison. Henderson alleges that he was denied due process of law when he was dismissed without a hearing on September 20, 1982, by Captain Kiser, from his position in the staff mess hall. Defendant Kiser moves to dismiss the complaint under Federal Rules of Civil Procedure 12(b)(6) and 56(b) for failure to state a cognizable section 1983 claim.

Plaintiff's dismissal was the result of tardiness in reporting to his assigned job on September 19, 1982. On that day, plaintiff states that he was waiting to be paged on the prison loud speaker before reporting for his 4 p.m.-12 a.m. shift. He claims that the public address system was out of order and that he never received the page. The prison officials state that the system was not out of order and even if the main generator had failed, there was a secondary backup generator. Captain Kiser states that Henderson was paged three times and failed to

report to work. As a result, Henderson was dismissed from that work assignment on the very next day. Plaintiff filed a grievance on September 24, 1982, it was investigated and handled in accordance with a new Division Guideline, #414.

## II. Legal Analysis

The Fourth Circuit has made it abundantly clear that work assignments are within the discretion of the prison administration and do not require a prior hearing. In Altizer v. Paderick, 569 F.2d 812 (4th Cir. 1978) cert. denied, sub nom, Altizer v. Young, 435 U.S. 1009 (1978), a state prisoner complained of his removal as an inmate counselor and alleged that he was entitled to a hearing as a requirement of the due process clause. The Court in Altizer stated:

It is well settled that federal courts do not occupy 'the role of super wardens of state penal institutions' and 'do not sit to supervise state prisons.' In particular, the classification and work assignments of prisoners in such institutions are matters of prison administration, within the discretion of the prison administrators, and do not require fact-finding hearings as a prerequisite for the exercise of such discretion.

569 F.2d 812, 812-13 (citations omitted). Also see Reid v. Moore, No. 79-6499 (4th Cir. June 28, 1982). It is clear from the affidavits filed by the defendant that the prison officials acted within the bounds of the discretion allocated to them to efficiently administer the day-to-day functioning of the prison and did not violate Henderson's constitutional rights by not providing him with a hearing. This is especially so in light of the fact that there are approximately 160 inmates assigned to Powhatan and only 70 available jobs for these inmates. While there is a dispute as to whether or not Henderson got paged this is not a dispositive fact. What is important is the fact that he was late and the prison officials exercised their authority in dismissing him. Plaintiff's complaint is thereby DISMISSED and defendant's motion for summary judgment is GRANTED.

Let the Clerk of the Court send a copy of this  
Memorandum Opinion and the attached Order to plaintiff and to  
counsel for the defendant.

DATE: Dec. 1, 1982

Richard L. Williams  
UNITED STATES DISTRICT JUDGE

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Powhatan Correctional Center, )  
 )  
Defendant. )

ORDER

This matter is before the court on defendant's motion to dismiss under Fed. R. Civ. P. 12 (b)(6) and motion for summary judgment under Fed. R. Civ. P. 56 (b). For the reasons stated in the accompanying Memorandum Opinion, the motion for summary judgment is GRANTED, accordingly, the plaintiff's case is DISMISSED.

Let the Clerk send a copy of this order and the accompanying Memorandum Opinion to plaintiff and counsel for the defendant.

DATE: Dec. 1, 1982

Richard L. Williams  
UNITED STATES DISTRICT JUDGE