

**IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH OF PENNSYLVANIA** :  
 : **CR-249-2014**  
 v. :  
 :  
 :  
 **JASON M. ENTERLINE,** : **CRIMINAL DIVISION**  
 **Defendant** :

**OPINION AND ORDER**

On February 4, 2015, the Defendant filed a Motion to Reconsider Restitution Nunc Pro Tunc. The Court renamed the motion as a Motion to Determine Restitution. A hearing on the motion was held on February 26, 2015 and May 14, 2015.

**I. Background**

From November 2013 to January 2014, the Defendant stole brass from Andritz, his employer at the time. On August 8, 2014, the Defendant entered a plea of guilty to theft and was sentenced to pay restitution in the amount of \$25,729.23. During the sentencing hearing, the Court asked the Defendant if \$25,729.23 was around the amount that he stole. The Defendant responded that \$25,729.23 was around the amount that he stole, but he “was not sure how accurate that figure is.”

During the hearing on the Motion to Determine Restitution, Adrian Cutler, the operations manager at Andritz, testified that in determining the amount of restitution requested, Andritz first recognized what was missing from the shelf. See N.T., 2/26/15, at 7. Cutler further testified that Andritz did “stock counting to see where we have discrepancies.” Id. at 9. The Commonwealth submitted a table (Commonwealth’s Exhibit 2), which Cutler explained:

This document is a listing of the items involved which were all identified with a part number and a description, um, and each one then has taken – takes the recorded computer value and it’s actually a scrapping document because we have to remove them from the

system officially so we can recognize what's happened and that will total the value as to the given sum at end of the column, \$25,729.

Id. at 10.

The Defendant argues that the amount of restitution is inflated and speculative. The Commonwealth argues that the amount is neither excessive nor speculative because Cutler explained how he determined the amount.

## **II. Discussion**

In Commonwealth v. Pleger,<sup>1</sup> the Superior Court of Pennsylvania discussed restitution:

Although restitution does not seek, by its essential nature, the compensation of the victim, the dollar value of the injury suffered by the victim as a result of the crime assists the court in calculating the appropriate amount of restitution. A restitution award must not exceed the victim's losses. A sentencing court must consider the victim's injuries, the victim's request as presented by the district attorney and such other matters as the court deems appropriate. The court must also ensure that the record contains the factual basis for the appropriate amount of restitution. In that way, the record will support the sentence.

934 A.2d at 720 (citations omitted).

“[T]he amount of the ‘full restitution’ [must] be determined under the adversarial system with considerations of due process.” Commonwealth v. Ortiz, 854 A.2d 1280, 1282 (Pa. Super. 2008). “It is the Commonwealth’s burden of proving its entitlement to restitution.”

Commonwealth v. Atanasio, 997 A.2d 1181, 1183 (Pa. Super. 2010). “The amount of the restitution award may not be excessive or speculative.” Id. “Although [18 Pa.C.S. § 1106(c)(3)] allows the judge to alter restitution, this does not mean that in every case the judge can alter the restitution award at any time for any reason. There must be justifiable reasons for the modification, and other principles of law must be followed. At some point, finality is needed.” Ortiz, 854 A.2d at 1282.

---

<sup>1</sup> 934 A.2d 715 (Pa. Super. 2007).

Here, the Commonwealth provided a factual basis for restitution in the amount of \$25,729.23. Cutler testified that Andritz used the items that were missing to determine the amount of restitution requested. The table explained by Cutler contains a list of the missing items and the values of the items. The table has \$25,729.23 as the total value of the missing items. Therefore, restitution in the amount of \$25,729.23 is neither excessive nor speculative.

### **III. Conclusion**

The restitution is neither excessive nor speculative because the Commonwealth provided a factual basis for the amount, and the amount is not more than the total value of the missing items.

### **ORDER**

AND NOW, this \_\_\_\_\_ day of July, 2015, based on the foregoing Opinion and in accordance with the sentencing Order of August 8, 2014, it is ORDERED and DIRECTED that the Defendant pay restitution to Andritz in the amount of \$25,729.23.

By the Court,

Nancy L. Butts, President Judge