Text as published on gao.gov, https://www.gao.gov/products/b-122688, archived 2026-09-05. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-122688, Sep. 25, 1956

Number: B-122688

Date: 1956-09-25

B-122688, SEP. 25, 1956

TO THE SECRETARY OF STATE:

REFERENCE IS MADE TO A LETTER DATED JULY 10, 1956, WITH ENCLOSURES, SIGNED BY MR. I. W. CARPENTER, JR., ASSISTANT SECRETARY-CONTROLLER, REQUESTING RECONSIDERATION OF THE ACTION OF OUR FORMER DIVISION OF AUDITS HOLDING NICHOLAS FORTUCCI RESPONSIBLE FOR A $270 SHORTAGE IN THE JANUARY 1954 ACCOUNTS OF MISS ANITA R. WHARTON, UNITED STATES DISBURSING OFFICER, HABANA, CUBA.

THE RECORD BEFORE OUR OFFICE INDICATES THAT MR. FORTUCCI, UNDER PROPER AUTHORIZATION, TOOK OVER THE DISBURSING FUNCTIONS OF MISS WHARTON FROM JANUARY 15 TO 28, 1954, WHILE SHE WAS ABSENT ON OFFICIAL LEAVE; THAT THE FUNDS, INCLUDING CASH, WERE IN BALANCE AT THE TIME HE TOOK OVER AND THE CASH WAS $270 SHORT WHEN CHECKED BY MR. FORTUCCISHORTLY PRIOR TO MISS WHARTON'S RETURN; AND THAT ALL EFFORTS TO ASCERTAIN THE CAUSE OF SUCH SHORTAGE HAVE FAILED TO REVEAL ANY DEFINITE EXPLANATION THEREOF. LETTER OF MAY 11, 1954, ASSISTANT SECRETARY OF STATE, EDWARD T. WAILEZ, REQUESTED OUR OFFICE TO RELIEVE MISS WHARTON OF RESPONSIBILITY FOR THIS SHORTAGE UNDER THE PROVISIONS OF THE ACT OF AUGUST 1, 1947, 61 STAT. 720, ADVISING THAT WHILE NO EXPLANATION OF THE LOSS HAD BEEN DISCOVERED IT HAD BEEN DETERMINED THAT IT DID NOT OCCUR AS A RESULT OF ANY FAULT OR NEGLIGENCE ON THE PART OF MISS WHARTON OR MR. FORTUCCI. IN RESPONSE THERETO, OUR DIVISION OF AUDITS ADVISED YOUR DEPARTMENT BY LETTER OF MARCH 10, 1955, THAT RELIEF UNDER THE ACT HAD BEEN GRANTED TO MISS WHARTON, BUT THAT, SINCE MR. FORTUCCI WAS IN COMPLETE CUSTODY OF THE FUNDS WHEN THE SHORTAGE OCCURRED AND WAS UNABLE TO FURNISH ANY SATISFACTORY EXPLANATION THEREOF, THERE WAS PRIMA FACIE EVIDENCE OF NEGLIGENCE ON HIS PART AND HE MUST BE HELD FINANCIALLY RESPONSIBLE FOR THE SHORTAGE. THE LETTER OF JULY 10, 1956, REQUESTS RECONSIDERATION OF THE MATTER AND FORWARDS TWO LETTERS FROM MR. FORTUCCI PERTAINING THERETO.

A DISBURSING OFFICER IS AN INSURER OF THE PUBLIC FUNDS IN HIS CUSTODY AND IS EXCUSABLE ONLY FOR LOSS DUE TO ACTS OF GOD OR THE PUBLIC ENEMY. UNITED STATES V. THOMAS, 15 WALL. 337. THIS LIABILITY IS UNAFFECTED BY LACK OF NEGLIGENCE ON THE PART OF THE DISBURSING OFFICER, OR THE ABSENCE OF EVIDENCE THAT HE MISAPPROPRIATED THE FUNDS OR THAT THE LOSS RESULTED FROM HIS FAULT. UNITED STATES V. PRESCOTT, 3 HOW. 578; SMYTHE V. UNITED STATES 188 U.S. 156; 18 COMP. GEN. 639 AND CASES CITED THEREIN. SINCE THE LOSS OCCURRED DURING THE PERIOD WHEN MR. FORTUCCI HAD OFFICIALLY ASSUMED THE DISBURSING FUNCTION OF THE EMBASSY, THE LIABILITY THEREFOR CLEARLY ATTACHES TO HIM. SEE IN THIS CONNECTION SECTION 022.11E OF THE FOREIGN SERVICE MANUAL, PART V.

THE ACT OF AUGUST 1, 1947, 61 STAT. 720, AS AMENDED BY THE ACT OF AUGUST 9, 1955, 69 STAT. 626, AUTHORIZES THE GENERAL ACCOUNTING OFFICE TO RELIEVE

DISBURSING OFFICERS OF RESPONSIBILITY FOR PHYSICAL LOSS OR DEFICIENCY OF GOVERNMENT FUNDS IF THE HEAD OF THE DEPARTMENT CONCERNED DETERMINES (1) THAT SUCH LOSS OR DEFICIENCY OCCURRED WHILE THE OFFICER WAS ACTING IN THE DISCHARGE OF HIS OFFICIAL DUTY, OR THE LOSS OR DEFICIENCY OCCURRED BY REASON OF THE ACT OR OMISSION OF HIS SUBORDINATE; AND (2) THAT SUCH LOSS OR DEFICIENCY OCCURRED WITHOUT FAULT OR NEGLIGENCE ON THE PART OF THE OFFICER, AND THE GENERAL ACCOUNTING OFFICE CONCURS WITH SUCH DETERMINATIONS AFTER CONSIDERATION OF THE PERTINENT FINDINGS.

IN THE PRESENT INSTANCE, THE EVIDENCE PRESENTED TO US CLEARLY INDICATES THAT THE FUNDS IN QUESTION DISAPPEARED WHILE IN THE SOLE CUSTODY OF MR. FORTUCCI. THE LETTER OF JULY 10, 1956, STATES THAT THERE IS NO EVIDENCE WHICH WOULD SUPPORT ANY SUSPICION OF THEFT, AND IT IS UNDERSTOOD THE REPORT OF THE ACTING SECURITY OFFICER AT HABANA INDICATES THAT NEITHER THE SAFE NOR THE COMPARTMENT WITHIN THE SAFE SHOWED INDICATION OF TAMPERING. ALSO, THERE IS NOTHING IN THE RECORD TO SUPPORT AN INFERENCE THAT MR. FORTUCCI PERSONALLY TOOK THE MONEY, AND IT SHOULD BE CLEARLY UNDERSTOOD THAT NO SUCH ALLEGATION OR INFERENCE IS MADE BY OUR OFFICE. LIKEWISE, THERE IS NO POSITIVE OR AFFIRMATIVE EVIDENCE OF NEGLIGENCE ON THE PART OF MR. FORTUCCI. HOWEVER, THE MERE FACT THAT AN UNEXPLAINED SHORTAGE OF FUNDS OCCURRED IS, IN AND OF ITSELF, SUFFICIENT TO RAISE AN INFERENCE OF NEGLIGENCE. A GOVERNMENT OFFICIAL CHARGED WITH THE HANDLING OF PUBLIC MONEYS IS EXPECTED TO EXERCISE THE HIGHEST DEGREE OF CARE IN THE PERFORMANCE OF HIS DUTY AND, WHEN FUNDS DISAPPEAR WITHOUT EXPLANATION OR EVIDENT REASON, THE PRESUMPTION NATURALLY ARISES THAT THE OFFICIAL HAVING CUSTODY OF SUCH FUNDS WAS DERELICT IN SOME WAY.

ACCORDINGLY, WHILE WE SYMPATHIZE WITH THE FEELINGS OF MR. FORTUCCI, IN THE ABSENCE OF EVIDENCE AS TO WHAT ACTUALLY HAPPENED TO THE MISSING MONEY FROM WHICH IT MAY BE DETERMINED THAT THE DISAPPEARANCE WAS NOT DUE TO HIS FAULT OR NEGLIGENCE, WE ARE UNABLE TO CONCUR WITH THE ADMINISTRATIVE DETERMINATION OF LACK OF NEGLIGENCE, AND, HENCE, CANNOT GRANT RELIEF ON THE BASIS OF THE PRESENT RECORD. IT IS THEREFORE AGAIN SUGGESTED THAT APPROPRIATE ACTION BE TAKEN TO COLLECT THE SHORTAGE OF $270.00 FROM MR. FORTUCCI OR HIS SURETY AND THAT WE BE ADVISED UPON COMPLETION OF SUCH COLLECTION.