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B-137223, Aug. 28, 1959

Number: B-137223

Date: 1959-08-28

B-137223, AUG. 28, 1959

TO THE SECRETARY OF THE NAVY:

BY LETTER OF JUNE 25, 1959, THE UNDER SECRETARY OF THE NAVY TRANSMITTED A LETTER DATED JUNE 12, 1959, FROM MR. A. F. CAVALARI, A FORMER NAVY DISBURSING OFFICER, AND REQUESTED FURTHER CONSIDERATION OF OUR DECISION OF MAY 21, 1959, B-137223, DENYING MR. CAVALARI RELIEF FOR AN ERRONEOUS PAYMENT OF $326.59 MADE BY HIM ON VOUCHER 324 IN HIS JUNE 1956 ACCOUNT.

THE FACTS AND CIRCUMSTANCES SURROUNDING THE ERRONEOUS PAYMENT WERE SET OUT IN DETAIL IN OUR DECISION OF MAY 21 AND NEED NOT BE REPEATED HERE. MR. CAVALARI'S LETTER EXPLAINS THAT HE WORKED UNDER THE PRESSURE OF A HEAVY WORK LOAD DURING THE PERIOD HIS SHIP OPERATED IN THE VICINITY OF ITALY, AT WHICH TIME THE PAYMENT IN QUESTION WAS MADE. HE REPEATS HIS PREVIOUS CONTENTION THAT HE CONSISTENTLY FOLLOWED THE REGULATIONS AND PROCEDURES ESTABLISHED FOR DISBURSING OFFICERS BY THE NAVY AND THAT SAID REGULATIONS AND PROCEDURES WERE FOLLOWED IN MAKING THIS PAYMENT. MR. CAVALARI QUESTIONS THE PROPRIETY OF THE SECOND PAYMENT MADE IN THIS CASE AND CONTENDS THAT SUCH PAYMENT WAS UNJUST IF MADE WITH THE INTENT TO HOLD HIM ACCOUNTABLE FOR THE FIRST. IN ADDITION, MR. CAVALARI PRESENTS EXTENSIVE ARGUMENTS SUPPORTING THE POSSIBILITY OF FRAUD AND COLLUSION ON THE PART OF GALBANI AND HIS AGENT, FAGIANI, IN PROCURING THE SECOND PAYMENT.

OBVIOUSLY, THE PRESSURE OF A HEAVY WORK LOAD DOES NOT WAIVE THE REQUIREMENT FOR THE EXERCISE OF DUE CARE IN THE EXPENDITURE OF GOVERNMENT FUNDS. WE HAVE NOT CONTENDED THAT MR. CAVALARI FAILED TO FOLLOW THE PRESCRIBED REGULATIONS AND PROCEDURES. THE BASIS OF OUR DETERMINATION OF LACK OF DUE CARE IS THE FACT THAT MR. CAVALARI DID NOT COMPARE THE ALLEGED SIGNATURE OF FAGIANI ON THE VOUCHER WITH THAT APPEARING ON THE INVOICE WHICH WAS REQUIRED TO BE PRESENTED AT THE TIME OF PAYMENT. THAT SUCH SIGNATURES ARE NOT THE SAME IS READILY APPARENT UPON THE MOST CASUAL INSPECTION. THE NECESSITY FOR SUCH COMPARISON APPEARS TO BE ADEQUATELY SUPPORTED BY THE VERY FACT OF THE ALLEGATION OF NONPAYMENT SUBSEQUENTLY MADE BY GALBANI.

GALBANI'S CLAIM WAS SUPPORTED BY A SIGNED STATEMENT FROM FAGIANI TO THE EFFECT THAT HE HAD NEVER BOARDED THE U.S.S. ROCKBRIDGE, HAD NOT RECEIVED PAYMENT FOR THE SHIPMENT IN QUESTION, AND HAD NOT SIGNED THE VOUCHER. THE SIGNATURE ON THIS STATEMENT IS CLEARLY THE SAME AS THAT APPEARING ON THE CONTRACT, THE INVOICE, AND OTHER DOCUMENTS SIGNED BY FAGIANI. IF THE SIGNATURE PURPORTING TO BE FAGIANI'S APPEARING ON THE VOUCHER HAD BEEN THE SAME AS THAT ON THE STATEMENT, INVOICE, ETC., WE COULD HAVE DENIED GALBANI'S CLAIM. HOWEVER, SINCE THE SIGNATURE ON THE VOUCHER CLEARLY WAS NOT THE SAME AS THOSE OF FAGIANI ON THE OTHER DOCUMENTS, HIS STATEMENT WAS SUPPORTED BY THE GOVERNMENT'S OWN RECORDS AND

WE HAD NO ALTERNATIVE BUT TO ALLOW THE CLAIM. OF COURSE, THE SAME EVIDENCE THAT SUPPORTED GALBANI'S CLAIM INDICATED THE IMPROPRIETY OF THE ORIGINAL PAYMENT MADE BY MR. CALVERT AND WE WERE REQUIRED TO CHARGE HIM THEREFOR.

FROM THE ABOVE, IT IS APPARENT THAT THE ENTIRE MATTER REVOLVES AROUND THE ALLEGED SIGNATURE OF FAGIANI ON THE VOUCHER. IT IS APPARENT THAT, IF MR. CAVALARI HAD COMPARED THE AVAILABLE SIGNATURES WITH THAT ON THE VOUCHER--- A MERE GLANCE BEING SUFFICIENT TO DETECT THE DIFFERENCE--- THE ORIGINAL PAYMENT WOULD NOT HAVE BEEN MADE, UNLESS THE PAYEE COULD HAVE PRODUCED SUFFICIENT ADDITIONAL IDENTIFICATION TO ADEQUATELY EXPLAIN OR OVERCOME THE DIFFERENCE IN THE SIGNATURE. SUCH ADDITIONAL IDENTIFICATION PROBABLY WOULD HAVE DEFEATED OR PREVENTED GALBANI'S SUBSEQUENT CLAIM AND, IN ANY EVENT, WOULD HAVE CLEARED MR. CAVALARI OF ANY IMPLICATION OF LACK OF DUE CARE IN MAKING THE PAYMENT.

REGARDING MR. CAVALARI'S CONTENTIONS AS TO THE POSSIBILITY OF FRAUD OR COLLUSION ON THE PART OF GALBANI AND FAGIANI, IT IS SUFFICIENT TO SAY THAT, WHILE ANY ONE OF THE POSSIBILITIES SUGGESTED COULD HAVE OCCURRED, THERE IS NO EVIDENCE TO SHOW THAT ANY ONE DID OCCUR. MOREOVER, AS INDICATED ABOVE, IT IS APPARENT THAT ANY ONE OF THE POSSIBILITIES SUGGESTED, IF ATTEMPTED, WOULD HAVE BEEN DEFEATED BY A COMPARISON OF THE SIGNATURE ON THE VOUCHER WITH THAT ON THE INVOICE.

IN VIEW OF THE ABOVE, WE HAVE NO ALTERNATIVE ON THE PRESENT RECORD BUT TO SUSTAIN OUR DECISION OF MAY 21, DENYING RELIEF TO MR. CAVALARI.