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B-138601, Jan. 18, 1960

Number: B-138601

Date: 1960-01-18

B-138601, JAN. 18, 1960

TO HONORABLE PEARL CARTER PACE, CHAIRMAN, FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES:

YOUR LETTER OF NOVEMBER 3, 1959, REQUESTS THAT ON THE BASIS OF THE FACTS SET FORTH THEREIN WE GIVE CONSIDERATION TO GRANTING RELIEF, UNDER THE PROVISIONS OF 31 U.S.C. 82C, TO JOSEPH H. DEWITT, KATHERINE FORD, BURTON J. GOODYEAR AND ROBERT A. KENNEDY, ALL FORMER AUTHORIZED CERTIFYING OFFICERS OF THE FOREIGN CLAIMS SETTLEMENT COMMISSION (OR ITS PREDECESSOR THE WAR CLAIMS COMMISSION). THEIR LIABILITY AROSE IN CONNECTION WITH THEIR CERTIFICATION OF CERTAIN AMOUNTS FOR PAYMENT, WHICH AMOUNTS WERE ERRONEOUS, ALTHOUGH REPRESENTING AWARDS MADE BY THE COMMISSION (OR ITS PREDECESSOR THE WAR CLAIMS COMMISSION) TO CERTAIN CLAIMANTS UNDER THE WAR CLAIMS ACT OF 1948, AS AMENDED. THE ERRONEOUS PAYMENTS AGGREGATE TWELVE IN NUMBER AND TOTAL $1,946.83. YOU ADVISE THAT ATTEMPTS TO RECOUP THE ERRONEOUS PAYMENTS FROM THE PAYEES HAVE BEEN UNSUCCESSFUL.

THE EXCEPTIONS GIVING RISE TO THIS REQUEST WERE STATED IN CONNECTION WITH SEVERAL VOUCHERS PAID DURING THE YEARS 1953, 1954, AND 1955 AND FALL WITHIN THE FOLLOWING CATEGORIES ACCORDING TO YOUR LETTER:

1. CASES IN WHICH DUPLICATE PAYMENTS TO AN AWARDEE WERE MADE AS THE RESULT OF THE CLERK-TYPIST LISTING AN AWARDEE AND THE AMOUNT OF AWARD AT THE BOTTOM OF PAGE ONE AND AGAIN AT THE TOP OF PAGE TWO OF VOUCHER.

2. CASES OF CLERK-TYPIST ERRONEOUSLY TRANSPOSING AMOUNTS FROM AWARD SHEET TO VOUCHER BY READING $1272 TO BE $1772 THEREBY CAUSING A $500 ERROR.

3. CASES IN WHICH THE PROCESSING ATTORNEYS INCORRECTLY COMPUTED THE AMOUNT OF AWARD ON THE AWARD SHEET. THIS AWARD WAS TRANSPOSED FROM THE AWARD SHEET BY THE TYPIST AND PLACED ON VOUCHER.

4. CASES IN WHICH TYPIST TRANSPOSED AWARDS FROM AWARD SHEETS TO VOUCHER FOR PAYMENT ON SEPTEMBER 3, 1954. THROUGH TYPIST INADVERTENCE ON SEPTEMBER 9, 1954, A DUPLICATE AWARD WAS TRANSPOSED FROM SAME AWARD SHEET TO ANOTHER VOUCHER. CONSEQUENTLY, A DUPLICATE PAYMENT RESULTED.

5. CASES IN WHICH PROCESSING ATTORNEYS PREPARED DUPLICATE AWARD SHEETS ON DIFFERENT DATES CAUSING DUPLICATE AWARDS TO BE VOUCHERED AND PAID.

6. CASES IN WHICH CLERK-TYPIST ERRONEOUSLY TRANSPOSED FROM THE AWARD SHEET THE NAME OF GUARDIAN OR A SURVIVING CHILD OF THE DECEASED PRISONER OF WAR.

YOUR LETTER IS, IN PERTINENT PART, AS FOLLOWS:

"IN THE ADMINISTRATION OF THESE CLAIMS, THE PROCEDURE WAS AS FOLLOWS:

"THE CLAIMS, UPON RECEIPT BY THE COMMISSION, WERE DISTRIBUTED TO PROCESSING ATTORNEYS WHO WOULD UPON BEING SATISFIED THAT THE EVIDENCE WAS COMPLETE, MAKE A RECOMMENDATION THAT THE CLAIMANT WAS OR WAS NOT ENTITLED TO AN AWARD. IN THE EVENT THAT THE PROCESSING ATTORNEY RECOMMENDED FAVORABLY, AN AWARD SHEET WAS PREPARED BY THE PROCESSING ATTORNEY, THE AMOUNT OF THE AWARD COMPUTED BY THE ATTORNEY AND FORWARDED TO A REVIEWING ATTORNEY. THE REVIEWING ATTORNEY WOULD REVIEW THE CLAIM AND THE AWARD FOR ERRORS OR INACCURACIES. UPON BEING SATISFIED HE WOULD INITIAL THE AWARD SHEET. THESE AWARDS WOULD THEN GO BEFORE THE COMMISSIONERS FOR FINAL APPROVAL.

"SECTION 11 OF THE ACT PROVIDES THAT THE ACTION OF THE COMMISSION WITH RESPECT THERETO "SHALL BE FINAL AND CONCLUSIVE ON ALL QUESTIONS OF LAW AND FACT, AND NOT SUBJECT TO REVIEW BY ANY COURT BY MANDAMUS OR OTHERWISE, AND THE COMPTROLLER GENERAL IS AUTHORIZED AND DIRECTED TO ALLOW CREDIT IN THE ACCOUNTS OF ANY CERTIFYING OR DISBURSING OFFICER FOR PAYMENTS IN ACCORDANCE WITH SUCH ACTION.' (62 STAT. 1240, 1246) UPON APPROVAL THE CLAIMS WERE FORWARDED TO A CLERK-TYPIST WHO WOULD VOUCHER THE NAMES AND ADDRESSES OF ALL AWARDEES FROM THE AWARD SHEETS IN THE FILE. THE VOUCHERS WITHOUT THE CLAIM FOLDER WOULD THEN BE FORWARDED TO THE CERTIFYING OFFICER FOR HIS SIGNATURE AND FORWARDED TO THE SECRETARY OF THE TREASURY FOR PAYMENT. ONLY ONE PERSON SERVED AS CERTIFYING OFFICER AT ANY GIVEN TIME AND WAS NEITHER A LAWYER NOR AN ACCOUNTANT. THERE WERE APPROXIMATELY 358,855 AWARDS CERTIFIED TO TREASURY BY THE CERTIFYING OFFICER FOR PAYMENT DURING THE ADMINISTRATION OF THE PROGRAM. PAYMENTS WERE NOT MADE FROM APPROPRIATED FUNDS BUT FROM THE WAR CLAIMS FUND, A SPECIAL FUND DERIVED FROM SEIZED GERMAN-JAPANESE ASSETS THAT WERE LIQUIDATED AND PLACED IN THE FUND.

"IN EACH CASE WE NOTED ABOVE WITH ONE EXCEPTION THESE ERRONEOUS PAYMENTS WERE CONSIDERED TO BE THE ACTION OF THE COMMISSION AND THUS FALL WITHIN THE AMBIT OF SECTION 11 OF THE ACT INASMUCH AS THE CERTIFYING OFFICERS WERE NOT AUTHORIZED TO GO BEHIND THE COMMISSION DETERMINATION. ONLY THE ERROR OF DUPLICATION BY THE TYPIST APPEARING ON SEPARATE PAGES OF THE SAME VOUCHER WOULD APPEAR SUBJECT TO QUESTION. BECAUSE OF THE VAST NUMBER OF PAYMENTS WHICH THE CERTIFYING OFFICERS WERE REQUIRED TO MAKE, IT IS APPARENT THAT IT IS IMPOSSIBLE FOR THEM TO MAKE AN EXAMINATION RESPECTING THE AWARDS CERTIFIED AND RELIANCE MUST BE PLACED ON THE PROCESSING ATTORNEYS AND CLERK-TYPISTS. ACCORDINGLY, IT IS BELIEVED THAT RELIEF SHOULD BE GRANTED TO THE CERTIFYING OFFICERS IN CASES OF THE ABOVE CATEGORIES.'

UPON CAREFUL CONSIDERATION OF THE MATTER IN LIGHT OF THE FACTS SET FORTH IN YOUR LETTER, INCLUDING THE VOLUME OF WORK HANDLED BY THE CERTIFYING OFFICERS, AND CONSIDERING THAT THE ERRORS ON THE VOUCHERS WHICH RESULTED IN THE OVERPAYMENTS WERE NOT OF SUCH A NATURE (EXCEPT WHERE THE SAME AWARD WAS LISTED AT THE BOTTOM OF PAGE 1 AND THE TOP OF PAGE 2 OF THE SAME VOUCHER) AS TO BE READILY APPARENT TO THE CERTIFYING OFFICERS UNDER THE PROCEDURES INVOLVED, THE RELIEF REQUESTED WILL BE GRANTED AS TO THE AMOUNTS OF THE EXCEPTIONS STILL OUTSTANDING, ALTHOUGH WE DO NOT AGREE WITH THE VIEW EXPRESSED IN YOUR LETTER THAT ALL BUT ONE OF THESE CASES "FALL WITHIN THE AMBIT OF SECTION 11 OF THE ACT.' WHILE WE FEEL THAT THE CERTIFYING OFFICERS SHOULD HAVE DETECTED ERRORS MADE BY CLERK-TYPISTS IN LISTING AN AWARD ON THE BOTTOM OF PAGE 1 AND AGAIN AT THE TOP OF PAGE 2 OF A VOUCHER, IT APPEARS THAT SUCH ERRORS OCCURRED BECAUSE OF THE VOLUME OF WORK HANDLED BY THE CERTIFYING OFFICERS. MOREOVER OUR RECORDS INDICATE THAT THERE IS AN OUTSTANDING EXCEPTION IN ONLY ONE CASE OF THIS TYPE. ACCORDINGLY, THIS EXCEPTION WILL ALSO

BE REMOVED.