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B-139886, Jul. 2, 1959

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B-139886, JUL. 2, 1959

TO THE SECRETARY OF THE TREASURY:

ON MARCH 17, 1959, THE ACTING SECRETARY OF THE TREASURY, A. GILMORE FLUES, RECOMMENDED THE RELIEF FROM LIABILITY OF ACCOUNTABLE OFFICERS, FRANK A. THORNTON, COLLECTOR OF CUSTOMS AT SAN DIEGO, CALIFORNIA, AND J. S. BOGAN, DEPUTY COLLECTOR OF CUSTOMS AT SAN YSIDRO, CALIFORNIA, FOR THE LOSS OF GOVERNMENT FUNDS UNDER THE ACT OF AUGUST 1, 1947, PUBLIC LAW 321, AS AMENDED, 31 U.S.C. 82A-1, ON THE BASIS THAT THE LOSS OCCURRED THROUGH NO NEGLIGENCE OF THE ACCOUNTABLE OFFICERS BUT BY REASON OF THE ACT OR OMISSION OF ONE OF THEIR SUBORDINATES. THE EVIDENCE SUBMITTED WITH THE LETTER INCLUDES REPORTS OF THE FEDERAL BUREAU OF INVESTIGATION AND AFFIDAVITS OF INDIVIDUALS ALLEGEDLY POSSESSING INTIMATE KNOWLEDGE OF THE FACTS IN THE CASE.

THE RECORD SHOWS THAT ON FEBRUARY 8, 1958, DANA M. DAVIS, CUSTOMS OFFICER AT THE SUBPORT SAN YSIDRO, WORKED THE SHIFT FROM 8 A.M. TO 4 P.M., AND AT THE END OF HIS SHIFT HE PLACED COLLECTIONS IN THE SUM OF $515, TOGETHER WITH ASSOCIATED DOCUMENTS, IN AN ENVELOPE WHICH HE LABELED AND PLACED IN A SAFE PURSUANT TO THE USUAL PROCEDURES. ON TUESDAY, FEBRUARY 11, 1958, THE LOSS OF THAT ENVELOPE WAS DISCOVERED BY GRACE G. JOHNSON, THE SUBPORT CASHIER, WHEN SHE DETECTED CERTAIN UNACCOUNTED FOR SERIAL NUMBERS WHICH REPRESENTED MR. DAVIS' ENVELOPE. MEANWHILE, ON MONDAY, FEBRUARY 10, 1958, MRS. HELEN S. WILLIAMS, TRAINEE CASHIER, REMOVED THE ACCUMULATED SHIFT ENVELOPES FROM THE SAFE AND PREPARED THE CONTENTS FOR TRANSMITTAL TO HEADQUARTERS AT SAN DIEGO. MRS. WILLIAMS DID NOT REPORT AS MISSING THE ENVELOPE WHICH MR. DAVIS CLAIMS THAT HE PLACED IN THE SAFE, ALTHOUGH SHE ALLEGEDLY SHOULD HAVE DISCOVERED THE LOSS IN THE NORMAL COURSE OF HER DUTIES.

THE SAFE IN WHICH THE ACCUMULATED SHIFT ENVELOPES WERE PLACED WAS LOCATED IN THE BAGGAGE AREA BEHIND THE SERVICE COUNTER. THAT AREA WAS IN FULL VIEW OF CUSTOMERS AND WAS ACCESSIBLE WITHOUT SUPERVISION TO SUCH CUSTOMERS, CUSTOMS BROKERS AS WELL AS ALL INSPECTORS, PRISONERS, AND LAW- ENFORCEMENT OFFICERS FROM MANY DEPARTMENTS AND AGENCIES AS WELL AS 33 EMPLOYEES OTHERWISE. NOTWITHSTANDING THIS, THE SAFE WAS LOCKED ONLY FROM 12 MIDNIGHT TO 8 A.M., DURING WHICH TIME THE BAGGAGE ROOM WAS NOT USED.

THE FILE INCLUDES THE STATEMENT OF ROBERT S. BAKER, INVESTIGATOR OF THE FBI, THAT U.S. CUSTOMS INSPECTOR DANA M. DAVIS SUSPECTS MRS. HELEN S. WILLIAMS, A TRAINEE FOR THE POSITION OF CASHIER, BECAUSE OF HER PAST RECORD OF BORROWING FROM OTHER EMPLOYEES. MRS. WILLIAMS ALLEGEDLY WAS DISCHARGED FOR HER FAILURE TO REPORT THE THEFT, WHICH SHE ALLEGEDLY SHOULD HAVE DETECTED IN THE NORMAL COURSE OF HER DUTIES; BUT THERE IS NO EVIDENCE IN THE RECORD THAT SHE HAD ANYTHING TO

DO WITH THE LOSS OF THE ENVELOPE.

SECTION 1 OF THE ACT OF AUGUST 1, 1947, AS AMENDED, 31 U.S.C. 82A-1, PROVIDES IN PERTINENT PART AS FOLLOWS:

"THE GENERAL ACCOUNTING OFFICE IS AUTHORIZED, AFTER CONSIDERATION OF THE PERTINENT FINDINGS AND IF IN CONCURRENCE WITH THE DETERMINATIONS AND RECOMMENDATIONS OF THE HEAD OF THE DEPARTMENT OR INDEPENDENT ESTABLISHMENT CONCERNED, TO RELIEVE ANY DISBURSING OR OTHER ACCOUNTABLE OFFICER OR AGENT OR FORMER DISBURSING OR OTHER ACCOUNTABLE OFFICER OR AGENT OF ANY SUCH DEPARTMENT OR INDEPENDENT ESTABLISHMENT OF THE GOVERNMENT CHARGED WITH RESPONSIBILITY ON ACCOUNT OF PHYSICAL LOSS OR DEFICIENCY OF GOVERNMENT FUNDS, VOUCHERS, RECORDS, CHECKS, SECURITIES, OR PAPERS IN HIS CHARGE, OR TO AUTHORIZE THE REIMBURSEMENT, FROM ANY APPROPRIATION OR FUND AVAILABLE FOR PURPOSES OF THE ACTIVITY IN WHICH THE LOSS OR DEFICIENCY OCCURRED, OF AMOUNTS PAID SUBSEQUENT TO AUGUST 1, 1947, BY OR ON BEHALF OF THE OFFICER OR AGENT IN RESTITUTION OF THE LOSS OR DEFICIENCY, IF THE HEAD OF THE DEPARTMENT OR INDEPENDENT ESTABLISHMENT DETERMINES (1) THAT SUCH LOSS OR DEFICIENCY OCCURRED WHILE SUCH OFFICER OR AGENT WAS ACTING IN THE DISCHARGE OF HIS OFFICIAL DUTIES, OR THAT SUCH LOSS OR DEFICIENCY OCCURRED BY REASON OF THE ACT OR OMISSION OF A SUBORDINATE OF SUCH OFFICER OR AGENT; AND (2) THAT SUCH LOSS OR DEFICIENCY OCCURRED WITHOUT FAULT OR NEGLIGENCE ON THE PART OF SUCH OFFICER OR AGENT. * * *"

THE PLACING OF ENVELOPES CONTAINING CASH IN AN UNLOCKED SAFE AS LOCATED IN THIS CASE WITH ACCESSIBILITY TO NUMEROUS PERSONS CONSTITUTES A PRIMA FACIE CASE OF NEGLIGENCE. IT DOES NOT APPEAR OF RECORD THAT IN THUS USING THE UNLOCKED SAFE THE SUBORDINATES DEPARTED FROM THE ESTABLISHED CUSTOM AND PROCEDURE NOR DOES THE RECORD ESTABLISH THAT THE LOSS OCCURRED BY REASON OF AN ACT OR OMISSION OF THE SUBORDINATES. HOWEVER, NEGLIGENCE MUST BE IMPUTED TO THE ACCOUNTABLE OFFICERS IN THE ABSENCE OF SATISFACTORY EVIDENCE TO THE CONTRARY.

ON THE BASIS OF THE PRESENT RECORD, I AM UNABLE TO CONCUR WITH THE ADMINISTRATIVE DETERMINATION OF LACK OF NEGLIGENCE ON THE PART OF THE ACCOUNTABLE OFFICERS AND THAT THE LOSS WAS DUE TO AN ACT OR OMISSION OF THE SUBORDINATES, AND, THEREFORE, CANNOT GRANT RELIEF PURSUANT TO THE APPLICABLE STATUTE.