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B-164449, Dec. 8, 1969

Number: B-164449

Date: 1969-12-08

B-164449, DEC. 8, 1969

ACCOUNTABLE OFFICERS--PHYSICAL LOSSES, ETC; OF FUNDS, VOUCHERS, ETC.- CASHIERS, ETC.--RELIEF DENIED RELIEF UNDER 31 U.S.C. 82A-1 TO COMMISSARY OFFICER FOR $351.55 LOSS WHERE OFFICER FAILED TO COMPLY WITH REGULATION REQUIRING FORWARDING OF COLLECTION TOTALING $50 OR MORE TO APPROPRIATE COLLECTION CLERK ON DAY OF BURGLARY IS DENIED SINCE IT SEEMS CLEAR THAT AMOUNT, WHICH WOULD HAVE BEEN TRANSMITTED HAD OFFICER PROPERLY COMPLIED WITH REGULATION, WAS IN SAFE AT TIME OF BURGLARY SOLELY THROUGH OFFICER'S NEGLIGENCE. HOWEVER, UPON RECEIPT OF STATEMENT AS TO AMOUNT WHICH WOULD HAVE BEEN TRANSMITTED HAD REGULATION BEEN COMPLIED WITH, CONSIDERATION WILL BE GIVEN TO RELIEVING OFFICER OF LIABILITY FOR AMOUNT PROPERLY IN SAFE, AND LIMITING LIABILITY TO AMOUNT THAT WOULD HAVE BEEN TRANSMITTED BUT FOR HIS NEGLIGENCE.

TO MR. SECRETARY:

YOUR LETTER OF SEPTEMBER 22, 1969, ADDRESSED TO THE DIRECTOR OF OUR CIVIL DIVISION, TRANSMITTED ADDITIONAL INFORMATION IN THE MATTER CONCERNING RELIEF OF CHIEF WARRANT OFFICER WILLIAM O. CAVERLY, COMMISSARY OFFICER, COAST GUARD AIR STATION, TRAVERSE CITY, MICHIGAN, FOR A LOSS IN THE AMOUNT OF $351.55, AND REQUESTED RECONSIDERATION OF OUR PRIOR ACTION IN DENYING SUCH RELIEF.

THE RECORD IN THIS MATTER DISCLOSES THAT RELIEF WAS ORIGINALLY REQUESTED BY YOUR LETTER OF MAY 24, 1968, WHICH STATED THAT SOMETIME BETWEEN 4:30 P.M. ON JUNE 2, 1966, AND 8:20 A.M. ON JUNE 3, 1966, THE SAFE IN THE SUPPLY OFFICE AT THE COAST GUARD AIR STATION WAS ENTERED BY A PARTY OR PARTIES UNKNOWN AND $351.55 WAS STOLEN FROM THE CASH BOX OF THE COMMISSARY OFFICER, WILLIAM O. CAVERLY. THAT LETTER INDICATED THAT THE $351.55 WHICH WAS STOLEN HAD BEEN COLLECTED IN PAYMENT OF INDIVIDUAL COMMISSARY BILLS ON JUNE 1 AND 2. THE LETTER FURTHER STATED THAT AT THE TIME OF THE INCIDENT THE COAST GUARD COMPTROLLER MANUAL CONTAINED A REQUIREMENT THAT DAILY COLLECTIONS TOTALING $50 OR MORE BE FORWARDED TO THE APPROPRIATE COLLECTION CLERK, AND EXPRESSED YOUR DETERMINATION THAT WHILE CAVERLY'S FAILURE TO COMPLY WITH SUCH REGULATION WAS A CONTRIBUTING CAUSE TO THE AMOUNT OF THE LOSS IT WAS NOT THE PROXIMATE CAUSE OF THE LOSS.

OUR OFFICE DENIED RELIEF TO CAVERLY ON THE BASIS THAT, FIRST, YOUR LETTER DID NOT CONTAIN YOUR DETERMINATION THAT THE LOSS OCCURRED WHILE CAVERLY WAS IN THE DISCHARGE OF HIS OFFICIAL DUTIES AND WITHOUT FAULT OR NEGLIGENCE ON HIS PART, AS IS EXPRESSLY REQUIRED BY THE TERMS OF 31 U.S.C. 82A-1; AND, SECOND, THAT IF CAVERLY HAD COMPLIED WITH THE ABOVE MENTIONED REGULATION THE FUNDS WOULD NOT HAVE BEEN IN THE SAFE AT THE TIME OF THE BURGLARY AND, HENCE, SUCH FAILURE TO COMPLY WITH THE REGULATION CONSTITUTED NEGLIGENCE AND WAS THE PROXIMATE CAUSE OF THE LOSS OF $351.55 OF COMMISSARY COLLECTIONS.

YOUR LETTER OF SEPTEMBER 22, 1969, NOW CONTAINS THE TWO DETERMINATIONS REQUIRED BY 31 U.S.C. 82A-1. ALSO, YOUR LETTER QUOTES FOR OUR CONSIDERATION THE REGULATION IN QUESTION, AS FOLLOWS:

"3F07004 CASH TRANSMISSION TO COLLECTION CLERK

"5. FREQUENCY OF TRANSMISSION

"A. SHORE STATIONS AND VESSELS IN PORT. CASH COLLECTED FOR THE SALE OF MEALS OR PROVISIONS WILL BE TRANSFERRED TO THE COLLECTION CLERK AS FOLLOWS:

"/1) DAILY, EXCEPT THAT COLLECTIONS OF LESS THAN $50 MAY BE RETAINED UNTIL $50 HAS CUMULATED.' ALSO, YOUR LETTER STATED THE FOLLOWING IN EXPLANATION OF THE REGULATION AND ITS EFFECT UPON CHIEF WARRANT OFFICER CAVERLY'S LOSS: "ALTHOUGH THE REGULATION SPECIFIED DAILY,- IT DID NOT SPECIFY THE TIME OF DAY AS RELATED TO PARTICULAR COLLECTIONS TO BE TRANSMITTED AND COULD NOT SO SPECIFY SINCE THE BUSINESS HOURS OF COMMERCIAL FACILITIES UTILIZED AND THE WORKING HOURS OF UNITS VARY WIDELY. VARIABLE TRAVEL TIMES, TRANSPORTATION AVAILABILITY, AND UNPREDICTABLE OPERATIONAL EVENTS ALSO PRECLUDE SUCH SPECIFICATION.'THE FACT THAT CHIEF WARRANT OFFICER CAVERLY DID NOT MAKE A TRANSMITTAL AT SOME TIME ON JUNE 2 WAS THE BASIS FOR A LETTER OF REPRIMAND BUT IF SUCH TRANSMITTAL HAD OCCURRED AS REQUIRED, THAT DOES NOT MEAN THAT HE SHOULD HAVE HAD NO COMMISSARY FUNDS IN THE SAFE.'

WE CONCUR WITH YOUR DETERMINATION THAT THE LOSS OCCURRED WHILE CHIEF WARRANT OFFICER CAVERLY WAS ACTING IN THE DISCHARGE OF HIS OFFICIAL DUTIES. HOWEVER, WE CANNOT CONCUR IN ITS ENTIRETY WITH YOUR DETERMINATION THAT THE LOSS OCCURRED WITHOUT FAULT OR NEGLIGENCE ON HIS PART.

IT IS APPARENT THAT, HAD CAVERLY COMPLIED WITH THE REGULATION BY MAKING A TRANSMITTAL AT SOME TIME ON JUNE 2, THE AMOUNT SO TRANSMITTED WOULD NOT HAVE BEEN IN THE SAFE AT THE TIME OF THE BURGLARY. THE SAFE WOULD HAVE CONTAINED ONLY SUCH AMOUNTS AS HAD BEEN COLLECTED SUBSEQUENT TO THE TIME OF TRANSMITTAL, WHICH AMOUNTS WOULD, UNDER THE TERMS OF THE REGULATION, HAVE BEEN PROPERLY LEFT IN THE SAFE UNTIL JUNE 3 WHEN THEY WOULD HAVE BEEN REQUIRED BY THE REGULATION TO BE TRANSMITTED. THERE IS NOTHING IN THE REGULATION SPECIFYING THE TIME OF DAY TRANSMITTAL SHOULD BE MADE, NOR IS THERE ANYTHING IN THE RECORD TO INDICATE WHEN SUCH TRANSMITTAL WAS CUSTOMARILY MADE. HOWEVER, EVEN IF TRANSMITTAL WAS MADE EARLY IN THE MORNING, AT LEAST THE COLLECTIONS MADE ON JUNE 1 WOULD HAVE BEEN TRANSMITTED, LEAVING ONLY THE COLLECTIONS MADE ON JUNE 2 PROPERLY IN THE SAFE AT THE TIME OF THE BURGLARY. CONVERSELY, IF TRANSMITTAL WAS MADE LATE IN THE AFTERNOON, MOST IF NOT ALL OF THE COLLECTIONS OF BOTH DAYS WOULD HAVE BEEN TRANSMITTED, LEAVING LITTLE OR NO COLLECTIONS PROPERLY IN THE SAFE. IT SEEMS CLEAR THAT THE AMOUNT WHICH WOULD HAVE BEEN TRANSMITTED HAD CAVERLY PROPERLY COMPLIED WITH THE REGULATION WAS IN THE SAFE AT THE TIME OF THE BURGLARY SOLELY THROUGH CAVERLY'S NEGLIGENCE. HENCE, RELIEF CANNOT BE GRANTED TO CAVERLY UNDER 31 U.S.C. 82A-1 FOR THAT AMOUNT. B-71445, JUNE 20, 1949.

THERE IS NOTHING IN THE RECORD FROM WHICH WE MAY DETERMINE THE AMOUNT WHICH WOULD HAVE BEEN TRANSMITTED AND, CONVERSELY, THE AMOUNT WHICH WAS PROPERLY, UNDER THE REGULATION, IN THE SAFE AT THE TIME OF THE BURGLARY. IN VIEW THEREOF, WE HAVE NO ALTERNATIVE ON THE PRESENT RECORD BUT TO CONTINUE TO DENY RELIEF TO CAVERLY FOR THE ENTIRE AMOUNT STOLEN. HOWEVER, UPON RECEIPT OF A STATEMENT FROM CAVERLY THROUGH YOUR OFFICE AS TO THE AMOUNT WHICH WOULD HAVE BEEN TRANSMITTED HAD HE PROPERLY COMPLIED WITH THE REGULATION, CONSIDERATION WILL BE GIVEN TO

RELIEVING HIM FOR THE AMOUNT WHICH, UNDER THE REGULATION, WAS PROPERLY IN THE SAFE AT THE TIME OF THE BURGLARY AS INDICATED ABOVE, AND THE AMOUNT FOR WHICH HE IS HELD LIABLE WILL BE REDUCED TO THE AMOUNT WHICH WOULD HAVE BEEN TRANSMITTED BUT FOR HIS NEGLIGENCE. B-71445, JUNE 20, 1949.