Text as published on gao.gov, https://www.gao.gov/products/b-182386, archived 2026-09-07. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-182386, Apr 24, 1975, Office of General Counsel

Number: B-182386

Date: 1975-04-24

B-182386, APR 24, 1975, OFFICE OF GENERAL COUNSEL

THE HONORABLE, THE SECRETARY OF COMMERCE:

THIS IS IN REPLY TO YOUR LETTER DATED OCTOBER 4, 1974, REQUESTING OUR OFFICE TO RELIEVE TERRY W. JOHNSTONE, A CASHIER EMPLOYED BY THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION (NOAA), DEPARTMENT OF COMMERCE, OF RESPONSIBILITY FOR THE LOSS OF CERTAIN GOVERNMENT FUNDS WHILE IN HIS CHARGE.

REVIEW OF THE RECORD INDICATES THAT AN AUDIT OF THE IMPREST FUND IN QUESTION ON THURSDAY, MAY 3, 1973, UNCOVERED A SHORTAGE OF $811.63. ALTHOUGH AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION (FBI) WERE UNABLE TO DISCOVER EXACTLY HOW THE LOSS OCCURRED, NO EVIDENCE OF THEFT OR EMBEZZLEMENT ON THE PART OF MR. JOHNSTONE WAS INDICATED BY THE FBI REPORT. HOWEVER, FURTHER INVESTIGATION BY THE TREASURY DEPARTMENT AND AUDITORS FROM THE DEPARTMENT OF COMMERCE DID REVEAL A "PERVASIVE LAXITY IN THE PROTECTION AND ADMINISTRATION OF THE FUNDS."

THE RECORD SHOWS THAT PRIOR TO DISCOVERY OF THE SHORTAGE ON MAY 3, 1973, THE LAST ACTUAL PHYSICAL COUNT OF THE FUNDS WAS MADE BY THE ALTERNATE CASHIER, MRS. M. MARVIN, ON THE AFTERNOON OF FRIDAY, APRIL 27, 1973, AT WHICH TIME MRS. MARVIN PREPARED THE REIMBURSEMENT VOUCHER FOR THE MONTH OF APRIL. WHEN THE SAFE WAS OPENED ON MONDAY MORNING, THE CASH ON HAND WAS NOT COUNTED SINCE THE SAFE APPEARED TO BE IN ORDER AND MR. JOHNSTONE APPARENTLY ASSUMED, AS INDICATED IN HIS STATEMENT, THAT THE CASH WAS ALSO IN ORDER. MR. JOHNSTONE HAS ALSO STATED THAT ALTHOUGH HE APPEARED TO BE RUNNING SHORT OF FUNDS BY TUESDAY AFTERNOON HE WAS NOT CONCERNED BELIEVING SUCH SHORTAGE TO BE DUE TO NORMAL TRANSACTIONS. ON WEDNESDAY, MAY 2, MR. JOHNSTONE WAS OUT OF THE OFFICE MOST OF THE DAY AND DID NOT CHECK EITHER THE SAFE OR ITS CONTENTS, ALTHOUGH THE ALTERNATE CASHIER, MRS. MARVIN, DID MAKE SOME SMALL MONEY TRANSACTIONS THAT DAY. ON THURSDAY MORNING, MAY 3, THE SAFE WAS OPENED FOR AUDIT AND THE SHORTAGE WAS DISCOVERED.

ON THE BASIS OF THIS AND OTHER INFORMATION IN THE RECORD IT IS CLEAR THAT IRREGULARITIES PERVADED OFFICE PROCEDURE AT THE TIME THE LOSS OCCURRED AND APPARENTLY FOR SOME CONSIDERABLE PERIOD OF TIME PRIOR THERETO. IN THIS REGARD A MEMORANDUM DATED SEPTEMBER 27, 1974, FROM THE ADMINISTRATOR OF NOAA TO THE SECRETARY OF COMMERCE CONCERNING THE DISAPPEARANCE OF THESE FUNDS STATED THE FOLLOWING:

"(1) THE COMBINATION TO THE SAFE IN WHICH THE FUNDS

WERE KEPT HAD NOT BEEN CHANGED SINCE APRIL 4, 1973, (1971),

ONE YEAR BEFORE MR. JOHNSTONE BECAME CASHIER; DURING THE

INTERVAL BETWEEN THIS DATE AND THAT OF THE AUDIT IN WHICH

THE LOSS WAS DISCOVERED, THERE HAD BEEN THREE CHANGES OF

CASHIERS. PARAGRAPH 0409 OF THE MANUAL OF PROCEDURES AND

INSTRUCTIONS FOR CASHIERS OPERATING UNDER EXECUTIVE ORDER

NO. 6166 REQUIRES THAT COMBINATIONS BE CHANGED ANNUALLY

OR WHENEVER THERE IS A CHANGE OF CASHIERS. MOREOVER, THE

COMBINATION WAS KNOWN TO AT LEAST FIVE PERSONS AT THE TIME

OF THE LOSS.

"(2)BOTH THE PRINCIPAL AND THE ALTERNATE CASHIER,

WHOMEVER WAS AVAILABLE, HANDLED THE FUND, OPERATING FROM THE

SAME CASH BOX.

"(3) NO CASH COUNT, BALANCE OF FUNDS, OR RECEIPT

FOR FUNDS WAS EXECUTED BETWEEN THE PRINCIPAL AND ALTERNATE

CASHIERS AT THE TIME THE FUNDS WERE TRANSFERRED FROM ONE

TO THE OTHER, AS REQUIRED BY THE CASHIER'S MANUAL.

"(4) THE CASH BOX WAS OCCASIONALLY KEPT IN THE ALTERNATE

CASHIER'S DESK IN THE RECEPTION AREA WHEN BUSINESS KEPT HER

FROM RETURNING THE BOX TO THE SAFE IMMEDIATELY AFTER

DISBURSEMENT OF FUNDS." THESE DEFICIENCIES WERE BROUGHT TO THE ATTENTION OF MR. JOHNSTONE'S SUPERVISORS AFTER THE LOSS WAS DISCOVERED AND HAVE SINCE BEEN RECTIFIED AND REPLACED WITH NEW PROCEDURES.

THE RECORD FURTHER REVEALS THAT MR. JOHNSTONE WAS NOT PROPERLY SUPERVISED IN HIS HANDLING OF THE IMPREST ACCOUNT IN THAT CERTAIN REQUIREMENTS OUTLINED BOTH IN THE CASHIERS' MANUAL AND THE NOAA FINANCE HANDBOOK WERE NOT ADHERED TO. FOR EXAMPLE, ALTHOUGH SECTION 11-02(4) OF THE NOAA FINANCE HANDBOOK PROVIDES THAT CASHIERS SHOULD BE PROVIDED WITH CURRENT MATERIAL AND INFORMATION, MR. JOHNSTONE APPARENTLY HAD OPERATED AND, AT THE TIME OF THE LOSS, WAS OPERATING IN THE SAME MANNER AS HIS PREDECESSOR AND IN ACCORDANCE WITH THE VERBAL INSTRUCTIONS HE RECEIVED FROM HIS PREDECESSOR CONCERNING THE PROCEDURES TO BE FOLLOWED AT THE COLLEGE PARK LABORATORY WHERE THE LOSS OCCURRED. SINCE MR. JOHNSTONE BELIEVED THE ERRONEOUS VERBAL INSTRUCTIONS HE RECEIVED TO BE IN ACCORDANCE WITH THE APPLICABLE REGULATIONS, HE DID NOT CONSULT THE COPY OF THE CASHIERS' MANUAL WHICH WAS AVAILABLE IN THE OFFICE. IT MIGHT BE NOTED IN THIS REGARD THAT AFTER THE LOSS TOOK PLACE NOAA INSTITUTED A TRAINING COURSE TO ACQUAINT CASHIERS AND ALTERNATE CASHIERS' MANUAL AND PROPER PROCEDURES FOR SAFEGUARDING FUNDS.

FURTHERMORE, BOTH THE CASHIERS' MANUAL AND THE NOAA FINANCE HANDBOOK PROVIDE THAT IMPREST FUNDS SHOULD BE AUDITED EITHER ON AN UNANNOUNCED QUARTERLY BASIS OR WHENEVER A FUND IS TRANSFERRED TO ANOTHER CASHIER IN ORDER "TO VERIFY CASH BALANCES AND ASCERTAIN THAT FUNDS ARE PROPERLY ACCOUNTED FOR AND THAT PROCEDURES ARE BEING FOLLOWED THAT ADEQUATELY PROTECT THE FUNDS FROM LOSS OR MISUSE." SEE NOAA FINANCE HANDBOOK 11 08(1). IN HIS MEMORANDUM OF SEPTEMBER 27, 1974, THE ADMINISTRATOR OF NOAA STATED THAT IF THE AUDITS HAD BEEN PERFORMED AS REQUIRED, WHICH WAS NOT THE CASE, THEY "WOULD PROBABLY HAVE REVEALED THE PROCEDURAL LAXITY IN MR. JOHNSTONE'S OFFICE, PERHAPS SERVING TO PREVENT THE 1973 LOSS."

ACCORDINGLY, THE ADMINISTRATOR OF NOAA WITH THE CONCURRENCE OF THE SECRETARY OF COMMERCE DETERMINED:

"(1) THAT THE LOSS OR DEFICIENCY OCCURRED WHILE

MR. JOHNSTONE WAS ACTING IN THE DISCHARGE OF HIS OFFICIAL

DUTIES, AND (2) THAT THE LOSS OR DEFICIENCY WAS NOT THE

RESULT OF FAULT OR NEGLIGENCE OF MR. JOHNSTONE OR ANY

IDENTIFIABLE INDIVIDUAL." AND RECOMMENDED THAT OUR OFFICE RELIEVE MR. JOHNSTONE, UNDER THE AUTHORITY OF 31 U.S.C. SEC. 82A-1, FOR ALL RESPONSIBILITY ARISING OUT OF THIS LOSS OF $811.63 IN GOVERNMENT FUNDS.

OUR OFFICE IS AUTHORIZED TO GRANT RELIEF TO ACCOUNTABLE OFFICERS FROM LIABILITY FOR LOSSES ARISING UNDER CERTAIN CONDITIONS PRESCRIBED BY 31 U.S.C. SEC. 82A-1 WHICH 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 *** CHARGED WITH RESPONSIBILITY ON

ACCOUNT OF GOVERNMENT FUNDS, VOUCHERS, RECORDS, CHECKS,

SECURITIES OR PAPERS IN HIS CHARGE *** 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."

WE HAVE CONSISTENTLY INTERPRETED THE LANGUAGE OF CONDITION (2) TO PERMIT THE GRANTING OF RELIEF TO ACCOUNTABLE OFFICERS EVEN WHEN NEGLIGENT, PROVIDED THAT SUCH NEGLIGENCE IS NOT DETERMINED TO BE THE PROXIMATE CAUSE OF THE LOSS. IN THE CASE AT HAND IT APPEARS THAT MR. JOHNSTONE'S FAILURE TO ADHERE TO APPROVED PROCEDURE, EVEN IF UNWITTING, DID CONSTITUTE NEGLIGENCE. MOREOVER, SINCE GOVERNMENT OFFICIALS CHARGED WITH THE CUSTODY AND HANDLING OF PUBLIC MONEYS ARE EXPECTED TO EXERCISE THE HIGHEST DEGREE OF CARE IN THE PERFORMANCE OF THEIR DUTY IT HAS LONG BEEN RECOGNIZED THAT WHEN SUCH FUNDS DISAPPEAR WITHOUT EXPLANATION OR APPARENT REASON, AS OCCURRED HERE, A PRESUMPTION OF NEGLIGENCE ON THE PART OF THE RESPONSIBLE OFFICIAL NATURALLY ARISES. SEE 48 COMP.GEN. 566 (1969). HOWEVER, THE QUESTION STILL REMAINS AS TO WHETHER MR. JOHNSTONE'S NEGLIGENCE WAS THE PROXIMATE CAUSE OF THE LOSS OR, AS SUGGESTED IN THE MEMORANDUM FROM THE ADMINISTRATOR OF NOAA, WHETHER "THE PERVASIVE LAXITY IN THE PROTECTION AND ADMINISTRATION OF THE FUNDS AT THE LABORATORY ON ALL LEVELS" ACTUALLY CAUSED THE LOSS.

AS A GENERAL MATTER THE RESPONSIBILITY TO PROVIDE CASHIER OR OTHER ACCOUNTABLE OFFICERS WITH PROPER SECURITY ARRANGEMENTS BELONGS WITH THE AGENCY INVOLVED. IN THIS REGARD SECTION 11-09 OF THE NOAA FINANCE HANDBOOK PROVIDES IN PERTINENT PART AS FOLLOWS:

"3. EACH ALTERNATE CASHIER MUST HAVE A LOCK STRONG

BOX FOR HIS USE IN KEEPING FUNDS ASSIGNED TO HIM SEPARATE

FROM ANY OTHER FUNDS.

"4. EACH MANAGEMENT CONTROL CENTER SHOULD TAKE ACTION

TO PROVIDE SUITABLE FACILITIES FOR SAFEGUARDING FUNDS OF

EACH CASHIER. WHENEVER A RECOMMENDATION IS MADE FOR THE

APPOINTMENT OF A NEW CASHIER, ACTION SHOULD BE TAKEN TO

FURNISH SUITABLE FACILITIES IF NOT ALREADY AVAILABLE ***." HOWEVER, IT IS CLEAR THAT MR. JOHNSTONE AND THE ALTERNATE CASHIER WERE PROVIDED WITH AND BOTH OPERATED OUT OF ONLY ONE CASH BOX. FURTHERMORE, THE COMBINATION TO THE SAFE HAD NOT BEEN CHANGED SINCE APRIL 4, 1971, ONE YEAR BEFORE MR. JOHNSTONE BECAME CASHIER AND TWO YEARS BEFORE THE LOSS OCCURRED, DESPITE THE FACT THAT THE CASHIERS' MANUAL REQUIRES THAT COMBINATIONS BE CHANGED ANNUALLY OR WHENEVER THERE IS A CHANGE OF CASHIERS. OUR OFFICE HAS PREVIOUSLY HELD ON NUMEROUS OCCASIONS THAT THIS TYPE OF AGENCY FAILURE TO PROVIDE PROPER SECURITY ARRANGEMENTS FOR THE SAFEKEEPING OF GOVERNMENT FUNDS MAY ITSELF BE THE PROXIMATE CAUSE OF THE LOSS, THEREBY RELIEVING THE ACCOUNTABLE OFFICER OF LIABILITY.

NORMALLY, A CASHIER HAS EXCLUSIVE CONTROL OVER THE FUNDS WITH WHICH HE OR SHE IS CHARGED AND, THEREFORE, IT IS REASONABLE TO HOLD THE CASHIER LIABLE WHEN AN UNEXPLAINED LOSS OCCURS. HOWEVER, MR. JOHNSTONE DID NOT HAVE EXCLUSIVE CONTROL

OVER THESE FUNDS SINCE, AS STATED ABOVE, BOTH HE AND MRS. MARVIN OPERATED FROM THE SAME CASH BOX DEPENDING ONLY ON WHICH ONE WAS AVAILABLE TO CONDUCT A PARTICULAR TRANSACTION AND, ALSO, BECAUSE THE COMBINATION WAS KNOWN TO AT LEAST FIVE PERSONS AT THE TIME THE LOSS WAS DISCOVERED. THIS SITUATION PRECLUDES THE DEFINITE PLACEMENT OF RESPONSIBILITY FOR THE SHORTAGE THAT AROSE.

FURTHERMORE, ON THE BASIS OF THE AVAILABLE RECORD IT APPEARS THAT, ALTHOUGH MR. JOHNSTONE HAD BEEN FOLLOWING THE SAME PROCEDURES SINCE HIS APPOINTMENT AS A CASHIER EFFECTIVE APRIL 1, 1972, AT NO TIME DID HIS SUPERVISOR INDICATE OR SUGGEST THAT SUCH PROCEDURES WERE NOT IN ACCORDANCE WITH OFFICIAL POLICY. ALSO, AUDITS WHICH, IF PERFORMED AS REQUIRED, WOULD, IN ALL PROBABILITY, HAVE REVEALED THE PROCEDURAL LAXITY IN THE OFFICE, WERE NEVER CARRIED OUT. UNDER THESE CIRCUMSTANCES, IT WAS NOT UNREASONABLE FOR MR. JOHNSTONE TO ASSUME, AS HE APPARENTLY DID, THAT THIS FAILURE ON THE PART OF HIS SUPERVISORS TO CRITICIZE OR CORRECT IMPREST FUNDS PROCEDURES CONSTITUTED THEIR IMPLIED APPROVAL OF SUCH PROCEDURES AND INDICATED THAT MR. JOHNSTONE WAS OPERATING PROPERLY.

IN CONSEQUENCE OF THE FOREGOING WE AGREE WITH THE ADMINISTRATIVE DETERMINATION THAT THE LOSS IN QUESTION DID NOT OCCUR AS A RESULT OF FAULT OR NEGLIGENCE ON THE PART OF MR. JOHNSTONE OR ANY IDENTIFIABLE INDIVIDUAL AND, UNDER THE AUTHORITY CONTAINED IN 31 U.S.C. SEC. 82A-1 WE HEREBY GRANT MR. JOHNSTONE RELIEF FROM LIABILITY AS REQUESTED.