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B-189795, Sep 23, 1977

Number: B-189795

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B-189795, SEP 23, 1977

HEATHER L. ROSS:

YOU HAVE REQUESTED OUR DECISION WHETHER MS. NATALIE A. CORNFORTH, SUB-CASHIER/COLLECTION OFFICER, ALASKA DISTRIBUTION SECTION, GEOLOGICAL SURVEY, FAIRBANKS, ALASKA, MAY BE GRANTED RELIEF IN THE AMOUNT OF $774.25, PURSUANT TO 31 U.S.C. 82A-1 (1970).

THE RECORD REVEALS THAT MS. CORNFORTH WAS THE CUSTODIAN IN CHARGE OF CERTAIN FUNDS REPRESENTING CASH RECEIPTS FROM MAP SALES BY THE ALSAKS DISTRIBUTION SECTION. THESE FUNDS WERE KEPT IN A COMBINATION SAFE IN THE OFFICE. DURING THE LATE EVENING OF JANUARY 18 OR EARLY MORNING OF JANUARY 19, 1976, THE ALASKA DISTRIBUTION SECTION OFFICE WAS BURGLARIZED. ACETYLENE TORCH WAS USED TO OPNE THE SAFE, AND THE FOLLOWING CASH WAS STOLEN: $85 FROM THE CHANGE FUND; AND $759 IN CASH RECEIPTS FROM MAP SALES, DURING THE PERIOD JANUARY 2-16, TOTALING $844. SUBSEQUENTLY, DURING THE HOURS BETWEEN 5:30 P.M. ON JANUARY 20 AND 8 A.M. ON JANUARY 21, 1976, THERE WAS A SECOND BREAK-IN AT THE SAME OFFICE. AN ADDITIONAL $15.25 IN CASH RECEIPTS WAS STOLEN FROM A LOCKED DESK.

BOTH LOSSES WERE REPORTED TO THE FAIRBANKS POLICE AND FBI FIELD OFFICE AT ANCHORAGE, ALASKA. THE $85 CHANGE FUND LOSS WAS REPORTED TO THE DEPARTMENT OF THE TREASURY, WASHINGTON DISBURSING CENTER, WHICH RESTORED THE LOSS PENDING RESOLUTION OF THE CASE.

IMMEDIATELY FOLLOWING THE INITIAL BREAK-IN AT THE ALASKA DISTRIBUTION SECTION OFFICE, EFFORTS WERE MADE TO PROCURE A NEW SAFE. THE PROMISED DELIVERY DATE FROM ANCHORAGE, ALASKA WAS JANUARY 28, 1976. THE RECORD DISCLOSES THAT, PENDING DELIVERY OF THE SAFE, THERE WERE NO BETTER LOCK-UP FACILITIES IN THE OFFICE THAN THOSE USED, SUCH AS LOCKING DESK DRAWERS. BANK DEPOSITS OF THE CASH RECEIPTS WERE MADE AS OFTEN AS PRACTICABLE, DAILY, IF PERMITTED BY WEATHER AND STAFF AVAILABILITY, BUT USUALLY EVERY OTHER DAY.

MS. CORNFORTH, WHO HAD CUSTODY OF THE CHANGE FUND, WAS ACCOUNTABLE FOR IT TO MS. DANA OTTERSON, GEOLOGICAL SURVEY AGENT CASHIER, BRANCH OF FINANCIAL MANAGEMENT, NATIONAL CENTER, RESTON, VIRGINIA. BECAUSE THE LOSS OF THE CHANGE FUND WAS UNDER $500, THE DEPARTMENT, TREATING IT AS A SEPARATE LOSS, GRANTED RELIEF TO MS. OTTERSON.

YOU HAVE CONCLUSED THAT THE $775.25 LOSS IN CASH RECEIPTS WAS NOT DUE TO THE NEGLIGENCE OR BAD FAITH OF MS. CORNFORTH, AND RECOMMEND THAT SHE BE RELIEVED OF LIABILITY.

THE GRANTING OF RELIEF TO ACCOUNTABLE OFFICERS IS GOVERNED BY 31 U.S.C. 82A-1 (1970). THAT STATUTE PROVIDES:

"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 * * * 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 THE 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 * * * ."

IN THE INSTANT CASE, ALTHOUGH THE DEPARTMENT HAS NOT EXPLICITLY MADE THE REQUISITE DETERMINATION THAT THE LOSS OCCURRED WHILE MS. CORNFORTH WAS ACTING IN THE DISCHARGE OF HER OFFICIAL DUTIES, THE IMPLICATION THAT THAT WAS YOUR CONCLUSION IS SUFFICIENTLY CLEAR. WE CONCUR. THE QUESTION OF RELIEF THEREFORE TURNS ON THE PRESENCE OR ABSNECE OF NEGLIGENCE.

WHILE THERE IS A PRESUMPTION THAT AN ACCOUNTABLE OFFICER HAS BEEN NEGLIGENT IN THE LOSS OF ANY FUNDS FOR WHICH SHE OR HE IS RESPONSIBLE, IT IS REBUTTABLE BY EVIDENCE TO THE CONTRARY. SEE, 54 COMP.GEN. 112, 115 (1974).

WE HAVE OFTEN BEEN CALLED UPON TO RELIEVE AN ACCOUNTABLE OFFICER OF LIABILITY IN CASES OF THEFT. SEE, E.G., B-184274, SEPTEMBER 29, 1975, WHEREIN UNKNOWN INTRUDERS FORCED THERI WAY INTO THE TULSA EMPLOYMENT ASSISTANCE OFFICE IN TULSA, OKLAHOMA, AND BROKE INTO A METAL CASH BOX IN THE OFFICE SAFE. IN THESE CASES, WHEN INVESTIGATIONS HAVE REVEALED NO CONNECTION BETWEEN THE ACCOUNTABLE OFFICER INVOLVED AND THE THEFT, RELIEF HAS BEEN GRANTED. B-184274, ID.; B-182590, FEBRUARY 3, 1975; B-182477, DECEMBER 17, 1974.

IN THE INSTANT CASE, THERE IS CLEAR EVIDENCE OF BREAKING AND ENTERING. THE RECORD SUPPORTS YOUR FINDING THAT MS. CORNFORTH WAS NOT NEGLIGENT IN ANY WAY IN THE PERFORMANCE OF HER CUSTODIAL DUTY REGARDING THE STOLEN FUNDS. ALTHOUGH THE $15.25 WAS ONLY SECURED IN A LOCKED DESK DRAWER, THAT WAS THE ONLY FACILITY THEN AVAILABLE. NO EVIDENCE HAS BEEN DISCLOSED WHICH WOULD IMPLICATE MS. CORNFORTH IN THE THEFT. INDEED, IT APPEARS THAT TWO SUSPECTS WERE ARRESTED WITH SOME OF THE PROPERTY TAKEN AT THE SAME TIME STILL IN THEIR POSSESSION.

THEREFORE, WE CONCUR IN THE ADMINISTRATIVE DETERMINATION THAT MS. CORNFORTH SHOULD BE RELIEVED OF LIABILITY IN THIS CASE. THE LOSS MAY BE CHARGED TO THE CURRENT APPROPRIATION AVAILABLE FOR THE EXPENSE OF THE DISBURSING FUNCTION, PURSUANT TO 31 U.S.C. 82A-1 (1970).

IN THIS INSTANCE, YOU GRANTED RELIEF ADMINISTRATIVELY FOR THE $85 LOSS IN THE CHANGE FUND AND REQUESTED THAT WE GRANT RELIEF FOR $774.25 WHICH INCLUDED THE $15.25 LOSS FROM MAP SALES COLLECTIONS. ALTHOUGH, IN THIS CASE, THE RESULT IS UNOBJECTIONABLE, THE PROPER PROCEDURE WOULD HAVE BEEN TO HAVE COMBINED THE $85 LOSS WITH THE $774.25 LOSS. 7 GAO 28.14(3) PROVIDES FOR ADMINISTRATIVE RESOLUTION OF "ANY IRREGULARITY * * * (UNDER $500) ARISING FROM A SINGLE INCIDENT OR SERIES OF SIMILAR INCIDENTS OCCURRING ABOUT THE SAME TIME * * * ."

SEE B-161457, AUGUST 14, 1977. THE LOSS OF THE $85 AND $759, ALTHOUGH FROM DIFFERENT FUNDS AROSE FROM THE SAME THEFT. CONSEQUENTLY, EVEN THOUGH THE $85 LOSS, IF IT HAD OCCURRED ALONE, COULD BE RESOLVED ADMINISTRATIVELY, UNDER THE INSTANT CIRCUMSTANCES IT MUST BE RESOLVED ALONG WITH THE $759 LOSS.