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B-190205, Nov 14, 1977

Number: B-190205

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B-190205, NOV 14, 1977

DANIEL L. WILLIAMSON, JR.:

REFERENCE IS MADE TO YOUR LETTER OF SEPTEMBER 22, 1977, WITH ENCLOSURES, WHEREIN YOU REQUEST THAT SUBCASHIER HENI VAN CLEAMPUT, AN EMPLOYEE OF THE AMERICAN CONSULATE IN LUBUMBASHI, ZAIRE, BE RELIEVED FROM LIABILITY IN THE AMOUNT OF 5,243.313 ZAIRES, OR $6,168.60. THIS AMOUNT REPRESENTS MONEY WHICH WAS APPARENTLY STOLEN FROM THE CONSULATE.

THE RECORD SUBMITTED TO US INDICATES THAT DURING THE EARLY MORNING HOURS OF JULY 4, 1976, BETWEEN 8 AND 12 MEN BROKE INTO THE CONSULATE THROUGH THE VICE CONSUL'S OFFICE. THEY REMOVED THE SUBCASHIER'S SAFE BY USING A JEEP BELONGING TO THE VICE CONSUL. FOLLOWING THE DEPARTURE OF THE THIEVES, THE NIGHT SENTINEL NOTIFIED THE CASHIER, CONSUL AND VICE CONSUL, WHO, IN TURN, NOTIFIED THE PROPER LOCAL AUTHORITIES OF THE BURGLARY. THE JEEP WAS FOUND UNDAMAGED A FEW BLOCKS AWAY, BUT THE SAFE AND IT CONTENTS WERE NEVER RECOVERED. A SUMMARY OF THE CASE PREPARED BY M. K. SHAFSHUF, BF/FS, ON AUGUST 2, 1977, STATES THAT THERE APPEARS TO BE NO POSSIBILITY OF RECOVERING THE STOLEN FUNDS. ACCORDING TO THE INFORMATION SUBMITTED TO US, SUBCASHIER VAN CLEEMPUT HAS NOT BEEN IMPLICATED IN CONNECTION WITH THE BURGLARY IN ANY WAY.

31 U.S.C. SEC. 82A-1 (1970), UNDER WHICH RELIEF HAS BEEN REQUESTED, 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 RELICVE 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, *** 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 NEGLIGENCY ON THE PART OF SUCH OFFICER OR AGENT. ***"

BASED UPON THE INCIDENTS AND INVESTIGATIVE FINDINGS, IT WAS ADMINISTRATIVELY DETERMINED THAT THE LOSS OCCURRED WHILE MR. VAN CLEEMPUT WAS ACTING IN THE DISCHARGE OF HIS OFFICIAL DUTIES AND WITHOUT FAULT OR NEGLIGENCE ON HIS PART AND

YOU ENDORESE THIS DETERMINATION. WE CONCUR IN THIS DETERMINATION.

THE RECORD INDICATES, HOWEVER, THAT THE TOTAL AMOUNT (5,243.313 ZAIRES) STOLEN INCLUDED 3400 ZAIRES (USE $4000) WHICH THE SUBCASHIER HAD ACCEPTED IN CONNECTION WITH AN ACCOMMODATION EXCHANGE. THIS AMOUNT REPRESENTED CASH FROM THE SALE OF THE VICE CONSUL'S PRIVATELY OWNED MOTOR VEHICLE, WHICH AMOUNT THE VICE CONSUL APPARENTLY TURNED OVER TO THE SUBCASHIER FOR THE PURPOSE OF INITIATING THE ACCOMMODATION EXCHANGE.

31 U.S.C. SEC. 492A AUTHORIZES DISBURSING OFFICERS OF THE UNITED STATES TO CONDUCT EXCHANGE TRANSACTIONS FOR THE ACCOMMODATION OF GOVERNMENT EMPLOYEES. A MEMORANDUM DATED DECEMBER 22, 1976, FROM THE EMBASSY IN KINSHASA TO THE DEPARTMENT OF STATE CONTAINS THE FOLLOWING:

"2. CASH FOR SALE OF VICE CONSUL MARSHALL P. ADAIR'S POV 23,400.00. THIS AMOUNT IS EQUAL TO $4,000.00. THE SUB CASHIER IS NOT AUTHORIZED TO ISSUE FS-459'S (DEPOSIT OR TRUST FUND RECORD). A RECEIPT IS GIVEN FOR THE MONEY AND THE SUB CASHIER OBTAINS A BANK DRAFT PAYABLE TO THE AMERICAN EMBASSY, KINSHASA FROM BARCLAY'S BANK IN LUBUMBASHI AND POUCHES IT TO THE EMBASSY WHERE THE CLASS B CASHIER TAKES IT IN AS A COLLECTION AND ISSUES THE FS-459 WHICH IS TRANSMITTED TO RFC PARIS FOR A DOLLAR CHECK TO BE MADE PAYABLE TO THE INDIVIDUAL CONCERNED. THE THEFT OCCURRED BEFORE THE SUB CASHIER COULD GO TO THE BANK. RELIEF IS REQUESTED AND A TREASURY CHECK SHOULD BE FORWARDED TO MR. ADAIR NOW STATIONED IN THE BUREAU OF AFRICAN AFFAIRS, DEPARTMENT OF STATE."

WHILE THE LAST QUOTED STATEMENT MAKES IT CLEAR THAT THE SUBCASHIER WAS NOT AUTHORIZED TO ISSUE FS-459'S (DEPOSIT OR TRUST FUND RECORD), WE HAVE BEEN INFORMALLY ADVISED BY A REPRESENTATIVE OF YOUR DEPARTMENT THAT THE SUBCASHIER WAS AUTHORIZED TO ACCEPT FUNDS FROM EMPLOYEES (AND GIVE A RECEIPT THEREFOR) FOR THE PURPOSE OF OBTAINING A BANK DRAFT FOR THE FUNDS AND TRANSMITTING THE BANK DRAFT TO AN EMPLOYEE AUTHORIZED TO ISSUE A FS- 459 AND MAKE THE ACCOMMODIATION EXCHANGE. ALTHOUGH SUCH FUNDS ADMITTEDLY ARE NOT APPROPRIATED FUNDS OF THE UNITED STATES THEY ARE CLEARLY FUNDS IN WHICH THE UNITED STATES HAD A SUFFICIENT INTEREST BY VIRTUE OF THEIR BEING ENTRUSTED TO, AND ACCEPTED BY, AN ACCOUNTABLE OFFICER IN HIS OFFICIAL CAPACITY (AND UNDER AUTHORITY OF LAW) TO RENDER THEM GOVERNMENT FUNDS WITHIN THE MEANING OF 31 U.S.C. SEC. 82A-1. B-22805, NOVEMBER 30, 1929.

ACCORDINGLY RELIEF IS GRANTED TO SUBCASHIER HENI VAN CLEEMPUT IN THE FULL AMOUNT OF THE LOSS UNDER THE PROVISIONS OF 31 U.S.C. SEC. 82A-1 AND APPROPRIATION 19-913 MAY BE CHARGED WITH THIS LOSS.