Text as published on gao.gov, https://www.gao.gov/products/b-191645, archived 2026-07-12. GAO published no original file for this decision. Rendered by Comptroller Desk.

B-191645, Oct 5, 1979

Number: B-191645

Date: 1979-10-05

B-191645, OCT 5, 1979

OFFICE OF GENERAL COUNSEL

CYRUS R. VANCE, SECRETARY OF STATE:

THIS IS IN RESPONSE TO A LETTER FROM THE DEPUTY ASSISTANT SECRETARY FOR BUDGET AND FINANCE REQUESTING THAT CLASS B CASHIER NUHKET TIGIN, EMPLOYED AT THE AMERICAN CONSULATE GENERAL, ISTANBUL, TURKEY, BE RELIEVED OF LIABILITY FOR A LOSS OF CURRENCY IN THE AMOUNT OF $7,427.21, WHICH REPRESENTED A CASH REPLENISHMENT OF THE CASHIER'S ADVANCE. THE LOSS APPARENTLY OCCURRED ON OR ABOUT JULY 27, 1976. FOR THE REASONS THAT FOLLOW, RELIEF IS GRANTED.

ACCORDING TO THE RECORD, MRS. TIGIN HAD FORWARDED ENDORSED CASHIER REPLENISHMENT CHECKS TO THE AMERICAN EMBASSY IN ANKARA, TURKEY. THE EMBASSY CASHIER THEN PURCHASED THE NECESSARY CURRENCY, PACKAGED IT, AND ARRANGED ITS SHIPMENT BY REGISTERED UNCLASSIFIED POUCH IN ACCORDANCE WITH PRESCRIBED PROCEDURES. THE REQUEST FOR RELIEF STATES THAT THE POUCH WAS SHIPPED TO ISTANBUL ON JULY 24, 1976. OTHER DOCUMENTS IN THE RECORD INDICATE THE SHIPPING DATE AS JULY 23. (THE DISCREPANCY AS TO THE CORRECT SHIPPING DATE DOES NOT AFFECT OUR CONCLUSION.) THE POUCH ARRIVED AT THE TURKISH AIR LINES TERMINAL IN ISTANBUL ON THE SAME DAY IT WAS SHIPPED, BUT WAS NOT PICKED UP BY OR DELIVERED TO THE CONSULATE.

THE RECORD FURTHER INDICATES THAT, ON JULY 27, 1976, THE CONSULATE REPORTED NON-RECEIPT OF THE POUCH TO THE EMBASSY AND TRACER ACTION WAS BEGUN. HOWEVER, DURING THE EVENING OF JULY 27 AND THE MORNING OF JULY 28, A FIRE OCCURRED AT THE AIR TERMINAL WHICH DAMAGED THE POUCH. THE RECORD SUMMARIZES SUBSEQUENT EVENTS AS FOLLOWS:

"ON AUGUST 4, THE COMMUNICATIONS AND RECORDS OFFICER WENT TO THE TERMINAL WHERE HE RECOVERED REMNANTS OF THE POUCH AND CONTENTS FROM THE AIR LINE OFFICIALS. IT WAS AUGUST 6 BEFORE HE WAS PERMITTED BY THE POLICE AND AIRLINE OFFICIALS TO MAKE A PERSONAL SEARCH. FURTHER ENCLOSURES WERE RECOVERED INCLUDING THE CHARRED INNER ENVELOPE WHICH HAD CONTAINED THE MONEY. THE ONLY OTHER EVIDENCE OF THE MONEY WERE TWO MONEY BANDS FOR $20 BILLS AND THE CURRENCY TRANSMITTAL SLIP."

BASED ON THE FOREGOING, YOUR DEPARTMENT CONCLUDED THAT THE LOSS RESULTED FROM "THEFT BY PERSON OR PERSONS UNKNOWN," DETERMINED THAT THE LOSS OCCURRED WITHOUT FAULT OR NEGLIGENCE ON THE PART OF MRS. TIGIN, AND REQUESTED RELIEF FROM LIABILITY UNDER 31 U.S.C. SEC. 82A-1 (1976).

THE GENERAL ACCOUNTING OFFICE IS AUTHORIZED BY 31 U.S.C. SEC. 82A-1 TO GRANT RELIEF FROM LIABILITY TO AN ACCOUNTABLE OFFICER UPON ITS CONCURRENCE WITH

DETERMINATIONS BY THE DEPARTMENT OR AGENCY HEAD THAT (1) THE LOSS OR DEFICIENCY OCCURRED WHILE THE OFFICER OR AGENT WAS ACTING IN THE DISCHARGE OF HIS OFFICIAL DUTIES, OR THAT IT OCCURRED BY REASON OF THE ACT OR OMISSION OF A SUBORDINATE OF THE OFFICER OR AGENT, AND (2) THE LOSS OR DEFICIENCY OCCURRED WITHOUT FAULT OR NEGLIGENCE ON THE PART OF THE OFFICER OR AGENT. ALTHOUGH THE RECORD IN THE INSTANT CASE DOES NOT CONTAIN THE REQUISITE DETERMINATION THAT THE LOSS OCCURRED WHILE MRS. TIGIN WAS ACTING IN THE DISCHARGE OF HER OFFICIAL DUTIES, THE RECITAL OF FACTS CLEARLY SUGGESTS THAT THIS WAS YOUR CONCLUSION. THE QUESTION OF RELIEF, THEREFORE, TURNS ON THE PRESENCE OR ABSENCE OF NEGLIGENCE.

THE PRESUMPTION THAT ACCOUNTABLE OFFICERS HAVE BEEN NEGLIGENT WHEN A LOSS OF FUNDS FOR WHICH THEY ARE RESPONSIBLE OCCURS CAN BE REBUTTED BY EVIDENCE TO THE CONTRARY. 54 COMP.GEN. 112, 115 (1974). WE HAVE PREVIOUSLY GRANTED RELIEF TO ACCOUNTABLE OFFICERS WHERE THE EVIDENCE IS CLEAR THAT A THEFT TOOK PLACE AND WHERE AN INVESTIGATION HAS REVEALED NO CONNECTION BETWEEN THE ACCOUNTABLE OFFICER AND THE THEFT. SEE, E.G., B-189795, SEPTEMBER 23, 1977; B-184274, SEPTEMBER 29, 1975.

BASED ON THE ORIGINAL RECORD SUBMITTED, IT WAS NOT CLEAR WHETHER THERE MIGHT HAVE BEEN NEGLIGENCE ON THE PART OF SOMEONE IN THE ISTANBUL CONSULATE FOR FAILING TO PROMPTLY PICK UP THE POUCH FROM THE TERMINAL, OR POSSIBLY ON THE PART OF SOMEONE IN THE ANKARA EMBASSY IN CONNECTION WITH MAKING THE SHIPMENT. THUS, TO ENABLE US TO INDEPENDENTLY EVALUATE THE MATTER, WE CONTACTED THE STATE DEPARTMENT INFORMALLY TO DEVELOP ADDITIONAL INFORMATION.

WHEN THE EMBASSY IN ANKARA SHIPPED THE POUCH, IT NOTIFIED THE CONSULATE BY TELEGRAM. THE TELEGRAM WAS RECEIVED BY THE ADMINISTRATIVE OFFICER AT THE CONSULATE WHO NOTIFIED THE CASHIER, MRS. TIGIN. HOWEVER, IT WAS NOT THE CASHIER'S RESPONSIBILITY TO PICK UP THE POUCH. NORMALLY, ACCORDING TO THE STATE DEPARTMENT, TURKISH AIR LINES WOULD NOTIFY THE POUCH ROOM AT THE CONSULATE THAT THE POUCH HAD ARRIVED, AND A POUCH ROOM EMPLOYEE WOULD PICK UP THE POUCH AND NOTIFY THE CASHIER. IN THIS INSTANCE, HOWEVER, THE AIR LINES FAILED TO NOTIFY THE POUCH ROOM. IN ADDITION, WE ARE ADVISED THAT THE POUCH ROOM EMPLOYEE WHO NORMALLY MADE THE PICK-UPS FREQUENTLY CHECKED WITH THE TERMINAL EVEN WITHOUT NOTIFICATION, ALTHOUGH NOT REQUIRED TO DO SO, IN THE COURSE OF PERFORMING HIS OTHER DUTIES. HOWEVER, THIS PERSON WAS ON LEAVE AT THE TIME OF THE LOSS IN QUESTION.

THUS, WE DO NOT HAVE A SITUATION WHERE CONSULATE PERSONNEL DELAYED IN PICKING UP THE POUCH AFTER BEING NOTIFIED OF ITS ARRIVAL. RATHER, SINCE THE CONSULATE DID NOT KNOW THAT THE POUCH HAD ARRIVED IN ISTANBUL BUT DID KNOW THAT IT HAD BEEN SHIPPED, THE QUESTION BECOMES WHETHER THERE WAS UNREASONABLE DELAY IN CAUSING AN INQUIRY TO BE MADE. AS NOTED ABOVE, THE POUCH WAS SHIPPED ON FRIDAY, JULY 23, OR SATURDAY, JULY 24, AND THE EMBASSY NOTIFIED THE CONSULATE BY TELEGRAM THAT IT HAD SHIPPED THE FUNDS. WE DO NOT KNOW PRECISELY WHEN THIS INFORMATION WAS CONVEYED TO MRS. TIGIN, BUT THE CONSULATE NOTIFIED THE EMBASSY OF NON RECEIPT ON JULY 27, THE FOLLOWING TUESDAY. IN THESE CIRCUMSTANCES, AND TAKING INTO CONSIDERATION THE INTERVENING WEEKEND, WE DO NOT BELIEVE MRS. TIGIN WAS NEGLIGENT IN NOT INQUIRING SOONER WHEN, AS FAR AS SHE KNEW, THE POUCH HAD NOT ARRIVED.

STATE DEPARTMENT FURTHER ADVISES THAT, PRIOR TO REQUESTING RELIEF, IT SUBMITTED A CLAIM WITH THE TREASURY DEPARTMENT UNDER THE GOVERNMENT LOSSES IN SHIPMENT ACT, 40 U.S.C. SECS. 721-729 (1976), BUT THE CLAIM WAS DENIED ON DECEMBER 28, 1977. NORMALLY, THE DENIAL OF A CLAIM UNDER THE GOVERNMENT LOSSES IN SHIPMENT

ACT WOULD CAUSE US TO INQUIRE FURTHER SINCE IT SUGGESTS THE POSSIBILITY THAT SOMEONE AT THE POINT OF SHIPMENT MAY HAVE BEEN NEGLIGENT. B-193830, MARCH 30, 1979. HERE, HOWEVER, THERE IS NO QUESTION THAT THE POUCH ARRIVED IN ISTANBUL, AND THE EVIDENCE INDICATES THAT THE MONEY WAS STILL IN THE POUCH WHEN IT ARRIVED. THUS, EVEN IF SOMEONE IN ANKARA HAD BEEN NEGLIGENT IN CONNECTION WITH MAKING THE SHIPMENT, SUCH NEGLIGENCE WOULD NOT BE THE PROXIMATE CAUSE OF THE LOSS.

IN SUM, THE STATE DEPARTMENT HAS CONCLUDED THAT THE LOSS RESULTED FROM THEFT AND THAT THERE WAS NO FAULT OR NEGLIGENCE ON THE PART OF MRS. TIGIN. THERE IS NO EVIDENCE IN THE RECORD TO THE CONTRARY, NOR IS THERE ANY EVIDENCE TO SUGGEST ANY CONTRIBUTING FAULT OR NEGLIGENCE ON THE PART OF ANY OTHER STATE DEPARTMENT EMPLOYEE WHO MIGHT HAVE BEEN ACCOUNTABLE FOR THE FUNDS. ACCORDINGLY, WE CONCUR WITH THE ADMINISTRATIVE DETERMINATION AND GRANT RELIEF TO MRS. TIGIN.