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B-201173, Aug 18, 1981, Office of General Counsel

Number: B-201173

Date: 1981-08-18

B-201173, AUG 18, 1981, OFFICE OF GENERAL COUNSEL

ALEXANDER M. HAIG, JR., SECRETARY OF STATE:

THIS RESPONDS TO THE REQUEST OF THE DIRECTOR OF FINANCIAL OPERATIONS, DEPARTMENT OF STATE, THAT WE GRANT RELIEF TO ADEMUYIWA ADETONA, ALTERNATE CLASS B CASHIER AT THE WEST AFRICAN CONSOLIDATED ADMINISTRATIVE SERVICES CENTER, UNITED STATES EMBASSY, LAGOS, NIGERIA, FOR A LOSS OF 25,391.27 NAIRAS AND $621 (U. S. DOLLAR EQUIVALENT $40,431.71) WHICH OCCURRED ON NOVEMBER 30, 1978. THE FUNDS REPRESENTED THE SUM OF THE CASHIER'S ADVANCE AS OF THAT DATE, ACCORDING TO THE SUBMISSION. WE GRANT RELIEF TO MR. ADETONA IN THE AMOUNT REQUESTED FOR THE REASONS STATED BELOW.

THE LOSS OCCURRED IN THE EARLY MORNING WHEN APPROXIMATELY 12 MEN IN TWO VOLKSWAGEN MINIBUSES ARRIVED AT THE CENTER COMPOUND. THE GROUP, BELIEVED TO BE ARMED, CLIMBED THE GATE, BROKE THE PADLOCK WHICH SECURED A CHAIN TO THE GATE, OPENED THE GATE AND DROVE THE MINIBUSES INSIDE. MOST OF THE COMPOUND GUARDS FLED WHEN THE GROUP ENTERED THE COMPOUND. THE INTRUDERS CAUGHT ONE GUARD AND BEAT AND STABBED HIM.

AFTER ENTERING THE COMPOUND, THE BURGLARS BROKE INTO THE CENTER'S BUILDING WHICH CONTAINED THE CASHIER'S OFFICE BY BREAKING THE GLASS ON THE DOUBLE DOORS TO THE MAIN ENTRANCE AND THEN WALKING THROUGH THE FRAME. THEY FORCIBLY ENTERED THE CASHIER'S OFFICE, REMOVED THE SAFE, AND BEGAN CARRYING IT DOWN THE STAIRS. THE SAFE WAS A 900-POUND TWO DRAWER CLASS 2 DIEBOLD TYPE WHICH WAS FITTED WITH AN APPROVED THREE-WAY COMBINATION LOCK. THE BURGLARS DROPPED THE SAFE WHILE THEY WERE CARRYING IT DOWN THE STAIRS AND IT CAME TO REST ON THE LANDING UPSIDE DOWN. THE SAFE OPENED WHEN THE BURGLARS DROPPED IT. THE SAFE DRAWERS WERE FOUND LATER AT THE BOTTOM OF THE STAIRWAY. THE BURGLARS TOOK TWO METAL CASH BOXES CONTAINING CASH AND CHECKS AND LEFT THE SAFE BEHIND. THE LOCAL AUTHORITIES HAVE NOT SOLVED THE CRIME.

THE STATE DEPARTMENT'S COMMITTEE OF INQUIRY INTO FISCAL IRREGULARITIES INVESTIGATED THE BURGLARY AND CONCLUDED THAT "THERE APPEARS TO BE NO POSSIBILITY OF RECOVERING THE LOSS." IT ALSO FOUND NO EVIDENCE OF FAULT OR NEGLIGENCE ON THE PART OF MR. ADETONA, AND IT RECOMMENDED THE DEPARTMENT SEEK RELIEF FROM THIS OFFICE. THE DIRECTOR OF FINANCIAL OPERATIONS IN ESSENCE AGREED WITH THE COMMITTEE'S FINDINGS AND REQUESTED RELIEF AS RECOMMENDED.

THE INVESTIGATION CONDUCTED AFTER THE BURGLARY INDICATED THAT MR. ADETONA HAD NOT PROPERLY SECURED THE FUNDS. HE HAD BECOME ACCOUNTABLE ON NOVEMBER 9, 1978, WHEN THE REGULAR CLASS B CASHIER WENT ON LEAVE, UNTIL DECEMBER 4. AT THE TIME OF THE ROBBERY, MR. ADETONA WAS KEEPING THE CASH AND CHECKS IN THE SAFE WHICH HAD A

COMBINATION LOCK. THE COMBINATION WAS NOT CHANGED WHEN MR. ADETONA ASSUMED THE CASHIER'S DUTIES ON NOVEMBER 9. INDICATED THAT HE HAD WORKED AS THE ALTERNATE CASHIER FOR SEVEN YEARS AND THAT IT HAD NEVER BEEN THE PRACTICE TO CHANGE THE COMBINATION. HE STATED FURTHER THAT HE DID NOT ASK THE REGULAR CASHIER FOR THE COMBINATION. THE CLOSE OF EACH BUSINESS DAY, HE SECURED THE SAFE BY MERELY DEPRESSING THE LEVER ON THE DRAWER CONTAINING THE COMBINATION LOCK. MR. ADETONA WAS NEVER GIVEN INSTRUCTIONS ON HOW TO PROPERLY SECURE THE FILE CONTAINER AND AN EXAMINATION OF THE SAFE AFTER THE ROBBERY SHOWED THE DEADBOLTS WERE RECESSED.

THE GENERAL ACCOUNTING OFFICE IS AUTHORIZED BY 31 U.S.C. SEC. 82A-1 TO GRANT RELIEF FROM LIABILITY TO AN ACCOUNTABLE OFFICER FOR A PHYSICAL LOSS OR DEFICIENCY 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.

CLEARLY, MR. ADETONA'S FAILURE TO PROPERLY LOCK THE SAFE WAS NEGLIGENCE. WE HAVE CONSISTENTLY HELD THAT AN ACCOUNTABLE OFFICER WHO LEAVES A SAFE ON "DAY LOCK," OR SOME COMPARABLE POSITION HAS NOT EXERCISED SUFFICIENT CARE TO JUSTIFY OUR GRANTING RELIEF. E.G., B-199790, AUGUST 26, 1980; B-187708, APRIL 6, 1977.

HOWEVER, WE WILL GRANT RELIEF EVEN THOUGH AN ACCOUNTABLE OFFICER WAS NEGLIGENT IF HIS NEGLIGENCE WAS NOT THE PROXIMATE CAUSE OF THE LOSS. FOR EXAMPLE, B-144148-O.M., NOVEMBER 1, 1960, WAS A CASE IN WHICH AN ACCOUNTABLE OFFICER, IN VIOLATION OF AGENCY RULES, HAD ENTRUSTED FUNDS TO AN UNAUTHORIZED PERSON TO TAKE THEM TO VENDORS TO PAY AGENCY DEBTS. RIOTERS STOLE THE FUNDS FROM THE UNAUTHORIZED PERSON DURING A CIVIL DISTURBANCE. WE HELD THAT, ALTHOUGH THE UNAUTHORIZED ENTRUSTMENT WAS NEGLIGENCE, THE LOSS OF THE FUNDS WAS NOT ATTRIBUTABLE TO THAT NEGLIGENCE SINCE THE RIOTERS PRESUMABLY WOULD HAVE STOLEN THE FUNDS NO MATTER WHO HAD CUSTODY OF THEM. THEREFORE, SINCE THE NEGLIGENT CONDUCT WAS NOT THE PROXIMATE CAUSE OF THE LOSS, WE GRANTED RELIEF.

IN ANOTHER CASE, WE RELIEVED AN IMPREST FUND CASHIER AFTER AN AUDIT REVEALED A SHORTAGE IN THE FUND EVEN THOUGH HE HAD NOT FOLLOWED THE REQUIRED PROCEDURES. WE GRANTED RELIEF BECAUSE WE FOUND THAT "PERVASIVE LAXITY IN THE PROTECTION AND ADMINISTRATION OF THE FUNDS," AND NOT THE CASHIER'S IMPROPER CONDUCT, HAD ACTUALLY CAUSED THE LOSS. B-182386, APRIL 24, 1975.

SIMILARLY, MR. ADETONA'S FAILURE TO PROPERLY SECURE AND LOCK THE SAFE, THOUGH NEGLIGENT, WAS NOT THE PROXIMATE CAUSE OF THE LOSS IN THIS CASE, AND HE IS THEREFORE ENTITLED TO RELIEF. UNDER THE CIRCUMSTANCES PRESENTED HERE, THE LOSS WOULD HAVE OCCURRED WHETHER OR NOT MR. ADETONA HAD PROPERLY LOCKED THE SAFE BEFORE THE INTRUDERS ATTACKED THE COMPOUND. AS NOTED, THE BURGLARS WERE IN THE PROCESS OF CARRYING THE SAFE OUT OF THE BUILDING WHEN IT DROPPED AND THE DOOR FELL OPEN. WE ASSUME THAT, EVEN IF THE DOOR HAD REMAINED SHUT THE THIEVES WOULD HAVE CONTINUED TO CARRY THE SAFE OUT OF THE OFFICE BUILDING AND LOAD IT ONTO THEIR MINIBUS, THEN TAKEN THE SAFE OUT OF THE COMPOUND AND FORCIBLY OPENED IT SOMEWHERE ELSE.

ACCORDINGLY, WE CONCLUDE THAT THE LOSS WAS NOT THE DIRECT RESULT OF ANY NEGLIGENCE ON MR. ADETONA'S PART AND WE GRANT THE RELIEF REQUESTED.