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B-206817, Feb 10, 1983

Number: B-206817

Date: 1983-02-10

B-206817, FEB 10, 1983

DIGEST: CLAIMANT HAS SUSTAINED THE BURDEN OF SHOWING THAT HE ACCOUNTED FOR THE $100 CASH ADVANCE IN QUESTION, AND THUS, IS ENTITLED TO A REFUND OF THE $100 WITHHELD FROM HIS SALARY.

CLAIM OF DAVID R. HOUSTON FOR $100 AGAINST THE UNITED STATES:

THIS CONCERNS A $100 CLAIM PRESENTED TO THIS OFFICE BY DAVID R. HOUSTON, AN EMPLOYEE OF THE FEDERAL AVIATION ADMINISTRATION (FAA), ATLANTA, GEORGIA. THE CLAIM, IN ESSENCE, APPEALS A DECISION BY RALPH E. SCHETROM, FAA ACCOUNTING OPERATIONS BRANCH CHIEF, ATLANTA, RESULTING IN $100 BEING DEDUCTED FROM MR. HOUSTON'S SALARY BECAUSE HE ALLEGEDLY FAILED TO ACCOUNT FOR $100 ADVANCED TO HIM BY IMPREST FUND CASHIER SHIRLEY GRAY. FOR THE REASONS GIVEN BELOW, WE FIND THAT MR. HOUSTON SHOULD BE REFUNDED $100.

IN GREAT MEASURE, THE FACTS IN THIS CASE WERE OBTAINED THROUGH AN INVESTIGATION UNDERTAKEN BY THE FAA CIVIL AVIATION SECURITY DIVISION AT THE REQUEST OF MR. HOUSTON. THEY SHOW THAT ON JULY 28, 1981, MR. HOUSTON RECEIVED $100 FROM IMPREST FUND CASHIER SHIRLEY GRAY FOR WHICH HE SIGNED AN INTERIM RECEIPT. MR. HOUSTON MAINTAINS HE USED THE MONEY TO MAKE PAYMENTS OF $60 TO FOREST PARK SHEET METAL WORKS AND OF $31 TO REPUBLIC AIRLINES. MR. HOUSTON ALSO CLAIMS THAT HE GAVE MS. GRAY THE RECEIPTS FOR THE PAYMENTS AS WELL AS $9 IN CASH BUT FORGOT TO TAKE BACK HIS $100 INTERIM RECEIPT. MS. GRAY HAS THE TWO RECEIPTS, COPIES OF WHICH WERE SENT TO OUR OFFICE. THEY SHOW THAT THE TWO PAYMENTS WERE MADE ON JULY 28, AND 29 RESPECTIVELY. THE CASHIER ACKNOWLEDGES THAT THE PAYMENTS WERE MADE, BUT BELIEVES THAT THEY SHOULD BE CREDITED TO AN EARLIER ADVANCE GIVEN TO MR. HOUSTON. (MR. HOUSTON IS A SUPPLY SPECIALIST FOR FAA'S ELECTRONIC ENGINEERING BRANCH. FROM THE INFORMATION PROVIDED, WE GATHER THAT HE REGULARLY RECEIVES CASH ADVANCES WHICH HE THEN USES TO MAKE SMALL PURCHASES REQUESTED BY OFFICIALS OF HIS BRANCH.)

THE INVESTIGATION SHOWS MR. SCHETROM AND ALTERNATE IMPREST FUND CASHIER BARBARA PARKS FILED STATEMENTS TO THE EFFECT THAT MS. GRAY HAD TROUBLE GETTING HER ACCOUNT TO BALANCE SOMETIME BEFORE GOING ON LEAVE IN MID- AUGUST. MR. SCHETROM REMEMBERED MS. GRAY INFORMING HIM OF AN OVERAGE OF ABOUT $85 AND MS. PARKS RECALLED IT AS $100. (MS. PARKS RECALLS MENTIONING TO SOME OF THE OTHER WOMEN IN THE OFFICE THAT THE OVERAGE MUST HAVE BEEN THE $100 MR. HOUSTON OWED THE IMPREST FUND.) IN ATTEMPTING TO DISCOVER THE REASON FOR THE OVERAGE, MS. PARKS STATED THAT SHE AND MS. GRAY WENT OVER MS. GRAY'S ACCOUNT BUT THAT THEY COULD NOT DETERMINE WHERE THE $100 CAME FROM. MS. PARKS ALSO STATED THAT SHE THOUGHT MS. GRAY "TOOK THE MONEY (THE $100) OUT OF THE IMPREST FUND" BUT "DID NOT SEE HER DO THIS." SOMETIME THEREAFTER, MS. GRAY WAS ABLE TO ACCOUNT FOR THE OVERAGE IN SOME OTHER WAY AND BALANCED HER ACCOUNT.

WHEN MS. GRAY RETURNED FROM LEAVE, MR. HOUSTON SHOWED HER THE COPIES OF THE TWO RECEIPTS TOTALLING $91 AND EXPLAINED THAT THE RECEIPTS, TOGETHER WITH THE $9 IN CASH THAT HE CLAIMED HE RETURNED WITH THE RECEIPTS, WOULD ACCOUNT FOR THE $100 ADVANCE. MS. GRAY, HOWEVER, INFORMED HIM THAT HAD HE GIVEN HER $100 IN RECEIPTS AND CASH, THERE WOULD HAVE BEEN AN OVERAGE OF $100 IN HER ACCOUNT, AND THAT HER ACCOUNTS WERE IN PERFECT BALANCE. SUBSEQUENTLY, MS. GRAY CHECKED HER REIMBURSEMENT VOUCHERS AND DETERMINED THAT THE TWO RECEIPTS GIVEN BY MR. HOUSTON WERE PAID; NEVERTHELESS, SHE COULD NOT REMEMBER THE EXACT TRANSACTIONS WHICH THE RECEIPTS REPRESENTED.

AFTER THE INVESTIGATION WAS CONCLUDED AND AN AUDIT PERFORMED WHICH SHOWED MS. GRAY'S ACCOUNT IN BALANCE, MR. SCHETROM INFORMED MR. HOUSTON THAT HE WAS RESPONSIBLE FOR THE $100, REQUESTED HIM TO REPAY THAT AMOUNT IMMEDIATELY, AND STATED THAT COLLECTION BY DEDUCTION FROM HIS SALARY WOULD BE NECESSARY IF REMITTANCE WAS NOT RECEIVED BY DECEMBER 31, 1981. AS MR. HOUSTON DID NOT MAKE THE $100 PAYMENT, THE ENTIRE AMOUNT WAS DEDUCTED FROM HIS PAYCHECK FOR THE PAY PERIOD ENDING FEBRUARY 6, 1982. APPROXIMATELY ONE MONTH LATER, MR. HOUSTON APPEALED THE MATTER TO THIS OFFICE.

WHEN DISPUTED QUESTIONS OF FACT ARISE BETWEEN A CLAIMANT AND AN AGENCY, IT IS OUR POLICY TO ACCEPT THE AGENCY'S STATEMENT OF FACTS, ABSENT SUBSTANTIAL EVIDENCE TO THE CONTRARY. B-185736, DECEMBER 28, 1976; 40 COMP.GEN. 178, 180 (1960). IN THIS CASE, HOWEVER, ALTHOUGH THERE IS A DISPUTE BETWEEN THE FAA AND MR. HOUSTON ABOUT WHETHER THE $100 WAS RETURNED, WE THINK THE AGENCY'S OWN INVESTIGATION REPORT SUBSTANTIATES MR. HOUSTON'S ASSERTION RATHER THAN THAT OF THE FAA.

IT IS NOT DISPUTED THAT MR. HOUSTON RETURNED TWO RECEIPTS IN THE AMOUNT OF $91. IN OUR VIEW, THE PROBABLE PAYMENT DATES FOR THE RECEIPTS - JULY 28 AND 29 - DEMONSTRATE A NEXUS BOTH IN TIME AND AMOUNT BETWEEN THOSE PAYMENTS AND THE JULY 28 $100 ADVANCE. IN THIS REGARD, WE THINK IT SIGNIFICANT THAT THE AGENCY WAS NOT ABLE TO SHOW THAT THE TWO RECEIPTS WERE CONNECTED WITH ANY OTHER ADVANCE RECEIVED BY MR. HOUSTON OR THAT MR. HOUSTON HAD NOT ACCOUNTED FOR ANY OTHER ADVANCE. WE ALSO THINK IT SIGNIFICANT THAT BOTH BUREAU CHIEF SCHETROM AND ASSISTANT CASHIER PARKS INDICATED THAT THE FIRST IMPREST FUND ACCOUNT RECONCILIATIONS UNDERTAKEN BY MS. GRAY AFTER THE INCIDENT SHOWED AN OVERAGE THAT COULD HAVE ACCOUNTED FOR THE $100 MR. HOUSTON ALLEGES HE RETURNED.

FOR THESE REASONS, WE THINK MR. HOUSTON HAS SUSTAINED THE BURDEN OF PROOF NECESSARY TO OVERCOME THE FAA FINDING THAT HE NEVER RETURNED THE $100. ACCORDINGLY, WE CONCLUDE THE AGENCY SHOULD NOT HAVE WITHHELD $100 FROM MR. HOUSTON'S PAY, AND WE SUSTAIN HIS CLAIM IN THAT AMOUNT.

OF COURSE, AS A RESULT OF OUR FINDING THERE WOULD NOT APPEAR TO BE A $100 DEFICIENCY IN MS. GRAY'S IMPREST FUND ACCOUNT. GENERALLY, UNEXPLAINED PHYSICAL LOSSES OF IMPREST FUNDS ARE SUBJECT TO SECTION 3527(A) OF TITLE 31 OF THE U.S.C. (FORMERLY 31 U.S.C. SEC. 82A-1). THAT PROVISION ALLOWS GAO TO GRANT RELIEF IF THE HEAD OF THE AGENCY DETERMINES THAT THE LOSS OR DEFICIENCY OCCURRED WHILE THE ACCOUNTABLE OFFICER WAS ACTING IN THE DISCHARGE OF OFFICIAL DUTIES AND THAT IT OCCURRED WITHOUT FAULT OR NEGLIGENCE OF THAT OFFICER. NEVERTHELESS, CONSISTENT WITH OUR DECISION IN 54 COMP.GEN. 112 (1974), SINCE, IN THIS INSTANCE, THE LOSS IS UNDER $500, ASSUMING THE FAA MAKES THE NECESSARY DETERMINATIONS UNDER THE CITED STATUTE, IT MAY RESOLVE THE MATTER ITSELF. AGENCY RESOLUTION OF LOSSES UNDER $500 SHOULD BE ACCOMPLISHED IN ACCORDANCE WITH THE STANDARDS SET FORTH IN PRIOR COMPTROLLER GENERAL DECISIONS.