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B-232252 January 5, 1989

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In November 1987, Cuban detainees rioted at two federal penitentiaries, and in each case forced open safe containing impress funds. Funds were either hidden or destroyed, and were never found. Relief is granted to both impress fund cashiers because losses resulted from forced entry into locked safes with no contributing fault or negligence by either cashier.

Mr. J. Michael Quinlan Director Federal Bureau of Prisons United States Department of Justice Washington, D.C. 20534

Dear Mr. Quinlan:

This is in response to your letter of August 1, 1988, requesting relief for Michelle Dunmeyer, cashier, United States Penitentiary, Atlanta (Atlanta Institution), and Susan Strother, cashier, Oakdale Federal Detention Center, Oakdale, Louisiana (Oakdale). The impress funds totaled $12,000 at each facility. Funds in the amount of $9,721.72 at the Atlanta Institution and $11,025.64 at Oakdale were destroyed or hidden when inmates rioted and took control of the facilities. Bureau of Prisons is continuing to search for the hidden funds. You have administratively determined that both cashiers were without fault or negligence in the loss. For the following reasons, we concur in that judgment and grant relief.

Under 31 U.S.C. Sec. 3527, our Office is authorized to relieve accountable officers of responsibility for a physical loss of government funds if we concur in the determination by the head of an agency that: (a) the loss occurred while the officer or agent was acting in the discharge of his or her official duties and (b) that there was no fault or negligence on the part of the cashier which contributed to the loss. B-230796, April 8, 1988. Anytime a physical loss of funds occurs there arises a rebuttable presumption of negligence on the part of an accountable officer. 54 Comp. Gen. 112, 115 (1974). However, when the evidence shows that a theft took place and an investigation reveals no connection between the accountable officer and the theft, the presumption of negligence is rebutted and we have granted relief to the accountable officers. See, e.g., B-230796, April 8, 1988 (inmates used acetylene torch to open Immigration and Naturalization safe at Oakdale facility during same riot); B-214276, Sept. 17, 1984 (thief forced safe open by dismantling hinges); B-195435, Sept. 12, 1979 (armed soldiers commandeered International Communication Agency facility in Lebanon, and used blow torch to enter safe).

Atlanta Institution

On November 23, 1987, Cuban inmates rioted and took control of the Atlanta institution. Even though the cashier, Ms. Dunmeyer, was on emergency leave on November 23, she was the accountable officer entrusted with the impress funds. Further, there is no indication that any other employee of the Bureau of Prisons opened the safe on the morning of November 23. /1/ Although the Bureau has not formally made the requisite determination that the loss occurred while the cashier, Ms. Dunmeyer, was acting in the discharge of her official duties, recital of the facts makes it clear that this was its conclusion. See, e.g., B-230796. supra; B-195435, supra.

The Controller of the Atlanta facility states he made an on-site investigation of the cashier's area on December 4, 1987, after the riot ended. He found that the safe was cut open by the inmates during the takeover using an acetylene torch. Upon further inspection, he also found the outer safe door and inner compartment still in the locked position. We have previously held that evidence of forced entry itself is sufficient to rebut a presumption of negligence on the part of an accountable officer. Presumably, the safe would not have been cut open if it had not been adequately secured. B-214276, Sept. 17, 1984; B-201651, Feb. 9, 1981. Thus, the loss resulting from the forcible entry into the locked safe could not have been prevented by Ms. Dunemeyer. We therefore agree with the Bureau that the loss was not the result of fault or negligence on her part.

Oakdale

On the evening of November 21, 1987, Cuban detainees took control of the Oakdale facility. The takeover terminated on November 29, 1987. Again, although the Bureau has not made the requisite determination that the loss occurred while the cashier, Ms. Strother, was acting in the discharge of her official duties, the recital of the facts makes it clear that this was its conclusion.

The Bureau has determined that the loss was attributable to the inmates taking control of the facility. Oakdale's Controller advises that his on- site inspection of the cashier facility on December 2, 1987 disclosed that the main safe had been opened with a torch. /2/ He also found that the safe's combination lock was still secure, and determined that all security measures were in place at the time of the disturbance. In this case, as in the Atlanta case above, the loss resulting from forced entry into the locked safe could not have been prevented by the cashier. Therefore, we agree that the loss was not the result of fault or negligence of the part of Ms. Strother.

We therefore grant relief to the above-mentioned cashiers. The loss may be charged to the proper appropriation in accordance with 31 U.S.C. Sec. 3527.

Sincerely,

Gary L. Kepplinger Associate General Counsel

1. The riot began at approximately 10:15 a.m. Report to the Attorney General, Disturbances at the Federal Detention Center Oakdale, La, U.S. Penitentiary, Atlanta, Gal, at 17 (Feb. 1, 1988). The Controller of the Atlanta facility advises that because of the increased unrest at the institution, there were apparently no release gratuities made that day.

2. Law enforcement personnel observed detainees rolling carts containing acetylene tanks near and around the Administration Building where the safe was

located. Report to the Attorney General, at Oakdale 30.