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B-235072, Jul 5, 1989

Number: B-235072

Date: 1989-07-05

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Roger B. Feldman

Comptroller (M/COMP)

U.S. Department of State:

This is in reply to your letter dated April 3, 1989, requesting our Office to relieve Ms. Ruby Brown, a former sub-cashier at the United States Embassy in Lagos, Nigeria, from responsibility for the loss of certain government funds. For the reasons that follow, we grant the requested relief.

BACKGROUND

The records show that on March 18, 1988, Ruby Brown took the day's consular fees, the equivalent of $852.00, and placed the money in a cash box and then placed the unlocked box into her safe. She distinctly remembers locking the safe and checking the handle to make sure that it was locked. The only person remaining in the consular section, according to Ms. Brown, was a secretary who, along with the alternate subcashier, knew the combination to the safe. Later that evening, at 11:10 p.m., a guard found the handle turned and the safe opened. He failed to file an incident report, however, because at that time the safe contained nothing of value. Upon arrival at work the next morning, Ms. Brown discovered the loss. The embassy notified the Nigerian police who inspected the safe but were unable to find any usable fingerprints.

The State Department investigated the incident and determined that force had not been used to break into the safe. The embassy was unable to discover exactly how the loss occurred and found no evidence of wrongdoing on the part of Ms. Brown. Although no fault or negligence could be attributed to any one employee, the investigation did reveal faulty agency security.

DISCUSSION

It has long been recognized that accountable officers in physical custody of government funds are held to a standard of strict liability. Under this standard, an accountable officer becomes automatically liable the moment a physical loss occurs. 54 Comp.Gen. 112, 114 (1974). In other words, a presumption of negligence on the part of the accountable officer is raised, and that officer has the burden of presenting convincing evidence that the loss was not due to his or her negligence. A mere lack of implicating evidence will not rebut this presumption.

While the basic legal liability of an accountable officer is automatic, the lack of fault or negligence may provide a basis for relief. Under 31 U.S.C. Sec. 3527(a) this Office has the authority to grant relief from liability if we agree with the determination by the head of an agency that the loss occurred while the accountable officer was discharging his or her official duties and that the loss occurred without the accountable officer's fault or negligence.

The shortage involved in this case is an unexplained loss. Ordinarily, cases of unexplained loss result in the denial of relief as there is no evidence to rebut the presumption of negligence on the part of the accountable officer. 48 Comp.Gen. 566, 567-68 (1969). However, the Office has held on numerous occasions that agency failure to provide proper security arrangements for the safekeeping of government funds may itself be the proximate cause of a loss, thereby justifying the relief of accountable officers of liability. See, e.g., B-227714, October 20, 1987; B-199034, February 9, 1981.

Under proper security arrangements, as required by 4 Foreign Affairs Manual 317, a cashier should have exclusive control over the funds with which he or she is charged so that it is reasonable to hold the cashier liable when an unexplained loss occurs. In this case, however, Ms. Brown did not have exclusive control over the funds because the Embassy did not provide her with her own safe. Rather, she was required to keep her funds in a safe to which at least two other embassy employees had access. This situation precludes the definite placement of responsibility for the loss of funds.

Accordingly, we agree with the administrative determination that the loss in question did not occur as a result of fault or negligence on the part of Ms. Brown, and therefore grant her relief from liability for the loss.