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B-76903 July 13, 1948

Number: B-76903

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The Honorable,

The Postmaster General.

My dear Mr. Donaldson:

Reference is made to letter dated May 24, 1948, from the Acting Postmaster General, requesting a decision as to whether the loss or deficiency of $115.20 in Government funds, which resulted from the cashing by a postal clerk of the Boston, Massachusetts post office of a Government check on a forged endorsement, is one for which relief may be granted under Public Law 321, approved August 1, 1947, 61 Stat. 720.

It is stated in the said letter that the check was cashed on November 1, 1946 , by Paul B. Hughes, regular clerk of the Boston, Massachusetts post office, while assigned to duty at the Receiving Station, located in a building serving as the Headquarters, First Naval District, from which buiding wartime security regulations, then in force, provided for the exclusion of all but personnel of the United States Navy and others having legitimate business there; that Mr. Hughes required the presenter of the check to furnish an identification card bearing the photograph of the holder and establishing that he was one of the naval personnel on duty in the building; that it later developed that the check did not bear the payee's genuine endorsement, and the Postmaster, Boston, Massachusetts, was required to refund the amount of the check to the Federal Reserve Bank of Boston; and that the amount of the loss, $115.20, is carried unadjusted in the money order account of Patrick J. Connelly, former postmaster, who retired as of April 30, 1948. It is stated further in the letter that there was no negiligence or fault on the part of the former postmaster, the loss having occurred through the action of his subordinate; and that, since no fault can be found as to Mr. Hughes' procedure in requiring identification from the negotiator of the check, no illegality or error appears to be chargeable to him. Accordingly, the belief is expressed that relief may be properly be granted as to both the former postmaster and Mr. Hughes under the provisions of Public Law 321, there being quoted certain sections of Senate Report 379 on the bill which became Public Law 321, which indicates that relief thereunder was to be applicable to losses or deficiencies resulting from the acts or omissions of subordinates of the accountable officer, as well as where the losses occurred while the funds or documents were in the hands of the accountable officer, provided that the loss occurred without fault or negligence of the accountable officer.

Section 1 of Public Law 321, 61 Stat. 720 provides as follows:

"That the General Accounting Office is authorized, after consideration of the pertinent findings and if in concurrence with the determinations and recommendations of the head fo the department establishment concerned, to relieve any disbursing or other accountable officer or agent or former disbursing or other accountable officer or agent of any such department or independent establishment of the Government charged with responsibility on account of physical loss or deficiency of Government funds, vouchers, records, checks, securities, or papers in his charge, if the head of the department or independent establishment determines (1) that such loss or deficiency occurred while such officer or agent was acting in the discharge of his official duties, or that such loss or deficiency occurred by reason of the act or omission of a subordinate of such officer or agent; and (2) that such loss or deficiency occurred without fault or negligence on the part of such officer or agent. This Act shall be applicable only to the actual physical loss of deficiency of Government funds, vouchers, records, checks, securities, or papers, and shall not include deficiencies in the accounts of such officers or agents resulting from illegal or erroneous payments."(Underscoring supplied.)

The underscored section of the act clearly establishes that the relief therein provided for its applicable only to actual physical losses or deficiencies of Government funds, vouchers, records or papers, and does not include deficiencies resulting from illegal or erroneous payments. There appears to be involved in the instant case no physical loss of the check or funds resulting from accidental or fortuitous circumstances beyond the control of the clerk who paid the amount of the check to one other than the payee on a forged endorsement. The check was cashed by the clerk voluntarily, in the performance of his duties, to a person whom he erroneously believed to be the payee thereof. It may be that the clerk's requiring identification was in accordance with established procedure and, also, it may be that the former postmaster as well was free from fault or negligence in the matter. However, there being no physical loss due to accidental or fortuitous circumstances but an erroneous payment of Government funds to the person for whom the check was cashed, I have to advise that the requested relief properly may not be granted under Public Law 321 supra.

Respectfully,

Comptroller General of the United States.