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K. Goldman
GEM

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

FILE: **B-188718**

DATE: 1974 576

MATTER OF: **ACTION - Uncollectible Loss**

DIGEST:

ACTION may charge current operating expense account for shortage in account of imprest fund cashier, pursuant to 31 U.S.C. § 1302(a), where submission and supporting documents indicate that fault or negligence by cashier caused loss and that collection cannot be effected against cashier.

This decision is in response to a letter, with enclosures, from James E. Allen, Chief, Fiscal Services Branch, Accounting Division, ACTION, requesting our concurrence in a proposal to charge ACTION's current operating expense account for a shortage which ACTION indicates appears to be uncollectible in the imprest fund account of Peace Corps Principal Class "B" Cashier Victor E. S. Williams. Mr. Williams was a local hire Sierra Leone national.

According to the letter and enclosures, Mr. Williams performed his duties until August 22, 1974, when he was imprisoned due to an unrelated matter. A cash count was subsequently performed on Mr. Williams' imprest fund account, and a shortage of \$7285.19 was discovered. The enclosures indicate that several irregularities occurred in connection with the assumption of responsibility over and cash count of the imprest fund account after Mr. Williams' imprisonment. Responsibility for the account was not assumed by any other individual until August 29, 1974. Moreover, although the possible shortage was originally detected in September 1974 (shortly after Mr. Williams' detention), apparently no formal cash count was performed until November 5, 1974. Furthermore, the cash count performed on November 5, 1974, was apparently not conducted in a proper manner--i. e., in the presence of Mr. Williams and a neutral party. Finally, it could not be definitively established through the November cash count that the loss occurred during Mr. Williams' tenure, although this seems to be highly likely under all the circumstances.

The question of recourse against Mr. Williams for the shortage was referred to Attorney John Henry Smythe, Freetown, Sierra Leone, who determined that pursuant to local law, any recourse against Mr. Williams for the shortage for the imprest fund could

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only be taken in a separate court action.*/ Mr. Smythe also determined that in view of the circumstances surrounding the cash count, it was doubtful whether under local law the Peace Corps would be successful in a suit against Mr. Williams to recover the \$7,206.12. The General Counsel, ACTION, subsequently contacted the Department of Justice which, on the basis of Mr. Smythe's opinion, recommended against instituting a law suit against Mr. Williams for the shortage.

Section 1.83(a) of title 51, United States Code (Supp. V, 1975), provides:

"Whenever--

(1) it is necessary to restore or otherwise adjust the account of any accountable officer or his agent for any loss to the United States due to fault or negligence of such officer or agent, and

(2) the head of the agency of the Federal Government concerned determines that the amount of the loss is uncollectible,

such amount shall be charged to the appropriation or fund available for the expenses of the accountable function at the time the restoration or adjustment is made. Such restoration or adjustment shall not affect the personal financial liability of such officer or agent on account of such loss."

While the record is not entirely clear, it does seem to support ACTION's conclusions that the instant loss was due to the fault or negligence of Mr. Victor E. S. Williams, and that collection cannot be effected against him. Moreover, it does not appear that further investigation of this matter would be productive. Also, since it is not possible to definitively establish when the loss occurred, there would not be a sufficient legal basis for holding Mr. Williams' successor liable for the loss. We note in this regard that procedural irregularities may have occurred in the

*/ Under 5 U.S.C. § 5512, withholding of pay of an employee in arrears to the United States (with exceptions not here relevant) is mandatory until he has accounted for and paid to the Treasury all the sums for which he is liable. However, ACTION states that "United States Government agencies have agreed to abide by local law in personnel matters" involving local hire nationals.

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handling of the imprest fund after Mr. Williams' departure, such as the manner in which the cash count was conducted. However, these irregularities do not seem to involve negligence on the part of an accountable officer to which personal liability would attach.

For the reasons stated above, we concur in ACTION's request to charge the amount of the loss to its current operating expense account pursuant to 31 U. S. C. § 1302(a).

In order to preclude the occurrence of similar situations we would suggest that ACTION reconsider its policy of appointing to accountable officer positions 'local hire employees,' who are citizens of the country in which they are hired and employed, at least in countries where by agreement local laws are applicable to such personnel and where such laws may preclude the recovery of fund losses attributable to the negligence or fraud of local hire nationals.

R. F. KELLER

Deputy, Comptroller General
of the United States