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OGC Has Reviewed

MEM
GAS
Office of the General Counsel

16 November 1948

Damage in Shipment of Household Effects of Mr. [REDACTED]

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1. Reference is made to your memorandum of 26 October 1948, which is concerned with the damaged shipment of household effects of Mr. [REDACTED], arising out of his transfer to his present post of duty at [REDACTED].

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2. You requested this office to consider the memorandum from Mr. [REDACTED] dated 3 September 1948, and the copy of his letter to Mr. [REDACTED] dated 7 May 1948, and determine if it would be proper for Mr. [REDACTED] to file a claim against this organization for breakage and damage to his household effects by an apparently irresponsible shipping concern recommended by members of this organization. You refer to Foreign Service Regulation 592.1 which authorizes the presentation of claims of this character by members of the Foreign Service under certain conditions. You point out that, while Mr. [REDACTED] not a member of the Foreign Service, he is a designated employee.

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3. It is the understanding of this office that employees destined for a transfer to an overseas post receive the assistance of members of this organization, who recommend experienced export packers to arrange for the packing and crating of household effects and goods. This service or information is furnished on a gratuitous basis, and the employee concerned is under no obligation to enter into contractual arrangements with the recommended export packer. He is free to accept or reject the suggested export packer and to search elsewhere should he so desire. It is supposed that the recommendations of the members of this organization are made on the basis of prior experience with the recommended export packer, which experience is of a generally satisfactory nature. In the absence of a clear history of irresponsibility on the part of the export packer, the recommendations made by members of this organization would appear to be proper.

4. Although the file does not present a complete record, it is apparent that the employee was under no compulsion to accept the [REDACTED]. The recommendation appears to have been made in good faith on the basis of satisfactory past experience with the company, which recommendation the employee was free to accept or reject. There is no indication or evidence on the face of the record that the employee has been denied his normal right of recourse as witnessed by his correspondence with Karlin.

5. Foreign Service Regulation 592.1 provides a method whereby an employee [REDACTED] Foreign Service [REDACTED] his [REDACTED]

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claim, under certain conditions, to a Claim Board. After the required findings and recommendations have been made by the Claim Board, it passes through the Secretary of State, the Bureau of the Budget, and, finally, the President who submits the claim to Congress if he approves. There is no authority within the Department to settle the claim which characterizes the subject regulation as procedural rather than remedial. It is interesting to note that the standards of the Claims Board require, prior to its favorable action thereon, that the claimant have exhausted his legal remedies against the common carrier. The Claims Board is also required to take into consideration whether the failure of the claimant to carry insurance on his property is indicative of negligence.

6. Recognition of these matters automatically, and without a record including the basic facts and findings of the interested activity, would place the Government in a position of insurer, which is contrary to traditional government policy.

7. It is the understanding of this office that, prior to leaving for their overseas stations, employees are informed, particularly with respect to transoceanic shipments, that insurance is advisable. It is recognized that the effects are handled many times and by various classes of people during the course of a journey, and it is apparent that the greatest protection to the employee lies in adequate insurance coverage and not in the pursuit of difficult legal remedies after sustaining damage.

8. On the basis of the record presented, the only conceivable avenue of relief might be available in the hardship provisions of Special Funds Regulations, 10.4; an essential condition to the exercise of that relief power, however, being the existence of an emergency. Subject case is silent in this regard. If other remedies, beyond the scope or coverage of the written regulations, are contemplated it becomes a matter for administrative acquiescence and due presentation of the facts, findings, and recommendations thereon.

9. Thus, it would appear that there are no facts of record which distinguish this case from others which have come to the attention of the administrative activities handling these matters; that the position in which the employee finds himself is not traceable to any misrepresentation, lack of judgment or breach of duty on the part of members of this organization; that the Government has not intervened to preclude the employee from pursuing his legal remedies against the [redacted] that no administrative findings have been made on the basis of pertinent material facts; that the employee has not completely exhausted his remedies against the carrier or packer of the goods and household effects.

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10. In the absence of a sufficient affirmative showing on the part of the employee, distinguishing this claim from others already presented, it is questionable whether the present record provides a proper basis on which the Director may consider its merits.

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cc: CAS
DFO
Hrv. [REDACTED]

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General Counsel: [REDACTED]

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