

BEFORE THE FOREIGN SERVICE GRIEVANCE BOARD

In the Matter Between

[REDACTED]

Grievant

and

The Department of State

Record of Proceedings
No. G-91-074-State-64

Date: January 31, 1992

JURISDICTION

EXCISED

For the Foreign Service Grievance Board:

Presiding Member:

James C. Oldham

Board Members:

John H. Rouse
Calvin C. Berlin

Special Assistant
to the Board:

Irene M. Barbeau

Representative for the Grievant:

Self

Representative for the Department:

Joanne Lishman (Acting)
Grievance Staff

DECISION ON JURISDICTION

I. THE GRIEVANCE

On March 11, 1991, [REDACTED], a member of the Foreign Service of the Department of State, filed a grievance with her agency seeking compensation for loss of personal property stolen from the residence into which she had been moved at her overseas post of assignment. [REDACTED] asserted that the limited partial payment she had received in settlement of the "Claim for Loss of or Damage to Private Personal Property" filed by her in accordance with Department regulations (6 FAM 300), was inadequate. She contended that the loss had been caused by the failure of the Department to properly secure the residence assigned to her before moving her into it, in violation of established security standards. Therefore, she concluded, she was entitled to "full financial reimbursement of the loss [she] suffered."

On August 20, 1991, the Department denied the grievance, holding that under the provisions of the Military Personnel and Civilian Employees Claims Act of 1964 (Claims Act, 31 U.S.C. 3721), agency settlement of a claim is "final and conclusive" and cannot be reviewed through the grievance process or in the courts.

[REDACTED] appealed to the Board on October 25, 1991. She asserted that the Department had accepted responsibility for post security, yet, despite notice that the residence assigned to her had previously been burglarized and was possibly under surveillance, failed to take even minimum steps to secure the

residence, consistent with its published guidelines for residential security, before she was moved into the house. As a result of the Department's failure to comply with its established security standards, valuable personal effects were stolen. The Department's disposition of her claim of loss excluded compensation for many high-value items and "terribly undercompensated" her. Because her loss resulted from the Department's failure to meet its security obligations to her, [REDACTED] maintained, she is entitled to full reimbursement for the loss she suffered.

On November 13, 1991, the Department moved the Board to dismiss the grievance for lack of jurisdiction. It cited several prior Board decisions holding that the Board is without jurisdiction to review agency claims under the Claims Act, contending that those decisions require dismissal of the instant grievance.

II. DISCUSSION AND FINDINGS

The Board can well appreciate grievant's sense of injury as well as loss in the circumstances of this case. However, we have no option but to dismiss the grievance for want of jurisdiction to consider it.

The Board's authority to grant relief such as that requested here derives from section 1107(b) of the Foreign Service Act of 1980, which provides:

(b) If the Board finds that the grievance is meritorious, the Board shall have the authority to direct the Department -

....

(2) to reverse a decision denying the grievant compensation or any other perquisite of employment authorized by laws or regulations when the Board finds that such decision was arbitrary, capricious, or contrary to laws or regulations;

By its terms, the section empowers the Board to direct payment only of "compensation ... authorized by laws or regulations." This limitation gives effect to the established principle of law that there may be no right of recovery against the United States Government in the absence of a statute creating a substantive right to recover damages from the government. See, e.g., Merrifield v. United States, 14 Cl.Ct. 180 (1988), and the cases cited therein.

The Board is aware of no authority for the Department to pay compensation to employees for personal property losses incident to their service other than the Claims Act. The courts have held that an employee seeking recovery against the government for loss or damage to personal property occurring incident to service is restricted to recovery under the Claims Act. See Talstrom v. United States, 3 Cl.Ct. 106 (1983). The Act and the Department's implementing regulations (6 FAM 300) cover compensable claims by employees for damage to or loss of personal property incident to service, whether or not the loss was the result of agency error or negligence or occurred without fault.

Accordingly, grievant's claim for compensation for loss of her personal property incident to her service abroad for the Department depends on the authority of the Claims Act,

including all of its conditions and limitations. The Act (31 U.S.C. 3721(k)) provides that agency settlement of a claim is "final and conclusive," and it defines "settle" (31 U.S.C. 3721(a)(3)) as encompassing disallowance or partial allowance of a claim. This Board has observed a number of times that those provisions preclude judicial or collateral review of agency Claims Act decisions and that the broad reach of the grievance authority of the Foreign Service Act of 1980 does not permit reconsideration of such claims through the grievance process. See, e.g., excised Board decisions G-051(91), G-091(6), and No. 577.

Even if, as grievant alleges, her loss resulted from the unjustified failure of the post to follow established Department security standards or regulatory requirements, that circumstance creates no basis for a claim of compensation for property loss against the Department independent of the Claims Act. Nor does it establish a basis for Board review of the Department's decision on the claim under the Act and its implementing regulations.

III. DECISION

The grievance is dismissed.

For the Foreign Service Grievance Board.

[REDACTED]

[REDACTED]

[REDACTED]

John H. Rouse
Member

[REDACTED]

Calvin C. Berlin
Member