

DECISION

12567
PMA-11

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

FILE: B-195126

DATE: January 17, 1980

MATTER OF: Richard B. Sanders

- DIGEST: 1. Postal Service has determined that evidence as to loss of registered items meets the standards of Boerner v. United States 117 F. 2d 387 (2d Cir. 1941), establishing employees' liability for value thereof, i.e., the individual was caught committing similar offense, he had access to items in question, and there is absence of indication any other employee might have committed theft. Employee's mere categorial denial of liability does not overcome the prima facie case.
2. Civil Service retirement funds may be applied in liquidation of an employee's indebtedness to the United States under the procedure set forth in Federal Personnel Manual Supp. 831-1, subch. S19. Where an amount otherwise due a former employee has been withheld as setoff to liquidate his indebtedness to the United States without the amount of the indebtedness having been found due in a court proceeding, the former employee may institute suit for recovery of the amount withheld if he believes such withholding was improper.

Harold Mendelow, Esquire, attorney for Mr. Richard B. Sanders, a former employee of the United States Postal Service (Postal Service) asks that we review the [setoff of money from Mr. Sanders' Civil Service retirement fund account]. The Postal Service has determined that Mr. Sanders is indebted to the Government in the amount of \$25,277 which represents the amounts paid by the Postal Service in indemnity claims for losses of registered mail to which he had access incident to his employment.

The documentation submitted shows that Mr. Mendelow has been advised by the Postal Inspector in Charge, Atlanta, Georgia, that a number of registered items were received at the Miami, Florida Post Office which were never dispatched, and that Mr. Sanders was caught stealing registered mail from the Registry Cage at the time of his arrest on February 9, 1977. The Postal Inspector in Charge states that on the basis of a check of Mr. Sanders' time records, it has been determined that he had access to each of the losses in question.

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The Postal Service has determined that the evidence in this matter is sufficient to meet the standards of Boerner v. United States 30 F. Supp. 35 (E.D. N.Y., 1939) affirmed 117 F.2d 387 (2d Cir. 1941), certiorari denied 313 U.S. 587 (1941), where it was held that civil liability could be established on a showing that the losses occurred, that the individual was caught committing a similar offense, that he had access to the item in question, and that there is an absence of an indication that any other employee might have committed the theft. See Parker v. United States 187 Ct. Cl. 553 (1969).

Mr. Mendelow states that Mr. Sanders denies involvement in any losses suffered by the Postal Service, and he questions the legal propriety of the setoff.

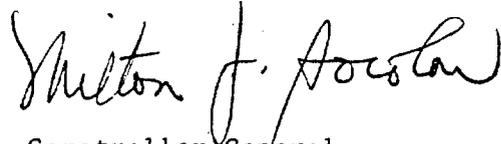
We have held in cases where the evidence was sufficient to meet the standards of Boerner v. United States, supra, that a prima facie case has been established against the employee. B-170316, April 22, 1971, B-164193, June 5, 1968, and B-155160, November 9, 1964. The rule is that when the administrative office concerned has established a prima facie case of liability for losses sustained by the Government, a mere categorical denial of liability is not sufficient to overcome such case and the individual must be considered indebted to the Government in the amount of the loss. 19 Comp. Gen. 88 (1939), B-164193, June 5, 1968, and B-155160, November 9, 1964. The burden is on the individual concerned to overcome such prima facie case by submitting additional facts if he is unwilling to be bound by the facts disclosed by the administrative office. 19 Comp. Gen. 88 (1939) and 23 Comp. Gen. 723 (1944).

The Government has the right to setoff indebtedness administratively against annuity payments or refund of retirement contribution. 58 Comp. Gen. 501 (1979) and cases cited therein. The procedure for setoff to liquidate an indebtedness to the United States is set forth in Federal Personnel Manual Supplement 831-1, Subchapter S19.

The action taken by the Postal Service in charging Mr. Sanders for the amount here involved and by the Office of Personnel Management in setting off that amount from his Civil Service retirement account is sustained. Where, as here, an amount otherwise due a former employee

B-195126

has been withheld as setoff to liquidate his indebtedness to the United States without the amount of such indebtedness having been found due in a court proceeding, the former employee may institute suit for recovery of the amount so withheld, if he believes such withholding was improper.

A handwritten signature in cursive script, reading "Milton J. Fowler". The signature is written in dark ink and is positioned above the typed name.

For the Comptroller General
of the United States