

Route 8, Frederick, Md. 21701
3/19/73

Dear Mr. Malmberg,

I would like to be able to believe that there are alternatives to what you say in your letter of March 7.

Assuming, as I believe is beyond reasonable question, that serious and irremedial harm was done me by the Department. The one area in which it can make redress is by paying the money out of which, in effect, it cheated me. If I have to engage counsel to obtain that money, even if there is no litigation, it would take part if not all of what is coming to me. With litigation, I can't possibly get any of what is my due.

There is an ancient and respected principle of law, that one may not profit from his misdeed. I would hope that the government could adhere to this philosophy and instead of taking a negative approach, seek for a positive one. I believe that with this intent, finding a solution is not impossible.

Aside from the really rotten thing represented by the firing and the enduring harm it has done me and my wife, the Department made two errors. It did not pay me what it owed me and it did not inform me of my rights. As a lawyer you must know how impossible it is for the victim of such a thing to be aware of all the law. When such things happen, contending with the injustice and the emotions and concerns that are inevitable generally make other considerations impossible.

To take this away from the technicalities to which you not improperly refer, if you as a man borrow money from me and don't repay it by the time the law requires, you may have the legal sanction for not making repayment, but do you, as an honest man, hide behind the running of the statute? I don't know if there is a statute in this case. I am aware that there might be. If there is, I would appreciate the legal experts of the Department informing me of it. In fact, I would also appreciate copies of any applicable regulations. Were there a statute, there would then be the question of wording. Is it an absolute prohibition against paying sums due? These are, I think, reasonable considerations. I hope you can provide the answers.

The incident of which I was the innocent victim was of sufficient importance in its day to assume the preservation of a complete file. Locating it should not be an unusually difficult task. In general, your assumptions are correct. I was one of ten fired without process of any kind under the so-called McCarran Rider. My case differed from the others in that a new division chief wanted only those with advanced degrees and seems, prior to the use of the McCarran Rider, to have tried to reduce me in force. The Civil Service Commission compelled the Department to reverse this. (My work, as a matter of fact, was good and I was employed because of experience in certain areas, for the kinds of things that are not taught and are not the concomitant of degrees.)

You err in believing the reversal was the result of court action. The Department, recognizing the injustice of what it had done, voluntarily reversed itself. Does this not change the legal situation and perhaps alter the regulations that might have been controlling? There was no question of procedural irregularities of which I know, either. It was just a dirty thing the Department, to its credit, came to be ashamed of having done. It was helped in reaching this feeling by publicity that showed there was no basis for the action except in the authoritarian and legally-dubious Rider. Has its Constitutionality been ruled on? If it has, would that make a difference?

Given a Departmental disposition to do what it can to rectify the harm it has done, I really think there will be no serious legal problem. There is machinery for the correction of administrative error. Is it possible that the recent decision in the case of the World War I railway workers for the U.S. Army in Siberia give you legal precedent?

I would like to find a disposition toward decency within the Department on this matter. I do hope you will explore the possibilities.

Sincerely,
Harold Malmberg



DEPARTMENT OF STATE

Washington, D.C. 20520

March 7, 1973

Mr. Harold Weisberg
Route 8
Frederick, Md. 21701

Dear Mr. Weisberg:

Mr. Lyerly is now assigned overseas, so your letter to him of February 9, 1973, was referred to me.

You will appreciate that with the lapse of as many years as referred to in your letter, it becomes difficult to verify what has happened without extensive record checks into long-retired files. On the basis of more readily available information, it is my current impression that you were discharged under the authority of the so-called McCarran Rider to the State Department Appropriation Act of 1947, Public Law 490. As a result of procedural irregularities, one or more discharges under that Rider were reversed by court action, but that does not necessarily invalidate all discharges under that Rider.

A more basic question, however, is that to which you yourself allude -- the statute of limitations. If that has indeed run, as it probably has, this Department, and the United States Government is without authority to compensate you. We cannot pay unless there is a legal obligation to do so, and the expiration of a period of limitations cuts off any obligation.

Therefore, if you wish to pursue this matter, you should obtain legal counsel to advise you on this central issue.

Sincerely yours,

K. E. Malmberg
Assistant Legal Adviser for
Management and Consular Affairs