

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON, D.C. 20579

IN THE MATTER OF THE CLAIM OF

BENJAMIN TURK

Claim No. CU - 0597

Decision No. CU **1904**

Under the International Claims Settlement
Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by BENJAMIN TURK in the amount of \$15,690.15 plus accrued interest, and is based upon the asserted ownership and loss of its interest in bonds and accrual certificates issued by the Consolidated Railroads of Cuba. Claimant has been a national of the United States since his naturalization on October 4, 1928.

Under Title V of the International Claims Settlement Act of 1949 [78 Stat. 1110 (1964), 22 U.S.C. §§1643-1643k (1964), as amended, 79 Stat. 988 (1965)], the Commission is given jurisdiction over claims of nationals of the United States against the Government of Cuba. Section 503(a) of the Act provides that the Commission shall receive and determine in accordance with applicable substantive law, including international law, the amount and validity of claims by nationals of the United States against the Government of Cuba arising since January 1, 1959 for

losses resulting from the nationalization, expropriation, intervention or other taking of, or special measures directed against, property including any rights or interests therein owned wholly or partially, directly or indirectly at the time by nationals of the United States

Section 502(3) of the Act provides:

The term 'property' means any property, right, or interest including any leasehold interest, and debts owed by the Government of Cuba or by enterprises which have been nationalized, expropriated, intervened, or taken by the Government of Cuba and debts which are a charge on property which has been nationalized, expropriated, intervened, or taken by the Government of Cuba.

On the basis of the evidence of record, the Commission finds that claimant is, and since prior to October 13, 1960, has been the owner of 10 bonds in the original face amount of 1000 pesos and 3 bonds in the original face amount of 5000 pesos issued by the Consolidated Railroads of Cuba of an issue known as "3% Cumulative Income Debentures, due October 1, 2001", issued under an Indenture of February 1, 1953, with the United States Trust Company of New York as Trustee. The bonds in question are Nos. RM14718 thru RM14720, RM14764 thru RM14767, RM16761, RM1762 and RM18775 for the \$1000 bonds, and RV1008, RV1007, and RV1212 for the \$5000 bonds.

The Commission further finds that claimant is, and since prior to October 13, 1960, has been the owner of 2 Accrual Certificates, in the face amount of 2900 pesos and 5 Accrual Certificates in the face amount of 290 pesos each issued by the Consolidated Railroads of Cuba, pursuant to a corporate "Recapitalization Plan", effective February 11, 1953. The Accrual Certificates in question are Nos. NYR1086 and NYR1002 for the 2900 peso certificates and NYB0659 thru NYBU661, NYBU667 and NYBU675 for the 290 peso certificates.

The corporate "Recapitalization Plan" of the Consolidated Railroads of Cuba, adopted by vote of the stockholders of that company on February 11, 1953, provided for the deposit of all shares of 6% Cumulative Preferred stock in the company. In exchange for each share of preferred stock so deposited, the stockholder received the following:

(a) A 3% Cumulative Income Debenture, due in the year 2001, in the face amount of one hundred (100) pesos; and

(b) An accrual certificate, without specific maturity date, non-interest bearing, in the face amount of 29 pesos; and

(c) Cash in the net amount of 5.91 pesos after deduction of Cuban taxes.

As of October 1, 1952, the company owed accrued and unpaid dividends on its 6% Cumulative Preferred stock, and the exchange described above was chosen as the method of recapitalization. The time within which to deposit the preferred shares was extended from time to time, the final date for submission being June 15, 1954. As of that date, approximately 255,813 shares had been deposited out of a total of approximately 303,073 shares outstanding.

A different question is presented, however, with respect to claimant's accrual certificates in the face amounts of 2900 and 290 pesos:

Under the terms of the corporate Recapitalization Plan and of the accrual certificate itself, a new order of priority of payment was created, as to the obligations and preferred stock of the company. First in priority were the debts and other obligations of the company, including bonds. Second were the outstanding shares of preferred stock. Third in order, and on par with each other, were the accrual certificates and the accrued and unpaid dividends on the outstanding preferred stock. The holders of common stock were last in order of priority.

Evidence of record, and other information available to the Commission disclose that the value of the real property, equipment and other assets of the Consolidated Railroads of Cuba exceeded its total obligations on debts, bonds, preferred stock, accrual certificates, and accrued and unpaid preferred stock dividends.

The record discloses that Consolidated Railroads of Cuba (Ferrocarriles Consolidados de Cuba) was nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. This corporation was organized under the laws of Cuba and does not qualify as a corporate "National of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. Therefore, claimant is entitled to file this claim based upon the bonds and accrual certificates which represent debts of a nationalized enterprise within the purview of Section 502(3) of the Act. ((See Claim of Meyer Lobsenz, Claim No. CU-1005.)

Information available to the Commission established that the last payment of interest on the subject debenture was made on April 1, 1959; however, as of that date, the nationalized enterprise owed a total of 14.3% of the face amount of the debenture for prior accumulation of unpaid interest. Claimant therefore, sustained the loss of the face amount of 13 bonds, the 14.3% prior accumulation of interests on the bonds from April 1, 1959 to October 13, 1960, the date of nationalization, and the face amount of his accrual certificates.

As to the dollar value of the bonds, the interest, and the accrual certificates, all expressed in pesos, the Commission finds that the peso was valued at par with the dollar on the date of loss.

The Commission further finds that the total amount of unpaid indebtedness on claimant's bonds on October 13, 1960, the date of loss, was \$29,727.03 including the total principal amount of \$25,000.00; and interest due, to and including October 13, 1960 in the total amount of \$4,727.03; additionally, the Commission finds that the total value of 7 accrual certificates was \$7,250.00 on that date. Consequently, claimant's total loss was in the amount of \$36,977.03.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

The Commission has decided that in certification of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement. (See Claim of Lisle Corporation, Claim No. CU-0644).

Accordingly, the Commission concludes that the amount of the loss sustained by claimant shall be increased by interest thereon at the rate of 6% per annum from the dates on which the loss occurred, to the date on which provisions are made for the settlement thereof.

CU-0597

CERTIFICATION OF LOSS

The Commission certifies that BENJAMIN TURK suffered a loss, as a result of actions of the Government of Cuba, within the scope of Title V of the International Claims Settlement Act of 1949, as amended, in the amount of Thirty-Six Thousand Nine Hundred and Seventy-Seven Dollars and Three Cents (\$36,977.03) with interest thereon at 6% per annum from the date of loss to the date of settlement.

Dated at Washington, D.C.,
and entered as the Proposed
Decision of the Commission

MAY 29 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

NOTICE TO THE TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities or the loss here certified.

The statute does not provide for the payment of claims against the Government of Cuba. Provision is only made for the determination by the Commission of the validity and amounts of such claims. Section 501 of the statute specifically precludes any authorization for appropriations for payment of these claims. The Commission is required to certify its findings to the Secretary of State for possible use in future negotiations with the Government of Cuba.

NOTICE: Pursuant to the Regulations of the Commission, if no objections are filed within 15 days after service or receipt of notice of this Proposed Decision, the decision will be entered as the Final Decision of the Commission upon the expiration of 30 days after such service or receipt of notice, unless the Commission otherwise orders. (FCSC Reg., 45 C.F.R. 531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)