

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

IN THE MATTER OF THE CLAIM OF

A. M. JOY de PARDO

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-1906

Decision No. CU 4131

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 A. M. JOY de PARDO for \$6,966.00, and is based upon the asserted loss of a pension. The claimant, A. M. JOY de PARDO, has been a national of the United States since her birth on June 7, 1890.

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.

It is asserted by claimant that she was entitled to a pension of \$81.42 per month due from the Caja General de Jubilaciones y Pensiones de Empleados de Bancos de la Republica de Cuba (General Retirement and Pension Fund of Bank Employees in the Republic of Cuba). It is further asserted that as of February 1, 1960, no amounts on account of such pension right were received by claimant due to the prohibition by the Government of Cuba to transfer such amounts to claimant in the United States.

On the basis of original documentation submitted by claimant and other evidence of record, the Commission finds as follows:

(1) By a decision dated January 21, 1946, as amended by decisions of June 18, 1953, April 16, 1958, and December 1, 1958, the Caja General de Jubilaciones y Pensiones de Empleados de Bancos de la Republica de Cuba, hereafter referred to as the Fund, allowed a retirement pension to claimant.

(2) That the Fund was established by the Law of September 7, 1938, as amended by Law Decrees No. 797 of March 27, 1953, No. 879 of May 27, 1953, and No. 1211 of November 26, 1953; that it was administered by a Board of Directors consisting of seven members, two elected by the General Assembly of Bank Employees, three by the banks contributing to the Pension Fund, one by the General Assembly of Retirees and Pensioners, and a chairman, appointed by the Supreme Court of Cuba.

(3) The amount of the pension awarded to claimant was 85.71 pesos per month reduced by 5% in case the pensioner resided abroad. In view of such deductions, the original pension of 85.71 pesos was reduced to 81.42 pesos per month for that period of time during which the pensioner resided in the United States with the amount of the pension being transferred to the United States in dollars on par with the peso.

(4) Contributions to the Fund consisted of 5% of the employee's salary; or, if employed subsequent to the creation of the Fund, then his first month's salary, payable over 24 months; and the amount of any first month's salary increase. The bank's contribution consisted of 5% of total salaries. The percentage of contributions, in both instances, was increased to 6% in March, 1953.

The record includes the last available balance sheet dated December 31, 1957, which shows that as of that date the Fund had a net worth of 19,837,811.67 pesos.

On May 29, 1959, Law No. 351 was enacted which provided for the establishment of the Banco de Seguros Sociales de Cuba (Social Insurance Bank of Cuba) as an agency of the Government of Cuba to supervise and administer social insurance, as well as to direct the policy concerning all social security matters. The law also provided for the transfer of the assets and liabilities of all pension funds to the Banco de Seguros Sociales de Cuba. Information also shows that retired employees received their monthly retirement benefits (pensions) from the Banco de Seguros Sociales de Cuba up to the time of their departure from Cuba. After their departure from Cuba the benefits remained unpaid. On the basis of evidence of record the Commission finds that from February 1, 1960, and thereafter the Government of Cuba, refused to transfer any pension benefits to claimant, who was then residing in the United States.

The Commission has held that Cuban Law No. 568, on Foreign Exchange Control published on September 29, 1959, and the Cuban Government's implementation thereof by denying transfer of funds abroad, was not in reality a legitimate exercise of its sovereign authority to regulate its foreign exchange. Rather, the Commission concluded that the application of this law in that respect, constituted an intervention by the Government of Cuba

in the contractual rights of the claimant which, in effect, resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966].) Accordingly, the Commission finds that the refusal of the Government of Cuba to transfer retirement benefits to claimant constituted a taking of her property, effective February 1, 1960, within the purview of Section 503(a) of the Act, and her claim for the loss based upon such taking arose on that date.

The Commission has adopted as a basis for the valuation of annuities the Makehamized mortality table, appearing as Table 38 of United States Life Tables and Actuarial Tables 1939-41, and a 3-1/2% interest rate, compounded annually, as prescribed by United States Treasury Department regulations of June 24, 1958, for the collection of gift and estate taxes, respectively. (See 23 F.R. 4547, 26 C.F.R. 2031-7.) According to that method of valuation, the value of the annuity for a person of the age of 70 amounts to 7.8200 times the yearly sum of the annuity. Since on February 1, 1960, claimant was 70 years of age, the value of her discounted annuity on that date amounted to \$877.04 times 7.8200 or \$6,858.45, and the Commission finds that she sustained a loss within the purview of Title V of the Act in such latter amount.

The Commission has decided that in certification of losses 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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that A. M. JOY de PARDO, sustained 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 Six Thousand Eight Hundred Fifty-eight Dollars and Forty-five Cents (\$6,858.45) with interest at 6% per annum from February 1, 1960, the date of loss, to the date of settlement.

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

OCT 21 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, Commissioner

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).)

CU-1906