

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

IN THE MATTER OF THE CLAIM OF

DAVID O. AIKENHEAD

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -2756

Decision No. CU-0648

AMENDED PROPOSED DECISION

By Proposed Decision issued November 15, 1967, the Commission denied this claim for failure of proof. Since then, claimant has submitted additional evidence and the Proposed Decision is hereby amended.

Claimant, DAVID O. AIKENHEAD, who owned a First Mortgage bond issued by the Cuba Railroad Company, asserts a claim under Title V of the International Claims Settlement Act of 1949, as amended, against the Government of Cuba because of its nationalization of said Company.

In our decision entitled the Claim of Joseph Gans (Claim No. CU-1720 which we incorporate herein by reference), we held that the properties of the Railroad were nationalized or otherwise taken by the Government of Cuba on October 13, 1960, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per \$1,000 bond of \$492.86 including interest to October 13, 1960.

On the basis of evidence in the record in the instant case, the Commission finds that this claimant comes within the terms of the Gans decision; that he was an American national at the requisite times; that he has been the owner of one First Mortgage bond issued by the Cuba Railroad Company since prior to October 13, 1960; and that he suffered a loss in the amount of \$492.86 within the meaning of Title V of the Act. Further, the Commission finds that the amount of loss sustained shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960, the date of loss, to the

date on which provisions are made for the settlement thereof. (See Gans,  
supra.)

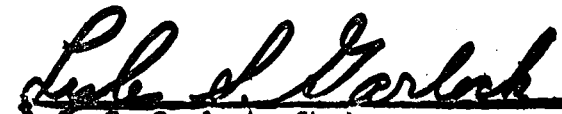
Accordingly the following Certification of Loss will be entered and in  
all other respects the Proposed Decision is affirmed.

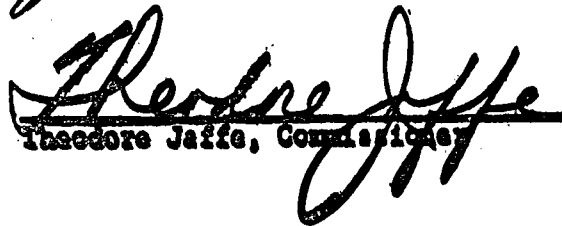
CERTIFICATION OF LOSS

The Commission certifies that DAVID O. AIKENHEAD 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 Four Hundred Ninety-Two Dollars and Eighty-Six Cents (\$492.86)  
with interest thereon at 6% per annum from October 13, 1960 to the date of  
settlement.

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

JUN 30 1971

  
\_\_\_\_\_  
Luke S. Garlock, Chairman

  
\_\_\_\_\_  
Theodore Jaffe, Commissioner

NOTICE TO 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 reten-  
tion 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 Amended  
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 (1970).)

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

IN THE MATTER OF THE CLAIM OF

DAVID O. AIKENHEAD

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU - 2756

Decision No. CU

648

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of \$460.00, was presented by DAVID O. AIKENHEAD and is based upon the asserted loss of certain bonds issued by the Cuban Railroad Company. Claimant has been a national of the United States since his birth in the United States.

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.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

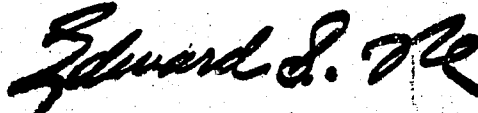
The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant states that he was the owner of a first mortgage bond issued by the Cuban Railroad Company and that the company, operating in Cuba, was nationalized by the Government of Cuba. Other than a certified copy of a birth certificate, no evidence has been submitted in support of this claim. By Commission letter of June 16, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. No response was received to this correspondence. On September 5, 1967, claimant was invited to submit any evidence available to him within forty-five (45) days from that date, and he was informed that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has been submitted.

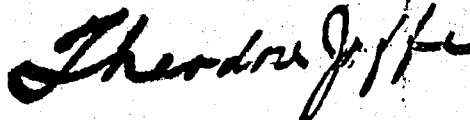
The Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or other taken by the Government of Cuba. Thus, the Commission is constrained to deny this claim and it is hereby denied. The Commission deems it unnecessary to make determinations with respect to other elements of the claim,

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

NOV 15 1967



Edward D. Re, Chairman



Theodore Jaffe, Commissioner



LaVern R. Dilweg, Commissioner

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-2756