

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

IN THE MATTER OF THE CLAIM OF

JAMES S. BALESH

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-3267

Decision No. CU -680

AMENDED PROPOSED DECISION

By Proposed Decision dated November 15, 1967, the Commission denied this claim for the reason that claimant had not established his United States nationality or his ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Claimant objected to the Proposed Decision and submitted additional evidence in support of his claim. Upon consideration of the new evidence, it is

ORDERED that the Proposed Decision be amended to read as follows:

On the basis of the entire record, the Commission now finds that JAMES S. BALESH, a United States national since birth, has been the owner of the following securities since prior to October 13, 1960:

1. Bond No. M10279 in the original face amount of \$1,000.00 issued by the Cuba Northern Railways Company and known as "First Mortgage Gold Bonds, 4%, due June 30, 1970 (originally First Mortgage Gold Bonds, 5-1/2%, due June 1, 1942), issued under an Indenture of July 1, 1927, with the First National City Bank of New York as Trustee;

2. Bonds Nos. TRM 101 and TRM 102 in the original face amount of \$2,000.00, issued by the Cuba Railroad Company, and known as "First Lien and Refunding Bonds, Series A, 4%, due June 30, 1970" issued under an Indenture of March 10, 1922 and a Supplemental Indenture dated July 1, 1952, with the First National City Bank of New York as Successor Trustee; and

3. Bond No. TRM 32 in the original face amount of \$1,000.00 issued by the Cuba Railroad Company, and known as "First Lien and Refunding Bonds, Series B, 4%, due June 30, 1970" issued under Supplemental Indentures of June 2, 1926 and July 1, 1952, with the First National City Bank of New York as Successor Trustee.

The Cuba Railroad Company, incorporated in the State of New Jersey, was wholly owned by Consolidated Railroads of Cuba (Ferrocarriles Consolidados de Cuba), a Cuban corporation. The Cuba Railroad Company thus would not qualify as a national of the United States under Section 502(1) of the Act which defines the term "national of the United States" as including "(B) a corporation or other legal entity which is organized under the laws of the United States, or of any State, the District of Columbia, or the Commonwealth of Puerto Rico, if natural persons who are citizens of the United States own, directly or indirectly, 50 per centum or more of the outstanding capital stock or other beneficial interest of such corporation or entity."

Consolidated Railroads of Cuba also owned Cuba Northern Railways Company (Ferrocarriles Del Norte de Cuba), a Cuban corporation. The latter in turn owned the majority interest in Guantanamo and Western Railroad Company (Cia. Ferrocarrilera de Guantanamo y Occidente), incorporated in the State of Maine. Thus, none of these railroads qualify as a national of the United States under Section 502(1) of the Act.

The record reflects that on April 4, 1933, Cuba declared a moratorium on mortgage indebtedness, which was later extended to June 1942. On June 4, 1940 a new Cuban Constitution was adopted, having certain "Transitory Provisions" which extended the maturity date on mortgage indebtedness in excess of \$800,000 to June 30, 1970 and provided for interest at 1% and amortization by certain annual installments.

The Cuba Railroad Company, by Indenture dated March 10, 1922, and Supplemental Indentures dated June 2, 1926 and July 1, 1952, issued Dollar bonds secured by mortgage upon the real property of the Company. By the Supplemental Indenture of July 1, 1952, the bonds were re-issued as 4% bonds, due June 30, 1970. As of 1952, the outstanding principal balance on each \$1,000.00 bond was \$635.00, with interest at 4% per annum to be paid on the principal balance.

The record discloses that the last payment of interest on the bonds was made on December 1, 1958. The properties of the Cuba Railroad Company were listed as nationalized in Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. Claimant's Cuba Railroad Company bonds, therefore, represented debts which were a charge upon nationalized property, as defined in Section 502(3) of the Act.

The Commission concludes that as a result of the nationalization of the properties of the Cuba Railroad Company, claimant suffered a loss in connection with his bonds within the meaning of Title V of the Act. (See Claim of Albert I. Harris, Claim No. CU-2398.)

The Commission finds that the total amount of the unpaid indebtedness on claimant's Cuba Railroad Company bonds was \$2,047.68, including the principal amounts of \$635.00 on each bond, and the interest due on each bond from December 1, 1958 through October 13, 1960, in the amount of \$47.56.

With respect to his bond issued by Cuba Northern Railways Company, in 1952, pursuant to a "Plan for Readjustment of Bonded Debt of the Company", claimant surrendered his 5-1/2% Gold Bond and received, in exchange, a First Mortgage Gold Bond, 4%, due June 30, 1970. The

interest on this bond was payable on June 1 and December 1 of each year. The last payment of interest on the bond was made on December 1, 1958.

The record shows that Cuba Northern Railways Company was nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. Claimant's bond, therefore, represented the debt of a nationalized enterprise as defined in Section 502(3) of the Act (supra).

The Commission concludes that as a result of the nationalization of the properties of the Cuba Northern Railways Company, claimant suffered a loss in connection with his bond, within the meaning of Title V of the Act. (See Claim of Kentucky Home Mutual Life Insurance Company, Claim No. CU-1339.)

Evidence of record establishes that the Cuba Northern Railways Company bond had an outstanding principal balance of \$635.00 on October 13, 1960, the date of loss.

The Commission therefore finds that the amount of the unpaid indebtedness on claimant's Cuba Northern Railways Company bond on October 13, 1960, the date of loss, was \$682.56, including the principal amount of \$635.00, and the interest due on the bond in the amount of \$47.56 for the period December 1, 1958 to October 13, 1960. Thus, the total loss sustained by claimant amounted to \$2,730.24.

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 Claim of Lisle Corporation, Claim No. CU-0644.)

Accordingly, the Commission concludes that the amount of loss sustained by claimant shall be increased by interest thereon at the

rate of 6% per annum from October 13, 1960, the date of loss on each bond, to the date on which provisions are made for settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that JAMES S. BALESH 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 Two Thousand Seven Hundred Thirty Dollars and Twenty-Four Cents (\$2,730.24) 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 Proposed  
Decision of the Commission

APR 10 1968

*Leonard v. B. Sutton*

Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

Theodore Jaffe, 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 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, 32 Fed. Reg. 412-13 (1967).)

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 TO TREASURY DEPARTMENT: The above listed bonds may have been returned to claimant and no payment should be made until they are resubmitted.

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IN THE MATTER OF THE CLAIM OF

JAMES S. BALESH

Under the International Claims Settlement  
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Claim No. CU-3267

Decision No. CU -680

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 \$4,000.00, was presented by JAMES S. BALESH and is based upon an asserted loss sustained in connection with bonds of the Cuba Railroad Company and the Cuba Northern Railroad Company, both of Havana, Cuba. Claimant stated that he has been a national of the United States since birth.

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).)

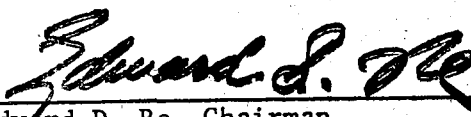
Claimant states that he owned, on May 3, 1967, the date the claim was filed, a \$1,000.00 bond issued by the Cuba Northern Railroad Company and a \$3,000.00 bond issued by the Cuba Railroad.

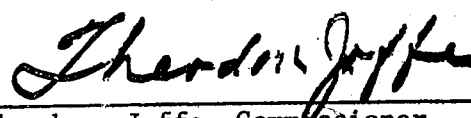
By Commission letter of July 31, 1967, claimant was advised as to the type of evidence proper for submission to establish this claim under the Act. Thereafter, on September 22, 1967, claimant was invited to submit any evidence available to him within 45 days from that date, and he was informed, that, absent such evidence, it might become necessary to determine the claim on the basis of the existing record. No evidence has since 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 otherwise 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

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