

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

STEPHEN K. SOMLYO-SWIFT
5020 Montrose Road
Houston, Texas

Claim No. CZ-3,823

Decision No. CZ-3378

Under the International Claims Settlement
Act of 1949, as amended

Counsel for Claimant:

Doman & Ablondi
295 Madison Avenue
New York 17, New York

FINAL DECISION

On May 16, 1962, the Commission issued its Proposed Decision, granting an award to claimant in the principal amount of \$76,940.00 plus interest in the amount of \$44,342.83 for the loss of his stockholder's interest in two local railroads in Czechoslovakia, the Miestna zeleznica Cadca-Makov uc. spol. and the Miestna zeleznica Tepla-Nemsova-Lednicke Rovne uc. spol. which were nationalized by the Government of Czechoslovakia. The remainder of the claim, based upon certain uncollected priority dividends for the years 1941-1948 was denied.

Claimant filed objections to the Proposed Decision and a hearing was held thereon before the Commission on June 28, 1962. Due consideration having been given to the entire record and the brief submitted, the Commission now finds as follows:

The "unpaid priority dividends" actually constituted rentals due from the Government of Czechoslovakia to the railroad corporations and therefore, were assets of the corporations. As such, these assets were nationalized by the Government of Czechoslovakia along with all other assets of the corporations and should be considered in the determination of the value of the corporate stock.

The Government of Czechoslovakia was obligated to pay 5% of the capitalization for the use of the railroads. Since each share of stock of the corporations in question had a par value of 200 koruna, the 5% amounted to 10 koruna per annum, or 70 koruna for the seven year period of 1941 to 1948. Applying the rate of exchange of \$.02 per koruna, prevailing in 1948 when nationalization took place, the corporations' loss concerning unpaid rent amounted to \$1.40 per share. Having taken the loss of this additional asset into consideration, the Commission finds that each share of the stock of the Miestna zeleznica Cadca-Makov uc. spol. had a value of Six Dollars and Forty Cents (\$6.40) on December 30, 1948, the date when the corporations were nationalized. Since claimant owned 7231 shares of the first and 8157 shares of the second corporation, the Commission finds that claimant's loss amounted to \$98,483.20.

Accordingly, it is

ORDERED that the Proposed Decision be amended to conform with the foregoing, the award being restated as follows:

A W A R D

An award is hereby made to STEPHEN K. SOMLYO-SWIFT in the principal amount of Ninety-eight Thousand Four Hundred Eighty-three Dollars and Twenty Cents (\$98,483.20), plus interest thereon at the rate of 6% per annum from December 30, 1948 to August 8, 1958, the effective date of Title IV of the Act, in the amount of Fifty-six Thousand Seven Hundred Fifty-eight Dollars and Eighty-two Cents (\$56,758.82), for a total award of One Hundred Fifty-five Thousand Two Hundred Forty-two Dollars and Two Cents (\$155,242.02).

It is further

ORDERED that the award granted herein be certified to the
Secretary of the Treasury.

Dated at Washington, D. C.

AUG 15 1962

Edward J. De
Theodore Joffe
LaVern R. Diweg

COMMISSIONERS

FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

STEPHEN K. SOMLYO-SWIFT
5020 Montrose Road
Houston, Texas

Claim No. CZ-3823

Decision No. CZ-

Under the International Claims Settlement
Act of 1949, as amended

Counsel for Claimant:

Doman & Ablondi
Attorneys at Law
295 Madison Avenue
New York 17, New York

PROPOSED DECISION

This is a claim against the Government of Czechoslovakia under Section 404, Title IV, of the International Claims Settlement Act of 1949, as amended, in the amount of \$123,528.91 by STEPHEN K. SOMLYO-SWIFT, a national of the United States by naturalization on July 7, 1938. The claim is based upon the asserted nationalization of the corporations Miestna zeleznica Cadca-Makov uc. spol. and Miestna zeleznica Tepla-Nemsova-Lednicke Rovne uc. spol., and upon assertedly confiscated uncollected priority dividends for the years 1941-1948, in the names of the railroads (the corporations) but the property of the claimant.

Section 404 of the Act provides, inter alia, for the determination by the Commission in accordance with applicable substantive law, including international law, of the validity and amount of claims by nationals of the United States against the Government of Czechoslovakia for losses resulting from the nationalization or other taking on and after January 1, 1945, of property including any rights or interests therein owned at the time by nationals of the United States.

The record shows that pursuant to the instructions of the Penzintezeti Kozpont in Budapest, Hungary, 7231 preferred shares of the Miestna zeleznica Cadca-Makov uc. spol. and 8157 preferred shares of

the Miestna zeleznica Tepla-Nemsova-Lednicke Rovne uc. spol. were deposited as claimant's property on January 15, 1947 with the Bratislavska I. sporiva banka uc. spol., Czechoslovakia. The Commission finds that the shares of stock in question remained on deposit in claimant's favor on December 30, 1948 when the corporations in question were nationalized by the Government of Czechoslovakia without compensation pursuant to Law 311/48 Sb.

In computing the value of the stock of Czechoslovak corporations at the time of their nationalization, it being impossible to make on-the-spot appraisals, the Commission has considered financial data from Compass, Financialles Jahrbuch 1942 ^{1/} (pp. 1214-1215 and 1225-1226), balance sheets and operating statements. On the basis of all the evidence and information available, the Commission finds that the value of the stock of Miestna zeleznica Cadca-Makov uc. spol. as well as of Miestna zeleznica Tepla-Nemsova-Lednicke Rovne uc. spol. was Five Dollars (\$5) per share.

The Commission finds, therefore, that the value of claimant's stock interest in the two corporations in question was \$76,940.00, and concludes that claimant is entitled to compensation for such loss under Section 404 of the Act.

The remainder of the claim is based upon assertedly confiscated uncollected priority dividends for the years 1941-1948, seven years, in the names of the corporations but the property of the claimant.

Both corporations owned local railroads, managed and used by the Government of Czechoslovakia up to the date of nationalization. The Government of Czechoslovakia had contracted to turn over a percentage of the net profits to the corporations, but not less than the amount required to pay the annual dividends due to holders of preferred shares. A failure of the Government of Czechoslovakia to pay the corporations the amounts necessary to pay dividends for the seven years immediately preceding the nationalization of the corporations, however, would not constitute a taking of

^{1/} Compassverlag Ges.m.b.H., Prag-Weinberge, 13 Slezska

property within the scope of Section 404 of the Act. Nor, if adequate payments were made by the government, would a failure of the corporations to declare and pay dividends to stockholders give rise to a separate compensable claim under the Act.

The legislative history of Title IV of the aforesaid Act indicates that Congress did not intend to include compensation of creditor claims for the non-payment of debts, unless a specific action of the Government of Czechoslovakia shows that such creditors' rights were annulled, abolished or cancelled. Representatives of the Department of State testified before both houses of Congress that it was not the intention of the Government of the United States to include in a future agreement with Czechoslovakia payment of creditor claims, and that the draft legislation before Congress which was subsequently enacted into law does not direct payment of such claims.^{2/} Since claimant failed to establish that the indebtedness in question was annulled, abolished or cancelled by the Government of Czechoslovakia, the portion of the claim which is based upon claimant's interest in dividends, due for the years immediately preceding the nationalization of the corporation in question, is hereby denied. In any event, the amount of the award herein is based upon the Commission's findings as to the net value of the assets of the corporations at the time of nationalization. Accordingly, a separate award for unpaid dividends would be offset by a corresponding decrease in the net value of assets.

The Commission finds it unnecessary to make determinations with respect to other elements of the claim.

A W A R D

Pursuant to the provisions of Title IV of the International Claims Settlement Act of 1949, as amended, this claim is allowed in part and an award is hereby made to STEPHEN K. SOMLYO-SWIFT in the principal

^{2/} Hearing before the Committee on Foreign Relations, United States Senate, 85th Congress, Second Session, on S. 3557; page 18; Hearing before the Sub-Committee on Foreign Economic Policy of the Committee on Foreign Affairs, United States House of Representatives, 85th Congress, Second Session, on H.R. 11340, S. 3557, and S. 979, page 31.

amount of Seventy-Six Thousand Nine Hundred Forty Dollars (\$76,940.00), plus interest thereon at the rate of 6% per annum from December 30, 1948 to August 8, 1958, the effective date of Title IV of the Act, in the amount of Forty-Four Thousand Three Hundred Forty-Two Dollars and Eighty-Three Cents (\$44,342.83), for a total award of One Hundred Twenty-One Thousand Two Hundred Eighty-Two Dollars and Eighty-Three Cents (\$121,282.83).

Dated at Washington, D. C.

BY DIRECTION OF THE COMMISSION:

MAY 16 1962



Francis T. Masterson
Clerk of the Commission

MAY 16 1962