

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

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In the Matter of the Claims of

RALPH M. WYMAN  
434 North Street  
Greenwich, Connecticut

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Claim No. CZ-4345

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Decision No. CZ-2771

HENRY W. WYMAN  
P. O. Box 128  
Rye, New York

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:  
Claim No. CZ-4350

:  
Decision No. CZ-2775

RUTH L. RUSSELL  
5025 Arlington Avenue  
Riverdale, New York

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:  
:  
Claim No. CZ-4353

:  
Decision No. CZ-2772

FRANK H. WYMAN  
730 Park Avenue  
New York 22, New York

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:  
Claim No. CZ-4355

:  
Decision No. CZ-2773

ELLA WYMAN  
C/o Frank H. Wyman  
375 Park Avenue  
New York 22, New York

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Claim No. CZ-4356

:  
Decision No CZ-2774

Under the International Claims Settlement  
Act of 1949, as amended

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Counsel for Claimants:

Gardner, Morrison & Rogers  
Suite 1126 Woodward Building  
Washington 5, D. C.

FINAL DECISION

The Commission issued its Proposed Decisions on these claims on October 18, 1961. The claims were based upon interests in an enterprise known as "Brucher Kohlenwerke, A. G." (Brucher). The record before the Commission shows that during the war the assets of this corporation were merged into a corporation known as "Sudetenlaendische Bergbau, A.G." (Subag) which latter corporation was nationalized by the Government of Czechoslovakia pursuant to the provisions of Decree 100/45. The Commission's Proposed Decisions denied the claims on the ground that under the provisions of Decree No. 100 the nationalization occurred on October 27, 1945, a date prior to the dates that the various claimants herein acquired United States nationality. Copies of the Proposed Decisions were served on the claimants.

At the request of the claimants a hearing was held on January 11, 1962. Full consideration having been given to the objections of the claimants and to the arguments, both written and oral, of their counsel and of other counsel on the same issues, the Commission is of the opinion that the denials must be affirmed.

The various contentions which have been made may be summarized as follows: First, that Decree 100/45 was not self-executing, but declaratory only, merely setting up procedures for nationalization, and did not in itself create a loss nor nationalize properties, nor take the corporate stock nor render it valueless;

Second, that ownership of corporate assets did not pass to the State until the property was transferred to a national enterprise, and that this was not sooner than January 1, 1946, urging that Decree 100 contained provisions in Sections 27, 28 and 29 prohibiting the "owners of property subject to nationalization, while continuing to manage the property, from diverting profits or assets, and requiring an accounting for transactions in the interim" which indicate title had not passed; that decrees creating national enterprises invariably provided that the net value of the property which the national enterprise takes over as on January 1, 1946 is its basic property, concluding that gains and losses during the period from October 27, 1945 until the date the property is taken over accrue to the benefit or detriment of the owner and that it would "naturally follow that the former owner should pay income taxes on the interim income." Further, it has been said in support of this contention that paragraph 41 of Decree 100, as amended, provided that earnings (income) from a nationalized enterprise up to the day of its taking over are part and parcel of the basis of assessment of taxes of the last owner of the nationalized enterprise prior to its nationalization;

Third, that upon transfer of the property to a national enterprise, which it is contended was usually in March, 1946, as of January 1, 1946, the corporation became the owner of a claim for compensation, which is property within the meaning of the Act, that the promise to pay in bonds



was made by a democratic government in good faith, with intent to honor the obligation under international law to make prompt, adequate and effective payment, and that this was substitution of one property right for another; and was a nationalization without loss;

Fourth, that the promise to pay was breached only with the advent of the Communist regime in 1948 which "rejected its obligations under international law and in effect confiscated these claims for compensation", by non-payment of the promised bonds, urging that this was a loss compensable under the Act, being a form of "other taking", and that therefore the claimants would be entitled to recover under Section 406(b) inasmuch as an asset of the corporation was thus taken when the claimants had become United States nationals--the corporation being ineligible to file claim as a non-national;

Fifth, that the stock certificates were not valueless as a result of the nationalization of the corporate assets; that the value of the shares reflected the potential right to compensation which the corporation possessed; that in some instances compensation was paid by the Government of Czechoslovakia; that moreover, a Czechoslovakian corporation could own assets outside of Czechoslovakia represented by the stock; that the stock had value until it was taken either on December 21, 1949, by Government termination of restitution proceedings, or by virtue of the provisions of Law 41/53 Sb.

It has also been urged that nationalization was not effective pending the outcome of any restitution proceedings, and that title did not pass to the State until a national administrator was removed.

The Commission considers it desirable at this point to clarify steps and terms used in connection with the Czechoslovakian nationalization programs. Nationalization is generally defined as seizure of property with intent to promote a planned economy of socialism generally with promise of payment in the future. After the re-entry to Czechoslovakia of Dr. Eduard Benes in March, 1945, the Provincial Government was



established at Kosice on April 3, 1945. Dr. Benes and Zdenek Fierlinger, the first premier, had worked out a program of highly socialized economy and a national state without privileged minorities.

One of the first Decrees enacted was No. 5 of May 19, 1945, which provided, among other things, that transfers of property were invalid if concluded after September 29, 1938, under pressure of the occupation or persecution, thus stating a recognition of an established principle that the occupant cannot transfer title to private property; and further, Decree 5 provided for state administration of concerns where the needs of the State demanded it. Under Law 128/46 provision was made for claiming restitution of such property as was still under national administration. The Commission has found that when such property (not nationalized or confiscated) still under national administration, was not returned by December 21, 1949, a taking occurred as of that date-- the date when restitution proceedings, not previously concluded, were suspended was in December 1949 and instructions to that effect were received by local officials on or about December 21, 1949.

The Kosice program further declared that the entire system of money and credit, key industrial enterprises, the insurance system and natural and power-producing resources should be placed under the general management of the government to the reconstruction of national economy and the renewal of production and trade.

Thereafter the Czechoslovakian Government passed a series of nationalization decrees, including No. 100, which was enacted on October 24, 1945 and published on October 27, 1945. This decree effected nationalization of all mines, and mining rights, and a number of industries. The Decree provided for compensation, in applicable cases, in the form of interest bearing securities to be redeemed from the excess profits of the nationalized enterprise. The Government of Czechoslovakia anticipated various dispositions of enterprises taken. The properties so taken were most frequently to be used to set up National Enterprises, the property of the State. Many enterprises of one pursuit were to be transferred to a



particular National Enterprise which would henceforth carry on that industry. Accordingly, it will be seen that the property of a concern might be nationalized under Decree 100; the announcement of the name of the concern would follow; thereafter its properties would be assigned to a National Enterprise. The National Enterprise itself was conceded the status of an independent person and so entered in the Registry. Some nationalized businesses were liquidated as superfluous to the economy, whereas others simply remained in Government ownership, under the control of a Ministry or other organ of the Government.

In February 1948, the Communists took over the reins of Government in Czechoslovakia. On April 28, 1948, and on subsequent dates, the Government of Czechoslovakia enacted legislation for the nationalization of most of the remaining privately-owned economic enterprises. Most of these laws specifically provided that the concerns and enterprises affected passed into State ownership retroactively as of January 1, 1948. Additionally, Law 116 of June 2, 1948 republished Decree 100 of 1945, as amended by Law 114/48.

The record shows, in connection with "Brucher", that it was confiscated by Germany in 1939 and on October 1, 1940 incorporated into a large coal combine established by Germany under the name of "Sudetenlaendische Bergbau A.G." This German combine consisted of approximately 20 former mining companies in the Sudeten territory. At that time, the German administrator who made the forced sale of Brucher stock to Subag, received RM 6,000,000 a portion of which he invested in 3-1/2% German Treasury Bonds, which were deposited in Germany.

After the liberation of Czechoslovakia, the German combine was placed under national administration pursuant to Decree No. 5/1945 of May 19, 1945. On October 27, 1945, the Government of Czechoslovakia published Decree No. 100/1945 nationalizing the coal mines and certain other industrial enterprises. On December 1, 1945, the Czechoslovak Ministry of Industry published an Announcement No. 442, dated November 29, 1945, stating that effective October 27, 1945, among 124 mining enterprises, Sudetenlaendische Bergbau A. G. was nationalized.

On March 23, 1946, an Announcement No. 822 of the Ministry of Industry was published, dated March 7, 1946, in which public notice was given that a Government enterprise named "Severoceske Hneudouhelne Doly Narodni Podnik (North Bohemian Bituminous Coal Mines National Enterprise) was established and that it consisted of 33 coal mines which had been previously nationalized. Among the 33 coal mines is listed the Sudetenlaendische Bergbau A. G. The announcement determines, among other things, the effective date of transfer of the nationalized companies to the newly established National Enterprise as January 1, 1946.

In none of the Czechoslovakian announcements is listed the Bruch Coal Mine Works, Inc., obviously because these works had been absorbed into the Sudetenlaendische Bergbau A.G., in 1940, had ceased to exist as an independent company, and its assets were effectively nationalized pursuant to Decree 100/45, effective October 27, 1945, with Sudetenlaendische.

In May 1960, the German Federal Republic converted the aforementioned German Treasury Bonds into 4% German Federal Republic debentures, which were delivered to the Brucher shareholders. The Commission found that this represented only a portion of the value of the Brucher assets.

An examination of Decree 100/1945 reveals that the only reference to a date of transfer of title to the State of Czechoslovakia for a nationalized enterprise is contained in Section 1, which reads in part: "On the date of promulgation of this Decree, the State takes over by nationalization. . ." The date of promulgation was October 27, 1945. Accordingly, the Commission finds that the Brucher assets, subject of these claims were nationalized on October 27, 1945, the effective date of Decree 100/45.



A subsequent transfer to a national enterprise of property already nationalized under Decree 100 does not change the date of taking, this transfer being merely a change in control of the property within the State; whether a new administrator was appointed or the old administrator retained does not alter the fact of State ownership since October 27, 1945. Moreover, it is to be noted that property of a nationalized enterprise was not necessarily transferred from the general ownership of the State to the ownership of a National Enterprise. An enterprise might be liquidated, or left under the supervision of a Government Ministry for operation. Further, the effective date of taking under Decree 100, October 27, 1945, was not stayed by proceedings for restitution of property. Indeed, the effect of such proceedings, when concluded favorably to a petitioner whose property had been nationalized, was merely to determine that he was entitled to compensation under Czechoslovakian law.

The Commission further finds that the requirement, in Section 29 of Decree 100, that the manager of the nationalized enterprise keep a record of assets and liabilities up to December 31, 1945, does not change the effective date of nationalization from October 27, 1945 to December 31, 1945 or January 1, 1946. Neither does it follow from the setting of January 1, 1946, or any other date, as the opening date for the books of the National Enterprise (Section 8), that gains and losses from October 27, 1945, accrued to the former owner of the nationalized business.

Similarly, the Commission finds that under Section 41 of Decree 100 as amended and republished, former owners are taxed on all 1945 profits or income which they "obtained from" the nationalized enterprise, but not on all 1945 profits of the enterprise. Under this provision the former owners were liable for taxes on income received after nationalization, such as income in the form of salary while in the status of a government employee, this does not serve to change the effective date of taking



from October 27, 1945. For that portion of the year preceding October 27, 1945, the taxable income could take the form of salaries, bonuses, dividends, etc., actually received. Such former owner is not responsible for taxes on the profits of the enterprise subsequent to the nationalization date of October 27, 1945. For this period of October 27, 1945, through December 31, 1945, the tax would be based on the reasonable salary (fixed by the Ministry of Industry) which may have been paid to any former owner who operated the enterprise as a representative of the government during the period pending its transfer to a national enterprise, as required by Section 37 of Decree 100/45.

The Commission is not persuaded by the argument that in view of the provisions of Decree 100/45 promising compensation to a corporation whose property was taken, there was no loss to the stockholders on the date of nationalization and no claim arising under international law at that time. If an offer of compensation is inadequate, the law is in effect confiscatory. A promise to pay in bonds to be redeemed from excess profits of the enterprise which bonds were never issued, and therefore not accepted, coupled with an inability to pay due to the disrupted economy of the country, does not satisfy the obligation for prompt, adequate and effective payment. Inasmuch as the promised compensation was illusory, the Commission concludes that the offer in Decree 100 to pay in bonds cannot be given effect. The effective date of nationalization under the specific decree was October 27, 1945, and in view of the requirements of Section 405 of the Act, a stockholder in a corporation whose assets were taken under that decree must have been a national of the United States on that date, if he is to receive compensation as a claimant under the Act for the loss resulting from the nationalization. Subsequent acquisition of United States nationality will not suffice, even though it be followed by a taking by the Government of Czechoslovakia of the stock certificates, since their value as measured by the worth of the enterprise taken on October 27, 1945, was lost on that date.



As a result of nationalization of the corporate assets, the shares of stock became worthless, so far as Czechoslovakian assets were concerned, on the date of such nationalization and Law 41/53 merely declared this fact. In the instant cases, the subject stock, after October 27, 1945, the effective date of the nationalization, was no longer "property, including any rights or interests therein" within the meaning of the Act. The Commission is not persuaded that the stock certificates remained valuable because of part payments which may have been made on other nationalization claims evidenced by such certificates. Further, the use of such stock certificates of nationalized corporations to "pay" taxes was merely a "set-off" of some part of the claim for compensation, against taxes due to the Czechoslovakian State, from whatever source. The property having been nationalized effective October 27, 1945, was not subject to restitution by December 21, 1949, and as stated above, the certificates became worthless on October 27, 1945.

In view of the foregoing, it must be concluded that no basis can be found in the Czechoslovak decrees and laws that the Brucher assets were nationalized on January 1, 1946, or that the claimants' loss arose on any later date. To the contrary, all pertinent legal provisions indicate that the said mining company was nationalized in the same manner and on the same date as all other mining companies in Czechoslovakia, namely on October 27, 1945.

For all of the foregoing reasons it is

ORDERED that the Proposed Decision be affirmed as the Commission's Final Decision, and the claims are denied.

Dated at Washington, D. C.

SEP 14 1962

*Edward J. De*  
*Theodore Joffe*  
*Laven R. Diweg*

COMMISSIONERS