

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

IN THE MATTER OF THE CLAIM OF

WALTER ROBERT MUNK
65 Old Mamaroneck Road
White Plains, New York

Claim No. CZ-2,619

Decision No. CZ-3530

Under the International Claims Settlement
Act of 1949, as amended

Counsel for Claimant:

Donovan, Leisure, Newton & Irvine
Two Wall Street
New York 5, New York

FINAL DECISION

By Proposed Decision dated June 29, 1962, this claim, based upon the nationalization of the "Vitkovice Mines, Iron and Steelworks Corporation" (hereinafter called Czechoslovak corporation) in which claimant owned an interest, was denied for the reason that the award by the British Foreign Compensation Commission was found to have been in full settlement and discharge of the claims by all owners of such interests on account of the nationalization of this corporation.

Claimant filed objections to the Proposed Decision and a hearing was duly held on August 13, 1962.

The Commission has carefully considered the entire record including claimant's objections and the evidence and arguments presented at the hearing and the record in the claim of Eugene de Rothschild, Claim No. CZ-3,633, which, in part, likewise involves an interest in the Czechoslovak corporation.

The record shows that in 1937, the owners of all the kuxen (a kuxe is an interest in a Czechoslovak mining corporation) of the Czechoslovak corporation transferred their interests therein to Alliance Assurance Company, Ltd., a British corporation, hereafter referred to as Trustee, under a Deed of Covenant dated May 6, 1937, whereby the Trustee issued

500,000 participation certificates evidencing the 100% ownership of the Czechoslovak corporation. Each certificate represented a 1/500,000 interest in the Czechoslovak corporation.

The Deed of Covenant, a copy of which is on file, provides, among other things, that:

(a) Any moneys received by Trustee on account of the shares of the Czechoslovak corporation by way of dividends, bonuses or otherwise shall be distributed to certificate holders in accordance with their respective interests upon surrender of said certificates. (Paragraph 4)

(b) Trustee shall for the duration of the trust possess and be entitled to exercise all or any of the rights of the owners or shareholders of the Czechoslovak corporation. (Paragraph 10)

On September 28, 1949 Great Britain and Czechoslovakia entered into an agreement pursuant to which all claims of nationals of Great Britain against the Government of Czechoslovakia were fully settled and discharged.^{1/} The record shows that the Trustee, acting on behalf of claimant and all other owners of the Czechoslovak corporation and with their full authority (Paragraph 10 of Deed of Covenant), filed a claim for the nationalization of the Czechoslovak corporation with the British Foreign Compensation Commission under the terms of the Anglo-Czechoslovak Compensation Agreement of 1949. In compliance with Czechoslovakian Decree No. 95/45 of October 20, 1945, the Trustee was required to, and did, deposit all kuxen with the London Office of the Anglo-Prague Credit Bank and received a deposit receipt for same. The deposit receipt issued by the bank was, in turn, submitted by the Trustee to the British Foreign Compensation Commission, for delivery to the Secretary of State after final payment has been made on Czechoslovakian claims. After that, the agreement requires delivery of the title documents to the Czechoslovakian Government.

^{1/} Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Czechoslovak Republic regarding compensation for British property rights and interests affected by Czechoslovak measures of nationalization, expropriation and dispossession.

Thus, the Trustee, with full authority of the claimant and other owners, elected to file with the British Foreign Compensation Commission for an award to constitute full settlement of the claim, and surrendered the indicia of ownership in order to do so. The fact that funds available under the agreement may not be sufficient for payment in full of the award (a fact undoubtedly known to claimant at the time of filing), does not alter the fact that the ownership interest was surrendered for such compensation as could be obtained under the British agreement. The Commission is of the opinion that since the Trustee elected to prosecute a claim for the taking of the property herein by availing itself of the Anglo-Czechoslovak Compensation Agreement of 1949, and succeeded in obtaining an award for the total loss sustained on account of the nationalization of the Czechoslovak corporation, the owners of all interests in and with respect to the Czechoslovak corporation are bound by the action of the Trustee.

The record shows that claimant owned 1,350 participation certificates issued by the said Trustee.

It is not disputed (1) that the award to the Trustee represented the 100% interest of the stockholders in the Czechoslovak corporation and (2) that the Trustee acted on behalf of such stockholders in presenting the stockholders' claim before the British Foreign Compensation Commission.

Claimant states that he has received only the sum of \$19,359.87 from the Trustee and that he is entitled to an award under Section 404 of the Act for the difference between that amount and the amount of his asserted loss (the value of his interest in the Czechoslovak corporation at the time of its nationalization).

It appears that the award to the Trustee, which included claimant's interest in the Czechoslovak corporation, settled in full his claim against the Government of Czechoslovakia, and that the liability of the Government of Czechoslovakia to pay compensation for the nationalization of the Czechoslovak corporation was fully discharged by the award granted to the Trustee. In this connection, the Commission is advised that payments by

the Government of Czechoslovakia to Great Britain are to be made over a period of years and as each payment is made, further distributions are effected to the English awardees. This is evidenced by statements made by the claimant. When claimant filed his original claim with the Commission he stated that he had received \$18,483.30 and under date of July 18, 1960 he informed the Commission that, on March 2, 1960, he received a further amount of \$876.57 from the Trustee "representing a further distribution of money received from the Foreign Compensation Commission in London." It appears that claimant may receive further payments from the Trustee.

Thus, the circumstances disclosed by the record are, namely, the transfer of the kuxen in the Czechoslovak corporation to the Trustee in 1937, the Deed of Covenant under which the Trustee acted on behalf of all owners, the subsequent deposit of the kuxen by the Trustee with the London agents of the Czechoslovak authorities, the claim filed by the Trustee pursuant to the Anglo-Czechoslovak Compensation Agreement of 1949, and the award granted by the British Foreign Compensation Commission to the Trustee. The Commission finds that such award was in full settlement and discharge of all claims owned by this claimant on account of the nationalization of the Czechoslovak corporation.

Therefore, the Commission finds that at the time this claim was filed the claimant herein no longer owned any claim against the Government of Czechoslovakia on account of the nationalization of the Czechoslovak corporation since his claim had already been settled and discharged by the Anglo-Czechoslovak Compensation Agreement of 1949 and the award granted pursuant thereto.

On the basis of the entire record the denial of this claim is hereby affirmed.

Dated at Washington, D. C.

SEP 14 1962

Edward S. Mc
Theodore Jaffe
LaVern R. Diweg

COMMISSIONERS

THIS DECISION WAS ENTERED AS THE COMMISSION'S
FINAL DECISION ON

SEP 14 1962

Francis J. MacFarland

Clerk of the Commission

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

*Not
issued*

IN THE MATTER OF THE CLAIM OF

WALTER ROBERT MUNK
65 Old Mamaroneck Road
White Plains, New York

Claim No. CZ-2,619

Decision No. CZ-

Under the International Claims Settlement
Act of 1949, as amended

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, by WALTER ROBERT MUNK for loss he assertedly sustained by reason of the nationalization by the Government of Czechoslovakia, in 1945, of "Vitkovice Mines, Iron and Steelworks Corporation" (hereinafter referred to as "Czechoslovak corporation").

Section 404 of the Act provides, inter alia, that the Commission shall determine 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.

In 1937, the owners of all the stock of the Czechoslovak corporation deposited such stock with Alliance Assurance Company, Ltd., a British corporation, hereafter referred to as Trustees, under a Deed of Covenant dated May 6, 1937, whereby the Trustees issued 500,000 participation certificates evidencing the 100% ownership of the Czechoslovak corporation. Each certificate represented 1/500,000 interest in the Czechoslovak corporation.

The record shows that claimant owned 1,350 participation certificates issued by the said Trustees.

A report from the Foreign Compensation Commission of London discloses that the Trustees filed a claim with that Commission based upon the nationalization of the Czechoslovak corporation, and that the Foreign Compensation Commission found such claim compensable and granted an award to the Trustees in the amount of £ 22,022,917 representing the entire loss sustained by the stockholders of the Czechoslovak corporation.

It is not disputed (1) that this award represented the 100% interest of the stockholders in the Czechoslovak corporation and (2) that the Trustees acted on behalf of such stockholders in presenting the stockholders' claim before the Foreign Compensation Commission.

Claimant states that he has received only the sum of \$19,359.87 from the Trustees and that he is entitled to an award under Section 404 of the Act for the difference between that amount and the amount of his asserted loss (the value of his 1,350 shares in the Czechoslovak corporation at the time of its nationalization).

The Commission notes that on September 28, 1949 Great Britain and Czechoslovakia entered into an agreement pursuant to which all claims of nationals of Great Britain against the Government of Czechoslovakia were fully settled and discharged.^{1/} The award to the Trustees, which included claimant's interest in the Czechoslovak corporation, therefore, settled in full his claim against the Government of Czechoslovakia.

The Commission holds that the liability of the Government of Czechoslovakia to pay compensation for the nationalization of the Czechoslovak corporation was fully discharged by the award granted to the English corporation. To grant another award to claimant directly under Section 404 of the Act would be manifestly unfair to other claimants who have valid claims against the Government of Czechoslovakia and who can look only to our

^{1/} Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the Czechoslovak Republic regarding compensation for British property rights and interests affected by Czechoslovak measures of nationalisation, expropriation and dispossession.

government for compensation on account of their losses. In this connection, the Commission is advised that payments by the Government of Czechoslovakia to Great Britain are to be made over a period of years and as each payment is made, further distributions are effected to the English awardees. This is evidenced by statements made by the claimant. When he filed his original claim with the Commission he admitted having received \$18,483.30 and under date of July 18, 1960 he informed the Commission that he had received on March 2, 1960 a further amount of \$876.57 from the English corporation "representing a further distribution of money received from the Foreign Compensation Commission in London."

In view of the foregoing, the claim is denied.

Dated at Washington, D. C.

BY DIRECTION OF THE COMMISSION:

Francis T. Masterson
Clerk of the Commission