

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

IN THE MATTER OF THE CLAIM OF

JOHN M. McRAE

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU -0282

Decision No. CU 4443

PROPOSED DECISION

This claim against the Government of Cuba, filed under Title V of the International Claims Settlement Act of 1949, as amended, for an unspecified sum, was presented by JOHN M. McRAE, based upon the asserted ownership and loss of a bank account and retirement pension in Cuba. Claimant has been a national of the United States since his birth on November 6, 1898.

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 and 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.

Bank Account

The record contains a statement dated November 7, 1961 issued by the Banco Nacional de Cuba which establishes that as of that date claimant had a balance of 8,812.85 pesos on deposit in his account.

Law 989, published in the Cuban Official Gazette on December 6, 1961, by its terms effected a confiscation of all goods, chattels, rights, shares, stocks, bonds, bank accounts and other securities of persons who had left Cuba. The Commission finds that this law applied to claimant who had left Cuba prior to that date, and that his bank account was taken by the Government of Cuba on December 6, 1961, pursuant to Law 989. (See Claim of Floyd W. Auld, Claim No. CU-0020, 25 FCSC Semiann. Rep. 55 [July-Dec. 1966].)

Further, the Commission finds that on December 6, 1961, claimant's 8,812.85 pesos had a value of \$8,812.85 and that he sustained a loss within the purview of Title V of the Act in such latter amount.

Pension

It is asserted by the claimant that he was entitled to a pension of 150.00 pesos per month due from the Caja del Seguro Social de los Trabajadores Azucareros, hereafter referred to as Sugar Retirement Fund, in Havana, Cuba. On November 10, 1958, the claimant submitted an application to the Fund for the determination of retirement benefits. However, he has been unable to submit any documentation concerning the action, if any, taken on such application.

By Commission letters of July 17, October 18, and December 5, 1967, suggestions were made to claimant for the submission of specific evidence which would enable the Commission to determine the amount of retirement pension to which he was entitled from the Fund. Pursuant to such suggestions, claimant submitted an affidavit dated November 29, 1967, by Thomas D. Stephenson, Vice President and Treasurer of the Baragua Industrial Corporation of New York, in which, in essence, it is stated that the claimant was the manager of the company's properties at Central Baragua in Cuba and contributions for the Sugar Retirement Fund were deducted from his

salary during the entire period of his employment which terminated on August 6, 1960 by the expropriation of company properties in Baragua by the Government of Cuba.

The Sugar Retirement Fund was established by Law No. 20 of March 27, 1941, and amended by Law No. 4 of November, 1948, Law-Decrees No. 586 of December 17, 1952, No. 711 of February 27, 1953 and No. 1239 of January 1, 1954, Decree No. 3394 of September 5, 1949, and Law-Decree No. 1959 of January 25, 1955.

On the basis of evidence of record, the Commission finds that claimant contributed for a period of 30 years to the Sugar Retirement Fund, and his average salary amounted to 3,600 pesos per annum. Therefore, the Commission finds that claimant's retirement pension amounted to 1,513.42 pesos per annum as of August 6, 1960, the date when his employment with the Baragua Industrial Corporation of New York terminated because of expropriation of the company's assets in Baragua, Cuba, by the Government of that country.

On May 29, 1959, Law No. 351 was enacted which provided for the establishment of the Banco de Seguros Sociales de Cuba (Social Insurance Bank of Cuba) as an agency of the Government of Cuba to supervise and administer social insurance, as well as to direct the policy concerning all social security matters. The law also provided for the transfer of the assets and liabilities of all pension funds to the Banco de Seguros Sociales de Cuba. Information also shows that retired employees received their monthly retirement benefits (pensions) from the Banco de Seguros Sociales de Cuba up to the time of their departure from Cuba. After their departure from Cuba the benefits remain unpaid.

In our decision entitled the Claim of A. M. Joy de Pardo (Claim No. CU-1906 which we incorporate herein by reference), we held that the refusal of the Government of Cuba to transfer retirement benefits to claimant constituted a taking of his property within the purview of Section 503(a) of the Act. Therefore, the Commission finds that claimant's claim for the loss based upon such taking in the instant claim arose on August 6, 1960.

The Commission has adopted as a basis for the valuation of annuities the Makehamized mortality table, appearing as Table 38 of the United States Life Tables and Actuarial Tables 1939-41, and a 3-1/2% interest rate, compounded annually, as prescribed by United States Treasury Department regulations of June 24, 1958, for the collection of gift and estate taxes, respectively. (See 23 F.R. 4547, 26 C.F.R. 2031-7.) According to that method of valuation, the value of the annuity for a person of the age of 62 amounts to 10.6186 times the yearly sum of the annuity. Since on August 6, 1960, claimant was 62 years of age, the value of his discounted annuity on that date amounted to \$1,513.42 (the peso being on a par with the United States dollar) times 10.6186 or \$16,070.40.

In view of the foregoing, the Commission finds that claimant sustained losses within the purview of Title V of the Act in amounts as follows:

Pension	\$16,070.40
Bank Account	<u>8,812.85</u>
	\$24,883.25

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%

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per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered, as follows:

<u>FROM</u>	<u>ON</u>
August 6, 1960	\$16,070.40
December 6, 1961	<u>8,812.85</u>
	\$24,883.25

CERTIFICATION OF LOSS

The Commission certifies that JOHN M. McRAE sustained 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 Twenty-four Thousand Eight Hundred Eighty-three Dollars and Twenty-five Cents (\$24,883.25) with interest thereon at 6% per annum from the respective dates of loss to the date of settlement.

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

29 JAN 1970

*Theodore Jaffe*

Theodore Jaffe, Commissioner

*Sidney Freidberg*

Sidney Freidberg, Commissioner

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 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)).

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