

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

IN THE MATTER OF THE CLAIM OF

WESTINGHOUSE AIR BRAKE COMPANY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -0483

Decision No. CU

3020

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was presented by WESTINGHOUSE AIR BRAKE COMPANY in the amount of \$6,320.83 based upon the asserted loss of payment for merchandise shipped to Cuba.

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 502(1)(B) of the Act defines the term "national of the United States" as 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.

An officer of the claimant corporation has certified that the claimant was organized in the State of Pennsylvania and that at all times pertinent hereto more than 50% of the outstanding capital stock of the claimant has been owned by United States nationals. An officer of claimant corporation stated that 99.6% of its stockholders are nationals of the United States. The Commission finds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The record includes copies of invoices prepared by the claimant, WESTINGHOUSE AIR BRAKE COMPANY, covering transactions included in this claim, which disclose the dates of sale of merchandise to the consignees, invoice numbers, sales amounts specified, as to which freight charges increased the totals. Claimant has also submitted evidence showing certain credits were allowed on shipment covered by Invoice #58-211, resulting in the remaining amount outstanding, as given hereafter. The terms of the sales were "On Open Account, net 30 days".

RECAPITULATION

<u>Date of Invoice</u>	<u>Invoice Number</u>	<u>Consignee</u>	<u>Amount</u>
5/ 5/59	135751	Compania Cubana de Aviacion, S.A.	\$ 300.00
5/13/59	58-211	Consolidated Railroads of Cuba	4,237.18
6/30/59	58-379	" " " " " "	424.86
8/18/59	58-444	" " " " " "	549.39
10/21/59	58-399	" " " " " "	288.62
10/21/59	58-211	" " " " " "	<u>520.78</u>
		Total	\$ 6,320.83

Claimant stated that it has not received the funds in payment for the aforesaid shipments and the sum of \$6,320.83 is due and payable by the Cuban consignees.

The Government of Cuba, on September 29, 1959, published its Law 568, concerning foreign exchange. Thereafter the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba, by numerous, unreasonable and costly demands upon the consignees, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimant herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba into the contractual rights of the claimant, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of The Schwarzenbach Huber Company, Claim No. CU-0019, 25 FCSC Semiann. Rep. 58 [July-Dec. 1966]; and Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, in the instant claim the Commission finds that claimant sustained a loss of \$6,320.83, within the meaning of Title V of the Act, as a result of intervention by the Government of Cuba; and that, in the absence of evidence to the contrary, the losses occurred thirty days after dates of shipment except those shipments made prior to September 29, 1959. As to these shipments, the Commission finds that these losses occurred on September 29, 1959, which is the date when Law 568 was published.

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 the loss sustained by claimant shall be increased by interest thereon at the rate

of 6% per annum from the date on which the loss occurred, to the date on which provisions are made for the settlement thereof, as follows:

From September 29, 1959, on \$5,511.43
From November 21, 1959, on \$809.40

CERTIFICATION OF LOSS

The Commission certifies that WESTINGHOUSE AIR BRAKE COMPANY 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 Six Thousand Three Hundred Twenty Dollars and Eighty-Three Cents (\$6,320.83) 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

SEP 11 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Treidberg

Sidney Treidberg, 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).)