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

IN THE MATTER OF THE CLAIM OF

NATIONAL AIRLINES, INCORPORATED

Claim No. CU-1349

Decision No. CU 3542

Under the International Claims Settlement Act of 1949, as amended

PROPOSED DECISION

This claim against the Government of Cuba under Title V of the International Claims Settlement Act of 1949, as amended, in the amount of $729,973.00, was presented by NATIONAL AIRLINES, INCORPORATED, based on asserted losses in connection with a bank account, a wholly-owned Cuban subsidiary, and an interest in another Cuban corporation.

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.

The record shows that claimant was incorporated under the laws of Florida. An officer of claimant has certified that at all pertinent times more than 50% of claimant's outstanding capital stock was owned by nationals of the United States. Another officer of claimant has certified that as of June 16, 1967, 97.36% of claimant's outstanding capital stock was held by persons or concerns having addresses in the United States. The Commission holds that claimant is a national of the United States within the meaning of Section 502(1)(B) of the Act.

The evidence of record includes copies of bank statements from the First National City Bank of New York, Havana, Cuba Branch; extracts from claimant's records; copies of Cuban decrees; letters from Cuban Intervenors and Administrators; a balance sheet as of November, 1960, with respect to Aerolineas Nalair, S.A.; and statements from officers of claimant concerning its claim against Cuba.

On the basis of the entire record, the Commission finds that claimant owned a bank account with the First National City Bank of New York, Havana, Cuba Branch, 100% interest in its Cuban subsidiary, Aerolineas Nalair, S.A., and an interest in another Cuban corporation, Radio Aeronautica, S.A. Pursuant to Resolution No. 370 issued on March 3, 1961 by the Cuban Ministry of Labor, claimant's wholly-owned subsidiary, Aerolineas Nalair, S.A.,was intervened and all other assets of claimant in Cuba, including its bank account and its stock interest in Radio Aeronautica, S.A., were likewise intervened or taken by the Government of Cuba. The Commission therefore concludes that as a result of the intervention by the Government of Cuba claimant sustained a loss within the meaning of Title V of the Act.

The Act provides, in Section 503(a), that in making determinations with respect to the validity and amount of claims and value of properties, rights, or interests taken, the Commission shall take into account the basis of valuation most appropriate to the property and equitable to the claimant, including but not limited to fair market value, book value, going concern value, or cost of replacement.

The question, in all cases, will be to determine the basis of valuation which, under the particular circumstances, is "most appropriate to the property and equitable to the claimant." The Commission has concluded that this phraseology does not differ from the international legal standard that would normally prevail in the evaluation of nationalized property and that it is designed to strengthen that standard by giving specific bases of valuation that the Commission shall consider, i.e., fair market value, book value, going concern value, or cost of replacement.

A copy of a bank statement from the First National City Bank of New York, Havana, Cuba Branch, shows that as of January 31, 1961, claimant had a bank account with a credit balance of 735,014.45 pesos, equivalent to $735,014.45. It further appears from claimant's records that deposits in transit to said Cuban bank aggregated $1,424.38. Accordingly, the Commission finds that the value of claimant's bank account on March 3, 1961, the date of loss, was $736,438.83.

With respect to claimant's wholly-owned Cuban subsidiary, Aerolineas Nalair, S.A., which was organized under the laws of Cuba, the record includes a copy of its balance sheet showing its financial condition as of November, 1960, to be as follows:

Assets				
Current Assets				
Cash in bank				$ 753.00
Working funds				1,650.00
Accounts Receivable:				
National Airlines			$118,720.00	
Miscellaneous			7,572.00	
Republic of Cuba (Mail Pay)			69.00	
Travel Agencies			5,095.00	
Air Cargo			247.00	
Employees			177.00	
Others			10.00	
Total Accounts Receivable				131,890.00
Prepayments				
Insurance			861.00	
Others			86.00	
Total Prepayments				947.00
Total Current Assets				135,240.00
Property & Equipment	Cost	Reserve		
Furniture & Fixtures	4,111.00	1,798.00		
Motorized vehicles	4,468.00	1,530.00		
Improvements to leased properties	12,644.00	4,828.00		
	$21,223.00	$8,156.00		
Net Property & Equipment				13,067.00
Deferred Charges				
Organization Expense			866.00	
Suspense items			(14,474.00)	
Other deposits			125.00	
Total Deferred Charges				(13,483.00)
Total Assets				$134,824.00
Liabilities & Net Worth				
Current Liabilities				
Accounts Payable (National Airlines)			67,400.00	
Other accounts payable			3,465.00	
Collections as agent			25,575.00	
Accrued wages			2,415.00	
Total Current Liabilities				98,855.00
Net Worth				
Capital			13,500.00	
Earned surplus			13,971.00	
Profit year to date (after income tax)			8,498.00	
Total Net Worth				35,969.00
Total Liabilities & Net Worth				$134,824.00

In the absence of evidence to the contrary, the Commission finds that the foregoing balance sheet is the most appropriate basis for valuation of claimant's Cuban subsidiary and equitable to claimant.

It is noted that claimant has asserted a claim of $10,000.00 on account of the loss of its Cuban subsidiary, based upon its investment in that entity. However, while the balance sheet shows a net worth of $35,969.00, it also evidences that the principal asset of the subsidiary was an account receivable due from claimant in the amount of $118,720.00. It further appears that the subsidiary owed claimant a debt of $67,400.00. Therefore, claimant owed its subsidiary a net debt of $51,320.00, applying the concept of set-off which is recognized both under domestic and international law. (See Claim of Simmons Company, Claim No. CU-2303.)

Inasmuch as claimant's net debt to its subsidiary was in excess of the subsidiary's net worth on the date of loss, the Commission finds that claimant sustained no loss within the meaning of Title V of the Act as a result of the intervention of Aerolineas Nalair, S.A. by the Government of Cuba. Accordingly, this portion of the claim is denied.

The remaining portion of this claim is based upon claimant's interest in Radio Aeronautica, S.A., a Cuban corporation. Claimant asserts a loss of $1,400.00 on account of its stock interest in this Cuban entity.

The evidence includes a letter from the Cuban administrator of Radio Aeronautica, S.A., which indicates that claimant owned 13 preferred shares and 1 common share of stock in this Cuban corporation, and that this interest had a value of $1,400.00. In the absence of evidence to the contrary, the Commission finds that the value of claimant's interest in Radio Aeronautica, S.A. on the date of loss was $1,400.00.

It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

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), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that NATIONAL AIRLINES, INCORPORATED, 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 Seven Hundred Thirty-seven Thousand Eight Hundred Thirty-eight Dollars and Eighty-three Cents ($737,838.83) with interest thereon at 6% per annum from March 3, 1961 to the date of settlement.

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

MAR 5 1969

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

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).)