

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

IN THE MATTER OF THE CLAIM OF

ALEJANDRO REY

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-3921

Decision No. CU 6038

PROPOSED DECISION

This claim against the Government of Cuba, under Title V of the International Claims Settlement Act of 1949, as amended, was timely filed by the Commission on behalf of ALEJANDRO REY, then in Cuba. Subsequent to his return to the United States, on December 6, 1967, ALEJANDRO REY on January 2, 1968 pursued the claim. He filed specifically for the amount of \$9,200.00, based on the loss of personal property and a pension. Claimant has been a national of the United States since birth.

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.

Based upon the entire record, including the affidavits of Silvio Hidalgo and Raul O. Serrano, the Commission finds that claimant owned said personal property used at his residence in Cuba.

On December 6, 1961, the Government of Cuba published its Law No. 989 which effected confiscation of all assets, personal property and real estate, rights, shares, stocks, bonds and securities of persons who left the country. The claimant left Cuba on December 5, 1967.

The Commission finds that the subject personalty was taken by the Government of Cuba on December 6, 1967, pursuant to the provisions of Law 989. (See Claim of Wallace Tabor and Catherine Tabor, Claim No. CU-0109, 25 FCSC Semiann. Rep. 53 [July-Dec. 1966].)

Section 503(a) of the Act (supra) provides for the Commission to determine certain claims of United States nationals, and continues:

. . . if such claims are submitted to the Commission within such period specified by the Commission by notice published in the Federal Register (which period shall not be more than eighteen months after such publication) within sixty days after the enactment of this title or of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later.

On November 1, 1965, the Commission filed notice with the Federal Register that it would receive, during the period ending at midnight, May 1, 1967, claims against the Government of Cuba.

Under the Commission's regulations, any initial written indication of an intention to file a claim received within 30 days prior to the expiration of the filing period thereof shall be considered as a timely filing of a claim if formalized within 30 days after the expiration of the filing period. (FCSC Reg., 45 C.F.R. §531.1(g) (Supp. 1967).)

There is no question that claim was timely filed for claimant. The question for consideration, however, is whether the Commission may properly consider on its merits the items of claim based on personalty and the pension, inasmuch as claim for loss of payment thereof did not arise until subsequent to December 5, 1967, a date after the close of the filing period.

The declared purpose of the Congress in enacting this legislation was to provide a vehicle for American nationals to have the validity and amounts of their losses decided by the Commission and reported to the Secretary of State for possible use in future negotiations of a claims settlement agreement with a friendly Government in Cuba.

In view of this purpose, the Commission has held that it will consider the merits of claims arising after the deadline so long as the consideration thereof does not impede the determination of those claims which arose prior to the close of the filing period. (See Claim No. CU-8739, Claim of Vivian Lopez Morales.)

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.

Claimant has submitted a detailed list showing cost figures totalling \$3195 for furniture, appliances and clothing and \$2500 for a 1953 Chevrolet.

Based on the entire record, including information as to values of similar properties, the Commission finds that on December 6, 1967, after appropriate depreciation, the personalty had a value of \$1,597.50 and the automobile had a value of \$1,250 and concludes that claimant suffered a loss in the amount of \$2,847.50 within the meaning of Title V of the Act, for the personal property.

It is also asserted by claimant that he was entitled to receive and did receive, until his departure from Cuba on December 5, 1967, a monthly disability payment from the Government of Cuba. It is further asserted by claimant that the Government of Cuba did not act upon his claim for additional 60.00 pesos monthly benefits based upon his employment with the Cuban Telephone Company.

On the basis of documentation and an affidavit by Siomara Sanchez, claimant's former attorney in Cuba, the Commission finds as follows:

On February 7, 1961, claimant applied for a disability pension from the Caja de Retiro de Trabajadores de Plantas Electricas Gas y Agua, Incorporada al BANSESCU (Electric Power Plant, Gas and Water Supply Retirement Fund, Merged into BANSESCU). Claimant's application was based upon employment as follows:

Cuban Telephone Company	from August 10, 1925 to December 31, 1932
Cuban Electric Company	from February 10, 1938 to February 7, 1961

The Electric Power Plant, Gas and Water Supply Retirement Fund was administered under Cuban Decrees No. 3006 of September 17, 1948, and No. 2488 of August 21, 1950, and Law-Decree No. 853 of May 9, 1953.

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 (BANSESCU).

Pursuant to his application, a copy of which is of record, a disability pension in the amount of 120.00 pesos per month was granted to claimant, and paid to him until his departure from Cuba on December 5, 1967. The Commission finds that from January 1, 1968, and thereafter the Government of Cuba refused to transfer any pension benefits to claimant who was then residing in the United States.

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 her 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 January 1, 1968.

The Commission has adopted as a basis for the valuation of annuities the Makehamized mortality table, appearing as Table 38 of 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 61 amounts to 10.9776 times \$1,440.00, the yearly sum of the annuity. Since on January 1, 1968, claimant was 61 years of age, the value of his discounted annuity on that date amounted to \$1,440.00 (the peso being on a par with the United States dollar) times 10.9776, or \$15,807.74.

It is alleged by claimant that his monthly disability pension should have been 180.00 instead of 120.00 pesos. It is implied by

claimant that such difference was caused by not giving credit for his employment performed for the Cuban Telephone Company from August 10, 1925, to December 31, 1932.

There is no evidence of record to support the claimant's allegation that the monthly disability benefit of 120.00 pesos was arrived at by the competent Cuban authority without taking his employment with the Cuban Telephone Company into consideration. Furthermore, claimant has failed to submit evidence that such disregard of creditable employment was done in violation of the applicable Cuban law providing for the computation of his disability retirement pension. The mere fact that claimant had a complaint concerning the amount of his disability pension which in his opinion should have been 60.00 pesos more per month as granted by the Cuban authorities, is insufficient to find that claimant was in fact entitled thereto under the applicable Cuban law controlling his disability retirement pension. Accordingly, the portion of the claim which is based upon an additional disability retirement of 60.00 pesos per month, must be and it is hereby denied.

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, as follows:

<u>FROM</u>	<u>ON</u>
December 6, 1967	\$ 2,847.50
January 1, 1968	<u>15,807.74</u>
	\$18,655.24


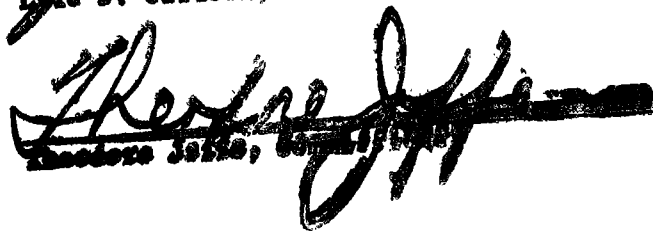
It will be noted that the total amount of loss found herein is in excess of the amount asserted by claimant. However, in determining the amount of loss sustained, the Commission is not bound by any lesser or greater amounts which may be asserted by claimant as the extent thereof.

CERTIFICATION OF LOSS

The Commission certifies that ALEJANDRO REY 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 Eighteen Thousand Six Hundred Fifty-Five Dollars and Twenty-Four Cents (\$18,655.24) 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

FEB 3 1971


Lyle S. Garlock, Chairman

Theodore J. Jaffe, Vice Chairman

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 (1970).)

CU-3921