

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

IN THE MATTER OF THE CLAIM OF

SYLVAN LEMAIRE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU - 5059

Decision No. CU-1917

AMENDED PROPOSED DECISION

Under date of May 22, 1968, this claim was denied for failure to sustain the burden of proof. Subsequently, additional supporting evidence was submitted. Upon consideration of the entire record, it is

ORDERED that the Proposed Decision be and it is hereby amended.

Claimant, SYLVAN LEMAIRE, who owned bonds issued by Guantanamo and Western Railroad, asserts a claim under Title V of the International Claims Settlement Act of 1949, as amended, against the Government of Cuba because of its nationalization of said Railroad.

In our decision entitled the Claim of Olive L. Fair (Claim No. CU-8104 which we incorporate herein by reference), we held that the properties of the Railroad were nationalized or otherwise taken by the Government of Cuba on October 13, 1960, and that this type of claim is compensable to an American national under the facts and conditions set forth therein. We need not again detail here the reasons or the method used in determining the value per \$1,000 bond of \$1,071.36 including interest to October 13, 1960.

On the basis of evidence in the record in the instant case, the Commission finds that this claimant comes within the terms of the Fair decision; that he was an American national at the requisite times; that he has been the owner of three bonds issued by the Guantanamo and Western Railroad since prior to October 13, 1960; and that he suffered a loss in the amount of \$3,214.08 within the meaning of Title V of the Act. Further, the Commission finds that the amount of loss sustained shall be increased by interest thereon at the rate of 6% per annum from October 13, 1960, the date of loss, to the date on which provision is made for the settlement thereof. (See Fair, supra.)

The following Certification of Loss will be entered and the remainder of the Proposed Decision is affirmed.

CU-5059

CERTIFICATION OF LOSS

The Commission certifies that SYLVAN LEMAIRE 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 Three Thousand Two Hundred Fourteen Dollars and Eight Cents (\$2,214.08) with interest at 6% per annum from October 13, 1960 to the date of settlement.

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

OCT 9 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Rosenberg

Sidney Rosenberg, Commissioner

NOTICE TO TREASURY: The above-referenced securities may not have been submitted to the Commission or if submitted, may have been returned; accordingly, no payment should be made until claimant establishes retention of the securities for the loss here certified.

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).)

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

IN THE MATTER OF THE CLAIM OF

SYLVAN LEMAIRE

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-5059

Decision No. CU- 1917

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 \$4,020.00 was presented by SYLVAN LEMAIRE, and is based upon the asserted loss of an interest in a bond issued by the Guantanamo and Western Railroad Company of Cuba. Claimant has been a national of the United States since his 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.

Section 504 of the Act provides, as to ownership of claims, that

(a) A claim shall not be considered under section 503(a) of this title unless the property on which the claim was based was owned wholly or partially, directly or indirectly by a national of the United States on the date of the loss and if considered shall be considered only to the extent the claim has been held by one or more nationals of the United States continuously thereafter until the date of filing with the Commission.

The Regulations of the Commission provide:

The claimant shall be the moving party and shall have the burden of proof on all issues involved in the determination of his claim. (FCSC Reg., 45 C.F.R. §531.6(d) (Supp. 1967).)

Claimant asserts the ownership of certain bond interests in the Guantanamo and Western Railroad Company of Cuba and has submitted a 6% Gold Bond of the Guantanamo and Western Railroad Company, No. RB 36, in the face amount of \$3,000.00, issued July 1, 1959. The owner named on the face of this bond is "Hare & Company". There is no record of an assignment thereof to the claimant.

The Commission has determined that October 13, 1960 is the date upon which losses arose with respect to interests in bonds issued by the Guantanamo and Western Railroad Company of Cuba (See Claim of Olive L. Fair, Claim No. CU-8104.) Claimant states that his bond was placed in a custodian account with the Bank of New York, which in turn placed the bond in the name of its nominee, Hare and Company. The Bank of New York, by letter of April 4, 1968, stated that claimant established this custodian account on December 27, 1962, at which time claimant's securities were in fact transferred to the name of the nominee of the Bank, Hare and Company.

Claimant was then advised of the necessity of submitting evidence showing when he purchased the bond forming the basis of this claim, and the price paid therefor. Claimant responded, stating that the bond was purchased in 1945, although he was not certain of the exact year; that he had no documentation available; and that he could not obtain evidence to establish a date of purchase or price paid.

Since claimant has not, by evidence submitted established the date of purchase of this bond and therefore his ownership of it on the date of loss, October 13, 1960 (as found by the Commission in the decision in the Claim of Olive L. Fair, Claim No. CU-8104), the Commission finds that claimant has not met the burden of proof, in that he has failed to establish ownership of rights and interests in property which was nationalized, expropriated or otherwise taken by the Government of Cuba. Accordingly, this claim is hereby denied. The Commission deems it unnecessary to determine other elements of this claim.

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

MAY 22 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

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CU-5059