

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

IN THE MATTER OF THE CLAIM OF

ARTHUR H. MILBERT

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU-8241

Decision No. CU

2776

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 ARTHUR H. MILBERT and is based upon the asserted loss of \$1,522.00, sustained in connection with the ownership of a preferred stock interest in Ferrocarriles Consolidados de Cuba (Consolidated Railroads of Cuba), hereinafter referred to as Consolidated Railroads. 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. §§1643-1643 (1964), as amended, 79 Stat. 988 (1965)]⁷, 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.

On the basis of evidence of record, the Commission finds that claimant is, since prior to October 13, 1960, has been the owner of 100 shares of 6% Cumulative Preferred Stock, having a par value of \$100.00 each, of the Consolidated Railroads. The stock in question is represented by certificate No. NP35840.

The record discloses that Consolidated Railroads of Cuba (Ferrocarriles Consolidados de Cuba) was nationalized by Cuban Law 890, published in the Cuban Official Gazette on October 13, 1960. This corporation was organized under the laws of Cuba and does not qualify as a corporate "National of the United States" defined under Section 502(1)(B) of the Act as a corporation or other legal entity organized under the laws of the United States, or any State, the District of Columbia or the Commonwealth of Puerto Rico, whose ownership is vested to the extent of 50 per centum or more in natural persons who are citizens of the United States. In this type of situation, it has been held previously that a stockholder in such a corporation is entitled to file a claim based upon the stock in question which represents an ownership interest in the assets of a nationalized enterprise within the purview of Section 502(3) of the Act. (See Claim of Parke, Davis & Company, Claim No. CU-0180, 1967 FCSC Ann. Rep. 33).

The record discloses that Consolidated Railroads authorized and had outstanding at the time of loss, two classes of stock--(1) 6% Cumulative Preferred Stock of \$100.00 par value, and (2) Common Stock without par value. The record further discloses that the last quarterly dividend paid in full on the preferred stock was that payable on January 1, 1932.

The record shows that a partial payment of \$0.50 was made on the quarterly dividend payable on April 1, 1932, and that since that date no preferred stock dividends have been paid. The total arrearage or accumulation of unpaid preferred stock dividends for each share of stock for the period from 1932 to and including October 1, 1960 was \$172.00.

Under the terms of the preferred stock certificates the dividend accumulation is without interest. The certificates further set forth the rights of preferred stockholders upon dissolution, liquidation or cessation as follows:

Preferred shareholders upon dissolution, liquidation or winding up of the Company, shall be entitled to receive out of the net assets of the Company, whether from capital or earnings, the nominal or par value of the preferred shares registered in their names plus accrued and unpaid dividends, if any on such shares;...

Evidence of record and other information available to the Commission disclose that the value of the real property, equipment and other assets of the Consolidated Railroads of Cuba exceeded its total obligation on debts, bonds, preferred stock, accrual certificates, and accrued and unpaid preferred stock dividends.

The Commission thus concludes that the dollar loss sustained in connection with the ownership of a preferred stock interest in the Consolidated Railroads of Cuba on the date of loss was \$272.00 per share. This amount represents the \$100.00 par value and the \$172.00 accrued and unpaid dividends per share on the date of loss.

Accordingly, in the instant claim, the Commission finds that claimant, as holder of 100 shares of the 6% Cumulative Preferred Stock of the Consolidated Railroads, suffered a loss in the amount of \$27,200.00 within the meaning of Title V of the Act, as a result of the nationalization of Consolidated Railroads by the Government of Cuba on October 13, 1960. (See Claim of Cora W. Welsh, et al., Claim No. CU-2503).

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).

Accordingly, the Commission concludes 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 provisions are made for the settlement thereof.

CERTIFICATION OF LOSS

The Commission certifies that ARTHUR H. MILBERT 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 Twenty-Seven Thousand Two Hundred Dollars (\$ 27,200.00) with interest at 6% per annum from October 13, 1960 to the date of settlement.

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

AUG 14 1968

Leonard v. B. Sutton

Leonard v. B. Sutton, Chairman

Theodore Jaffe

Theodore Jaffe, Commissioner

Sidney Freidberg

Sidney Freidberg, 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 or 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).)