

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

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In the Matter of the Claim of :

JOHN S. STEWART :

325 East 72nd Street  
New York 21, New York :

Docket No. Y-1049

Decision No. 1133

Under the Yugoslav Claims Agreement  
of 1948 and the International Claims  
Settlement Act of 1949 :

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FINAL DECISION

Thirty days, or such extended time as may have been granted by the Commission, having elapsed since the Claimant(s) herein and the Government of Yugoslavia were notified of the Proposed Decision of the Commission on the above Claim, and no objections thereto or notice of intention to file brief or request for hearing having been filed, or, if filed, no further evidence or other representations having been offered pursuant to the opportunity duly afforded therefor, such Proposed Decision is hereby adopted as the Commission's final decision on this Claim.

Done at Washington, D. C. **OCT** 6 1954



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*Approved*  
*12-27-54*

SUPPLEMENTAL FINAL DECISION

By Proposed Decision No. 1133 this claim has been denied on the ground that (1) part of the claim has been held to be a claim for war damage not within the jurisdiction of the Commission, and (2) the other part of the claim for 3,500 shares of stock of the Trepca Mines, Ltd. has been held not to be compensable because the claimant had no standing to prosecute the claim as he was a stockholder of the British corporation, Trepca Mines, Limited, which filed a claim with and was granted an award by the British Commission created pursuant to the agreement of December 23, 1948 between the Governments of the United Kingdom of Great Britain and Northern Ireland and the Government of Yugoslavia.

By Final Decision No. 1133 of October 6, 1954, the Proposed Decision has been adopted as the Commission's Final Decision on the claim, since no objections to the Proposed Decision have been filed.

This Commission, however, has held In the Matter of the Claim of Max Mayer (Docket No. Y-976) in its Final Decision No. 1136, decided upon objections filed in that claim and on the basis of additional evidence submitted by that claimant, that a stockholder of Trepca Mines, Limited is entitled to an award from the fund of

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*Wm*



\$17,000,000 under the Yugoslav Claims Agreement of July 19, 1948 for the balance of his loss not compensated to the British corporation. The Commission found that the amount of such loss is equivalent to \$0.67 per share.

The Commission is of the opinion that a claimant who did not file objections to a Proposed Decision should not be precluded from the benefit he may have had, if he had filed such objections. Consequently, it considers that this claim should be reopened and a Supplemental Decision issued as this claimant proved that he was the owner of certain shares of stock of Trepca Mines, Limited.

Claimant has proved that he was, from July 18, 1941 until at least May 1, 1952, the owner of 3,500 shares of stock of the aforesaid Company, whose property in Yugoslavia was nationalized pursuant to the Law on the Nationalization of Private Economic Enterprises of December 5, 1946 (Official Gazette No. 98 of December 6, 1946). As claimant owned 3,500 shares of stock of that Company at that time, he suffered a loss of \$2,345 as the result of such taking by the Government of Yugoslavia.

Final Decision No. 1133 of October 6, 1954 is vacated, and in full and final disposition of the claim an award is hereby made to John S. Stewart, claimant, in the amount of \$2,345 with interest thereon at 6% per annum from December 5, 1946, the date of taking, to August 21, 1948, the date of payment by the Government of Yugoslavia, in the amount of \$240.93.

Dated at Washington, D. C. DEC 29 1954



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PROPOSED DECISION OF THE COMMISSION

This is a claim for \$31,603.75 by John S. Stewart, a citizen of the United States since his birth on June 3, 1889, in Ontario, Ohio. The claim is for the asserted taking by the Government of Yugoslavia of clothing, personal effects and household goods, owned by claimant and his wife, and valued by claimant at \$3,554.75, and for the nationalization by the Government of Yugoslavia of those properties of the British Corporation Trepca Mines, Ltd. (hereinafter referred to as "Trepca"), in which the claimant alleges he owned 3,500 shares of stock at the time of nationalization and valued by him at \$28,049.

Article 1 of the Nationalization of Private Enterprises Act of December 5, 1946 (Official Gazette No. 98 of December 5, 1946) provides:

"On the day this law becomes effective, all the private economic enterprises of general, national and republican importance in the following branches of economy are nationalized and pass into State ownership:

(1) Mining and extractive industry."

An Edict issued by the Presidium of the People's Assembly of the Federative People's Republic of Yugoslavia on July 19, 1946 and published in the Official Gazette of Federative People's Republic

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of Yugoslavia No. 59 of July 23, 1946, lists "Trepca" as item 235 on page 689 of an exhibit attached to the Edict as being of general national importance.

The claim for personal property is based upon the following facts: Claimant was employed in 1941 by the Trepca Mines Ltd. as Consulting Metallurgist in Zvecan, where the lead refinery of the company was located. Claimant and his wife set up their home on the grounds of the refinery, where they lived until 1941. On April 6, 1941, Yugoslavia was invaded. On April 8, claimant and his wife left Zvecan, but returned on May 7, 1941, and found German soldiers billeted in their house. Their trunks and luggage were strewn about in the open, all of their clothes and personal effects were gone, and all of their household goods had been removed. The Germans claimed that the house was pillaged before the German army arrived in Zvecan. Starting with April 10, 1941, and for many days thereafter, thousands of retreating Yugoslav soldiers passed through Zvecan, taking night shelter wherever they found it. Claimant was told, after his return to Zvecan, that every night the house in which he lived was filled with soldiers, because the Yugoslav General Staff in Zvecan opened up the vacant houses as billets for the retreating soldiers, and that claimant's house was one of such vacant houses. The Germans arrived in Zvecan between April 20 and April 24, and the claimant believes that little was left of his personal property for the Germans to take.

These facts clearly show that the pilfering and looting of claimant's home occurred as a direct consequence of military operations in the area of Zvecan. During the retreat of the Yugoslav Army between April 10 and April 20, 1941, many thousands of Yugoslav soldiers passed through Zvecan and from that date until April 24, 1941, the advancing German Army passed through and finally occupied Zvecan.

The Agreement of July 19, 1948, between the Governments of the United States and Yugoslavia, settled claims for "the nationalization



and other taking by Yugoslavia of property" (Article 1). War damage caused by military action is not in our view a "nationalization" or "taking" of property by the Government of Yugoslavia. We, therefore, hold that claims for war damage of the sort involved herein were not settled by the Agreement of July 19, 1948, and are not within the jurisdiction of this Commission.

As to the shares of stock of "Trepca", claimant has filed no evidence that he owned these securities at the time of nationalization of that company. He merely filed photostatic copies of "Trepca" certificates for 3500 units of 5 shillings each, issued to the claimant on July 18, 1941. This leaves us in doubt as to whether claimant owned the securities on December 5, 1946, the date when "Trepca" was nationalized. However, this question need not be decided since the claim for the shares of stock must be denied on other grounds.

The records of the Commission show that pursuant to the Agreement of December 23, 1948, between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Yugoslavia, "Trepca" filed a claim in the amount of 8,837,255 pounds sterling with a British commission, of similar purpose to this Commission, and that the British Commission has "... provisionally determined that the company established a claim against the 4,500,000 pound sterling British-Yugoslav fund in the amount of 5,200,000 pounds sterling."

The Commission is not informed as to the amount actually paid to "Trepca" or whether any such amount fully compensated "Trepca" for its losses.

The Commission, in its determination of claims against Yugoslavia, is directed by the International Claims Settlement Act to apply (1) the terms of the Agreement with that country, and (2) the applicable principles of international law, justice and equity, in that order. The Agreement contains no specific provision regarding a claim by a



national of the United States which is based upon stock ownership in a corporation which has filed its own claim and has received an award out of a lump sum paid by Yugoslavia to the Government of which the corporation is a national. We are also not referred to any similar situation which heretofore may have been determined by an international claims tribunal.

Article 9 of the Agreement of July 19, 1948, between the Government of the United States and the Government of Yugoslavia, provides:

"In the interest of protecting the Government of Yugoslavia from the possible assertion through third countries, or otherwise, of claims falling within the scope of this Agreement, the Government of the United States will supply to the Government of Yugoslavia, certified copies of such formal submissions as may be made by claimants to such agency as may be established or otherwise designated by the Government of the United States to adjudicate claims to participation in the funds to be paid by the Government of Yugoslavia pursuant to this Agreement and of the corresponding awards of such agency with respect thereto."

The obvious and quite understandable purpose of these provisions is to avoid duplication of payment based upon the same claimed aggrievement. Multiplicity of demand could arise from a claim before the same tribunal of a corporation and, separately, another by its stockholders, or from more than one request for compensation for the same property or property right by the same claimant. A problem of that kind arising before the same adjudicating authority would not pose a difficult problem. If a corporation were recognized as a proper claimant and its property loss were the subject of an adjudication, it follows that the determination would be binding upon the corporate stockholders. Since it is the value of the res which is of real significance, an award made to compensate for its loss must preclude the recognized beneficiary from making further demands upon the fund provided for total compensation, whether such additional demand be



made directly or indirectly. Since, as we believe, the corporation and its stockholders must be regarded as a single entity for the indicated purpose, an award to one would preclude an award to the other. We are also of the opinion that, on the basis of action by a single determining agency, the same view must result regardless of the measure of the award. These, we believe, are basic, and seemingly elementary, principles. We are also of the view, and so find that where, as here, two claims' tribunals have before them separate claims for the same properties and based upon the same taking by the Government of Yugoslavia, the same result must follow.

By an Agreement dated December 23, 1948, between the Government of the United Kingdom and the Government of Yugoslavia, a fund of 4,500,000 pounds sterling was provided by the Government of Yugoslavia "in full satisfaction and discharge of all claims of British nationals arising on or before the date of signature of the present Agreement out of various Yugoslav measures affecting British property" (Article II). The term "British nationals" is defined in the Agreement as embracing "Companies, firms and associations incorporated or constituted under the laws in force in the territory of the United Kingdom of Great Britain" (Article IV). The Trepca corporation falls within the meaning of the term "British nationals."

Since the corporation elected to prosecute a claim for the taking of its properties by availing itself of the British-Yugoslav Agreement and fund, and as it has apparently succeeded in obtaining recognition of its right to claim an award, we believe that its stockholders are bound by that action. Therefore, consistent with principles of international law and recognized concepts of justice and equity in the prevention of unjust enrichment, the Commission finds that the claimant herein, John S. Stewart, has no standing to prosecute



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the present claim; and that, insofar as the Agreement of July 19, 1948, is concerned, his remedy is the same as, and follows that of, the corporation "Trepca".

For the foregoing reasons, the claim is denied.

Dated at Washington, D. C.

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