FOREIGN CLAIMS SETTLEMENT COMMISSION
OF THE UNITED STATES
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

Dr. RANKO M. and RADMILA BRASHICH
42-66 Parsons Boulevard
Flushing 55, New York

Claim No. IT-10,778

Decision No. IT-215-2

Under the International Claims Settlement
Act of 1949, as amended

GPO 942329

Attorneys for Claimants:

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FINAL DECISION

The Commission issued its Proposed Decision No. IT-215-2 on July 24, 1959, allowing each of the claimants an award in the principal sum of $11,298.00 with interest thereon for losses of business property and equipment in Yugoslavia, and denying certain asserted losses, arising out of the war in which Italy was engaged and for which no provision was made in the Treaty of Peace with Italy.

Formal objections were filed on behalf of the claimants and an oral hearing was set for 10:00 A. M., August 5, 1959 in Room 162 of the Commission's offices in Washington, D. C. On the date of hearing, counsel for claimants and claimant, Dr. Ranko M. Brashich, appeared in his own behalf and as a witness for and on behalf of Radmila Brashich, his wife and a joint claimant with him, Adolph Weissman and Alfred Bondy, who have filed related claims. Dr. Cloyd Smith appeared as an expert witness for and on behalf of all of the above-named claimants.

After due consideration of the arguments and testimony, and review of the evidence of record, the Commission concludes that an award in the total principal amount of $15,000.00 with interest should be allowed to each of the claimants herein, Dr. Ranko M. Brashich and Radmila Brashich.

The Commission affirms that portion of the Proposed Decision which denied certain aspects of the claim.

It is therefore ORDERED that said claim be and the same is hereby allowed and an award made to Dr. Ranko M. Brashich in the sum of $15,000.00, together with interest in the amount of $6,342.50;

I-26
I-40

And an award made to Radmila Brashich in the sum of $15,000.00, together with interest in the amount of $6,342.50, being 6 percent per annum from April 5, 1941 to April 23, 1948, the date of payment by the Government of Italy of $5,000,000 pursuant to the Memorandum of Understanding dated August 14, 1947, PROVIDED that no payment shall be made with respect to these awards until payment in full, from the Italian Claims Fund created pursuant to Section 302, of the principal amounts (without interest) of all awards upon claims determined under the original provisions of Section 304.

It is further ORDERED that the awards granted herein be certified to the Secretary of the Treasury.

Washington 25, D. C.

SEP 9 1959

Whitney Gillilland

Leo T. Pace

Robert L. Kunzig

COMMISSIONERS

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New York 36, New York

PROPOSED DECISION

This claim for $76,030.54, timely filed under Section 304 of the International Claims Settlement Act of 1949, as amended, by Dr. Ranko M. Brashich and Radmila Brashich, husband and wife, citizens of the United States since their naturalization on April 12, 1955, is for losses arising out of the war in which Italy was engaged from June 10, 1940 to September 15, 1947 and for which no provision was made in the Treaty of Peace with Italy.

Prior to amendment at the 2d Session of the 85th Congress, Section 304 was as follows:

> The Commission shall receive and determine, in accordance with the Memorandum of Understanding and applicable substantive law, including international law, the validity and amount of claims of nationals of the United States against the Government of Italy arising out of the war in which Italy was engaged from June 10, 1940, to September 15, 1947, and with respect to which provision was not made in the Treaty of Peace with Italy.

The evidence shows that on or about April 5, 1941 certain losses were suffered by claimants in or near Kicevo, Yugoslavia,

I-26
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as a consequence of military operations in which Italy participated. This claim was denied by the Commission prior to August 8, 1958 for the reason that the property was not owned by a United States national at the time of damage.

On that date, to-wit, August 8, 1958, the following amendment to Section 304 (Sec. 2, Public Law 85-604, 72 Stat. 531) was approved:

> Section 304 of the International Claims Settlement Act of 1949, as amended, is amended by adding at the end thereof the following: "Upon payment of the principal amounts (without interest) of all awards from the Italian Claims Fund created pursuant to Section 302 of this Act, the Commission shall determine the validity and amount of any claim under this section by any natural person who was a citizen of the United States on the date of enactment of this title and shall, in the event an award is issued pursuant to such claim, certify the same to the Secretary of the Treasury for payment out of remaining balances in the Italian Claims Fund -----."

A determination must now be made as to whether or not a claim presenting such a set of facts can be allowed under the language of Section 304, as amended.

It is noted that the amendment does not speak specifically of nationality at the time of damage, and that the statutory requirement to determine claims of nationals of the United States in accordance with the substantive rules of international law has not been removed.

It is a well known and long established rule, followed without exception by this Commission and its predecessors, that a claim cognizable under principles of international law does not come into existence unless the property which is the subject of the claim was owned by a national of the United States at the time of damage. Otherwise it cannot be said that the United States has received an injury or has a legal cause to complain against another nation.

(Borchard, "Diplomatic Protection of Citizens Abroad", p. 351; Whiteman, "Damages in International Law", Vol. 1, p. 96; Judge Parker in Administrative Decision No. V, the Mixed Claims Commission, United States and Germany, "Decisions and Opinions" 1928, pp. 145,

10,778

176-177; Jessup, "A Modern Law of Nations", p. 99; Moore, "Digest of International Law," Vol. VI, pp. 636-637; Hackworth, "Digest of International Law", Vol. V, p. 802; Ralston "The Law and Procedure of International Tribunals", pp. 161-162; Hyde, "International Law as Applied by the United States", Vol. II, p. 893; Nielsen, "International Law Applied to Reclamations", p. 13; Oppenheim, "International Law", 6th Ed. Vol. I, p. 314, edited by Lauterpacht.)

The property which is the subject of the claim before the Commission was not owned by a United States national at the time of damage and the United States received no injury. Therefore, the possible allowance of the claim under the amendment would at first appear to conflict with the foregoing rule. In view of the general and long acceptance of the rule and in the absence of clear and positive language, an intent on the part of the Congress to override it is scarcely to be presumed. That the Congress had no such intent is clearly shown in the Report of the Foreign Relations Committee (Senate Report No. 1794, 85th Congress, pp. 8-9).

Careful consideration of the matter leads to the conclusion that without doubt Congress had in mind to reaffirm the rule rather than to override it.

Nevertheless it is the considered opinion of the Commission that the instant claim is entitled to an award under Section 304, as revised, for the following reasons.

An international claims settlement is founded on the wrong done to a nation itself through injuries to its nationals. (Feller, The Mexican Claims Commission, p. 83 et. seq., and authorities cited supra.) A settlement fund when received, and at least unless otherwise committed by the terms of the settlement agreement, belongs to the nation whose nationals suffered the injuries. (First National City Bank of New York vs. Gillilland, 257 F. 2d 223, 227.)

Under the amendment to Section 304, the rights of persons who do have valid claims under rules of international law have been preserved. What the Congress has done is merely to provide for the

disposition of any balances which may remain in the fund received from Italy after the payment of such claims. This claim, although not cognizable under rules of international law, is allowable within the class which, by specific legislative authorization, may be entitled to participate in any such residual disposition.

The evidence shows that the claimants herein each owned 200 shares, or 40%, of capital stock in a corporation known as Jugoslovenski Rudnici Mangana "Cer-Nebojsa" A.D. (hereinafter referred to as "Cer-Nebojsa") with headquarters in Belgrade, Yugoslavia, managing and operating manganese ore mines in Kicevo (now Macedonia), Yugoslavia, and that the remaining shares of stock were owned by Adolf Weissmann (Claim No. IT-10,777) and Alfred Bondy (Claim No. IT-10,779); that the total number of shares of capital stock of the subject corporation was one thousand.

The mines owned and operated by "Cer-Nebojsa" were located in the southwestern part of Yugoslavia, near the Albanian border, which part of Yugoslavia was first occupied by the Italian armed forces in April 1941.

The government of Yugoslavia controlled all railroads throughout its country, including narrow guage lines, and consequently that portion of the railway running between the stations of Ochrida, General Henryevo and Skoplje, Yugoslavia, over which ore, materials and supplies from and to the mine at Kicevo were shipped, was taken over by the Italian occupation forces early in April 1941.

It has been asserted that due to orders which had been received by "Cer-Nebojsa", 3125 tons of manganese ore had been stored at the railroad station at Kicevo; that this ore had been confiscated as war material by the Italian forces at the time of occupation of the area, and presumably shipped to Italian occupied Dalmatia and to

Italy. The evidence submitted by claimants supports the allegations of loss. However, there is insufficient evidence of record to support the allegations of the exact quantity asserted to have been taken by the occupation forces.

Further assertions are made that the Yugoslav Government required certain reserves to be kept on hand at the mines, and that among these were dynamite, special steel, gasoline, and other materials necessary for mining purposes; that on or about March 31, 1941, 10,000 kilograms of special steel, 10,000 kilograms of dynamite; 10,000 liters of gasoline and crude diesel oil, and a compass for deep measurements were sent from Belgrade destined to the mine at Kicevo; that these supplies were missed after the transfer to the narrow guage railway at the General Henryevo station; that a search for these supplies by the corporation's former transportation agent, Rista Lozancevic, who was reported missing after the war, had been unsuccessful. Claimants rely on the affidavits of one Aleksander Gmizovic, who was the commercial director of the mines, and of Dr. Ing Gualtiero Mazzei, retired general of the Italian Army stationed in Albania, averring that the Italian Armed Forces controlled the "small guage railway (Ochrida) which ran from Ochrida (on the lake) through Henryevo to Skoplje" during 1941 and 1942, to support their contention that these supplies were believed to have been taken by the Italians for war purposes.

Averments are contained in the affidavit of Aleksander Gmizovic that other members of the management staff at the mines were reported as having been killed or missing. Therefore, additional material evidence cannot now be obtained.

Claim is made for loss of one Buick passenger car, one diesel truck and trailer and one Ford truck and trailer. However, the

evidence of record establishes that these cars were commandeered by the Yugoslav Army, and later destroyed during military engagements with the Italian Armed Forces.

Under the provisions of international law, claims for property which is damaged or destroyed as a result of a legitimate act of war, are held not to be compensable. Inasmuch as these trucks, trailers and passenger cars were taken from the claimants by the Yugoslav Army, and later destroyed during battles between the Yugoslavs and Italians, it must be determined that the confiscation by the former is not an act attributable to the Italian forces, and that the resultant loss during legitimate warfare does not give rise to a compensable claim for such loss, and therefore that portion of the claim must be, and hereby is denied.

The Commission finds from the evidence and data of record that claimants suffered certain losses due to the Italian occupation forces on or about April 5, 1941 but, based on that evidence submitted, it is not sufficient to justify an award for the total losses asserted by the claimants.

A W A R D

It is therefore ORDERED that said claim be and the same is hereby allowed and an award made to Dr. Ranko M. Brashich in the sum of $11,298.00, together with interest in the amount of $4,767.17;

And an award made to Radmila Brashich in the sum of $11,298.00, together with interest in the amount of $4,767.17, being 6 percent per annum from April 5, 1941 to April 23, 1948, the date of payment by the Government of Italy of $5,000,000 pursuant to the Memorandum of Understanding dated August 14, 1947, PROVIDED that no payment shall be made with respect to this award until payment in full, from the Italian Claims Fund created pursuant to Section 302, of

the principal amounts (without interest) of all awards upon claims determined under the original provisions of Section 304.

Dated at Washington, D. C.

JUL 24 1959

FOR THE COMMISSION:

J. Noble Richards

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