

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

IN THE MATTER OF THE CLAIM OF

JOHN A. BARNARD

Under the International Claims Settlement  
Act of 1949, as amended

Claim No. CU-2442

Decision No. CU 5884

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 JOHN A. BARNARD in the amount of \$86,208.97 based upon the asserted ownership and loss of real property, personalty, a retirement pension and unpaid salary. 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.

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) (1969).)

Claimant describes his losses as follows:

Down payment on land	\$ 5,000.00
Improvements	6,500.00
Interest paid on mortgage	8,800.00
Trucks	5,000.00
Farm equipment	6,100.00
Livestock	5,350.00
Sugar Fund Retirement	12,524.40
Excess salary unpaid	<u>36,934.57</u>
	\$86,208.97

#### Personalty

Based upon the entire record, including affidavits of the seller of trucks, and others familiar with claimant's operations, the Commission finds that claimant owned personalty consisting of several trucks, farm equipment and some livestock.

Claimant had been employed in Cuba by United Fruit Sugar Company. The record shows that his employment terminated on May 15, 1960 and shortly thereafter he left Cuba.

Based on the foregoing, the Commission finds that claimant's personalty, consisting of trucks, farm equipment and livestock was taken by the Government of Cuba on May 16, 1960.

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.

The record includes, in support of the claimed values, the aforesaid affidavits of the seller of the trucks and of others familiar with claimant's farming operations; several lists of this personalty, and claimant's explanations in connection with these items.

Based on the entire record, the Commission finds that on the date of loss, after appropriate depreciation, the trucks had a value of \$3,440.00, and the farm equipment \$3,965.00. With respect to the livestock, the Commission finds, in comparison with other claims for similar properties, that claimant's value of \$5,350.00 is fair and reasonable. Accordingly, the Commission concludes that claimant suffered a loss in the amount of \$12,755.00 within the meaning of Title V of the Act, as the result of the taking of the above-described personal property by the Government of Cuba on May 16, 1960.

#### Retirement Pension

Claimant JOHN A. BARNARD states that he was employed by the United Fruit Sugar Company in Oriente, and contributed to the retirement fund from February 1944 through May 1960. He states that United Fruit Sugar Company closed its payrolls as of May 15, 1960. Thereafter he applied for his retirement and was allotted \$149.10 monthly. He has submitted a statement of the Office Manager of the plant in Banes, Oriente, certifying that claimant contributed to the said fund for the period February 1944 through May 1960 as asserted.

Although claimant has not been able to document this item of claim fully, on the evidence of record and evidence available in other pension claims before it, the Commission finds that claimant was entitled to a pension of \$149.10 a month.

The Sugar Retirement Fund was established by Law No. 20 of March 27, 1941, and amended by Law No. 4 of November, 1948, Law-Decrees No. 586 of December 17, 1952, No. 711 of February 27, 1953 and No. 1239 of January 1, 1954, Decree No. 3394 of September 5, 1949, and Law-Decree No. 1959 of January 25, 1955.

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. Information shows that retired employees after departure from Cuba received no retirement benefits. On the basis of evidence of record the Commission finds that on May 16, 1960, claimant became entitled to a retirement pension. (See Claim of A. M. Joy de Pardo, Claim No. CU-1906; and Claim of Olive E. Cortis, Claim No. CU-1343.)

The Commission has adopted as a basis for the valuation of annuities the Makehamized mortality table, appearing as Table 38 of the 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 the yearly sum of the annuity. Since on May 16, 1960, claimant was 61 years of age the value of his discounted annuity on that date amounted to \$1,789.20 (the peso being on a par with the United States dollar) times 10.9776 or \$19,641.12.

Other Items

Claimant has contended that in 1951 he purchased a farm in Oriente having an area of 161 acres, with a sugar cane quota of 80,401 arrobas, for a purchase price of \$15,000.00 on which he made a down payment of \$5,000.00. He asserts that it had improvements valued at \$6,500.00, and was encumbered by a mortgage of \$10,000.00 carrying interest at .01% monthly, for which he claims \$8,800.00, from January 1952 through April 30, 1959 - a total of 88 months.

Although numerous suggestions have been made to claimant in this regard, and the Commission has attempted to aid the claimant in obtaining evidence, without success, there is no probative evidence of record which would permit the Commission to certify a loss to claimant on the items of down payment, improvements, or the interest payments, outlined by claimant.

Claimant has also contended that in 1945 the Company assigned him a basic salary to comply with Presidential Decrees, a Government Sugar Control Board having been established to change salaries according to changes in the price of sugar. He states that his salary was so established at \$333.75 and continued on this level to January 1945 although he says several increases had been authorized by Presidential Decree. Further he states that he substituted for a District Superintendent but was not paid the appropriate higher salary.

In December, of 1958, he states, he brought suit in the Cuban Courts for violation of the salary schedule and claiming the difference. The suit was lost but claimant prevailed on appeal and was awarded \$36,241.12. No payment was made, however.

Nevertheless, claimant has submitted no documentation in support of this item, nor indeed, shown that it would otherwise be certifiable within the scope of Title V of the Act.

The Commission appreciates the difficulties encountered by some claimants in establishing their claims against the Government of Cuba. However, the Commission must be guided by the evidence of record pertaining to the ownership, loss and value of the property included in each claim. Thus, the Commission finds that claimant has not met the burden of proof in that he has failed to establish ownership of the real property; entitlement to recovery of any interest payments; or that any salary was due him in the form of an adjudicated debt or otherwise, or that this would be within the scope of Title V of the Act. Accordingly, the Commission is constrained to deny these portions of the instant claim and they are hereby denied.

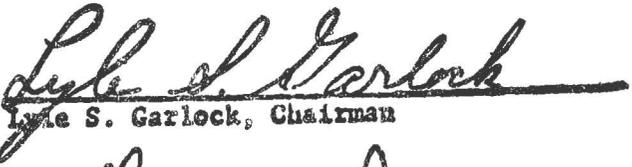
The Commission has decided that in certifications of loss on claims determined pursuant to Title V of the International Claims Settlement Act of 1949, as amended, interest should be included at the rate of 6% per annum from the date of loss to the date of settlement (see Claim of Lisle Corporation, Claim No. CU-0644), and in the instant case it is so ordered.

CERTIFICATION OF LOSS

The Commission certifies that JOHN A. BARNARD 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 Thirty-two Thousand Three Hundred Ninety-six Dollars and Twelve Cents (\$32,396.12) with interest at 6% per annum from May 16, 1960 to the date of settlement.

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

OCT 7 1970

  
Lyle S. Garlock, Chairman

  
Theodore Jaffe, Commissioner

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. 31.5(e) and (g), as amended, 32 Fed. Reg. 412-13 (1967).)