

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

IN THE MATTER OF THE CLAIM OF

CARL L. HAUSS

Claim No. IT-2-335

Decision No. IT-2-299

Under the International Claims Settlement
Act of 1949, as amended

Counsel for claimant:

Spaulding, Reiter & Rose
By Robert H. Reiter, Esq.

Appeal and objections from a Proposed Decision entered on August 4, 1971.

Oral argument on September 28, 1971, by Robert H. Reiter, Esquire, for claimant.

FINAL DECISION

This claim for \$100,000.00 against the Government of Italy, under Section 304(b), Title III, of the International Claims Settlement Act of 1949, as amended, is based upon the asserted personal injury sustained by the claimant, CARL L. HAUSS.

In its Proposed Decision of August 4, 1971, the Commission held that the claimant was arrested on November 20, 1943, at San Martino, Italy, disabled for seven months of his confinement and approximately five months the period of recovery, or for a total of twelve months; and granted an award to the claimant for such personal injuries in the principal amount of \$2,400.00 plus interest in the sum of \$637.20.

Pursuant to the claimant's objections, and counsel's arguments during the course of the oral hearing held on September 28, 1971, the claim was reconsidered, and the Commission now concludes that the claimant is entitled, under Section 304(b) of the Act, supra, to compensation for the personal injuries sustained in violation of international law, mentioned above, in the amount of \$7,500.00. Therefore, it is

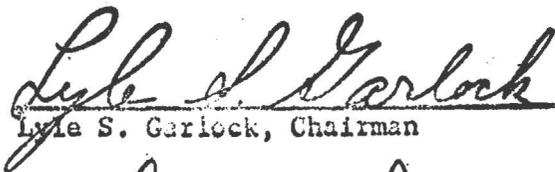
ORDERED that the Proposed Decision of August 4, 1971, be amended in accordance with the foregoing, and in all other respects it is affirmed, and the award is restated as follows:

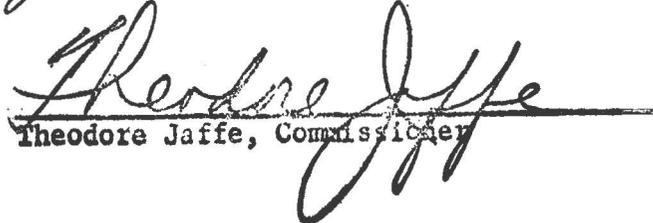
A W A R D

An award is made to CARL L. HAUSS in the principal amount of Seven Thousand Five Hundred Dollars (\$7,500.00), with interest thereof at the rate of 6% per annum from November 20, 1943, the date when the injury occurred, to April 23, 1948, in the sum of One Thousand Nine Hundred Ninety-One Dollars and Twenty-Five Cents (\$1,991.25).

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

OCT 6 1971


Lyle S. Gerlock, Chairman


Theodore Jaffe, Commissioner

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PROPOSED DECISION

This claim for \$100,000.00 against the Government of Italy, under Section 304(b), Title III, of the International Claims Settlement Act of 1949, as amended, is based upon the asserted personal injury sustained by the claimant. The claimant, CARL L. HAUSS, has been a national of the United States since his birth on January 30, 1894.

The claimant also filed a claim under Section 304(a) of the Act, supra (Claim No. IT-10,863), which was denied. That file has been associated with this claim for reference.

Under Section 304(b), Title III, of the International Claims Settlement Act of 1949 (69 Stat. 570 (1955)); 22 U.S.C. §§1641-1641q (1964)), as amended by Section 11 of Public Law 90-421, approved on July 24, 1968 (82 Stat. 420 (1968)), the Commission is given jurisdiction as follows:

The Commission shall receive and determine, or redetermine, as the case may be, in accordance with applicable substantive law, including international law, the validity and amounts of claims owned by persons who were eligible to file claims under the first sentence of subsection (a) of this section on the date of enactment of this title, but failed to file such claims or, if they filed such claims, failed to file such claims within the limit of time required therefor: Provided, That no awards shall be made to persons who have received compensation in any amount pursuant to the treaty of peace with Italy, subsection (a) of this section, or section 202 of the War Claims Act of 1948, as amended.

The first sentence of Section 304(a) of the Act, supra, reads 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 Commission has held that a sovereign state may detain, intern, or even expel enemy subjects without violating international law, and the mere fact of internment itself is not a violation thereof in the absence of evidence showing that a rule of international law was violated during such internment or detention. (See the Claim of ALESSANDRA BORRIONE LEONI et al., Claim No. IT-10,833.)

Evidence of record, consisting of a letter dated May 15, 1959, by Aldo Carpi, statements by Cesare Gatti, M.D., Giovanni Dugnani, D.D.S., and Giuseppe Canali, M.D., and the claimant's own affidavit dated May 18, 1959, shows, and the Commission finds that the claimant, CARL L. HAUSS, was arrested on November 20, 1943, at San Martino (Luino), Italy and imprisoned for seven months thereafter, during which period of time his treatment was in violation of the generally accepted rules of international law in consequence of which he sustained an impairment of his health to a limited degree, the extent of which has not been established. The Commission further finds, on the basis of evidence of record, that the partial impairment of health was the direct consequence of claimant's internment during the war in which Italy was engaged from June 10, 1940, to September 15, 1947, and no provisions were made with respect to such claim in the treaty of peace with Italy, signed at Paris, France, on February 10, 1947. For the purposes of this claim, the Commission finds that the personal injury now in question arose on November 20, 1943.

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The Act, supra, provides no guides for determining the amount of an award that should be granted for a personal injury consisting of impairment of health in a claim which is found to be valid under Section 304(b) of the Act. Under these circumstances it is incumbent upon the Commission to fix appropriate limitations in these respects.

The Commission has held that the rules which govern tort actions in courts of law are inapplicable to claims for death under Section 202(d)(1) of the War Claims Act of 1948 (62 Stat. 1240 (1948)), as amended by Public Law 87-846 (76 Stat. 1107 (1962)). (See Claim of Clara Emma Tinney, Claim No. W-1276.) The same rationale is equally applicable to claims under Section 304(b) of the Act, supra.

The Commission has considered other enactments under which provision was made for claims for death and personal injuries. (Federal Employees' Compensation Act, 29 Stat. 742 (1916), amended by 63 Stat. 855 (1949); Defense Bases Act, 55 Stat. 622 (1941), amended by 56 Stat. 1035 (1942); Longshoremen's and Harbor Workers' Compensation Act, 44 Stat. 1424 (1927), amended by 62 Stat. 602 (1948); War Risk Hazards Act, 56 Stat. 1028 (1942); and Section 5(f) of the War Claims Act of 1948, 62 Stat. 1240 (1948).)

Having carefully considered the various aspects of this matter, the Commission concludes that the amount of an award for a personal injury, not involving a total or partial loss of a member of the body, should be dependent upon the period of disability at the rate of \$200.00 for each month during which the disability is found to be total in nature. Periods of less than a month during which total disability is found shall be proportioned at the same rate. (See the Claim of Robert Newton Pritchard, Claim No. W-009 (FCSC Dec. & Ann. 643 (1968).)

On the basis of the record and the foregoing, the Commission finds that the claimant was disabled for the seven months of his confinement and approximately five months, the period of recovery, or for a total of twelve months; and concludes that the claimant is entitled, under Section 304(b) of the Act, supra, to compensation in the amount of \$2,400.00.

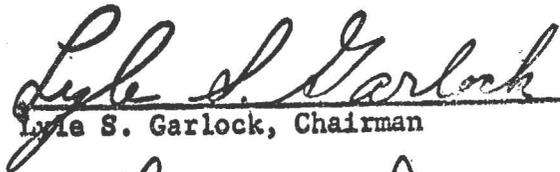
The Commission has held that in granting awards on claims under Section 304(b) of the Act interest shall be allowed at the rate of 6% per annum from the date of the injury, November 20, 1943, to April 23, 1948, the date of payment by the Government of Italy of \$5,000,000 pursuant to the Memorandum of Understanding dated August 14, 1947. (See Claim of Marie Verderber, Claim No. IT-10,488; FCSC Dec. & Ann. 275 (1968).)

A W A R D

An award is made to CARL L. HAUSS in the principal amount of Two Thousand Four Hundred Dollars (\$2,400.00), with interest thereof at the rate of 6% per annum from November 20, 1943, the date when the injury occurred, to April 23, 1948, in the sum of Six Hundred Thirty-Seven Dollars and Twenty Cents (\$637.20).

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

AUG 4 1971


Lytle S. Garlock, Chairman


Theodore Jaffe, Commissioner

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.)