

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

IN THE MATTER OF THE CLAIM OF

JOSEF WAGER

Claim No. Y2- 0523

Decision No. Y2- 276

Under the Yugoslav Claims Agreement of 1964  
and Title I of the International Claims  
Settlement Act of 1949, as amended

Counsel for claimant:

Edythe Jacobs

Appeal and objections from a Proposed Decision entered on February 14,  
1968.

Hearing on the record held on May 22, 1968.

FINAL DECISION

By a Proposed Decision entered on February 14, 1968, this claim was denied on the ground that claimant failed to establish that property was nationalized or otherwise taken from him by the Government of Yugoslavia between July 13, 1962, the date of his naturalization, and January 20, 1965, the effective date of the Agreement.

Claimant objected on three grounds: (1) that insufficient time was allowed to acquire evidence, (2) that the subject property was not an economic enterprise but an inventory of raw material, machinery, equipment and merchandise and therefore was not taken under the Law on Nationalization of Economic Enterprises of December 5, 1946, and (3) that the Commission's interpretation of the Agreement discriminates against naturalized citizens of the United States who became such subsequent to the date of taking of the property but prior to the date of the Agreement.

Claimant also requested that his claim be amended to include certain real property.

The Commission has reviewed the entire record and finds as follows:

(1) Pursuant to claimant's contention that insufficient time had been allowed to submit evidence, the Commission granted claimant an additional sixty days within which to do so. The evidence submitted at the termination of the said sixty days consists of four affidavits and a statement of distribution of compensation from the Austrian Government to claimant's sister, an Austrian national. This evidence contains no indication that claimant had an interest in property which was taken by the Government of Yugoslavia between July 13, 1962 and January 20, 1965.

(2) Claimant's second contention that the subject property was not an economic enterprise but rather an inventory of raw material, machinery, equipment and merchandise is and was without pertinence in the determination of this claim, the ground for the denial being that claimant failed to establish that the subject property was nationalized or otherwise taken by the Government of Yugoslavia between July 13, 1962 and January 20, 1965.

(3) Claimant's third contention that the Commission should deem the Agreement to be applicable to all United States nationals who were such at any time prior to the date of the Agreement is in direct violation of the clear and unambiguous terms of Article II of the Agreement requiring that the subject property be owned by a national or nationals of the United States on the date of taking. The Commission is without authority to deviate from the express terms of the Agreement.

Claimant's request that he be permitted to amend his claim to include real property is unsupported by any evidence to show that he had an interest in real property which was nationalized or otherwise taken by the Government of Yugoslavia between July 13, 1962 and January 20, 1965. Accordingly, claimant's request for amendment is denied.

Based upon all the evidence of record, including claimant's objections, it is

ORDERED that the Proposed Decision be, and it is hereby, affirmed.

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

MAY 29 1968

*Leonard v. B. Sutton*

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Leonard v. B. Sutton, Chairman

*Theodore Jaffe*

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Theodore Jaffe, Commissioner

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PROPOSED DECISION

This claim, in the amount of \$60,000.00, is based upon the asserted ownership and loss of personal property and an interest in a business enterprise located in Apatin, Yugoslavia. Claimant, JOSEF WAGER, has been a national of the United States since his naturalization on July 13, 1962.

Under Section 4(a) of the International Claims Settlement Act of 1949, as amended (64 Stat. 13 (1950), 22 U.S.C. §1623(a) (1958)), the Commission is given jurisdiction over claims of nationals of the United States included within the terms of the Yugoslav Claims Agreement of November 5, 1964 and the Commission is directed to apply the following in the following order:

(1) The provisions of the applicable claims agreement as provided in this subsection; and (2) the applicable principles of international law, justice and equity.

Among other things, the Agreement provides as follows:

Article I. (a) The Government of Yugoslavia agrees to pay, and the Government of the United States agrees to accept, the sum of \$3,500,000 United States currency in full settlement and discharge of all pecuniary claims of nationals of the United States, whether natural or juridical persons, against the Government of Yugoslavia, on account of the nationalization and other taking of property and of rights and interests in and with respect to property which occurred between July 19, 1948 and the date of this Agreement.

Article II. The claims of nationals of the United States to which reference is made in Article I of this Agreement refer to claims which were owned by nationals of the United States on the date on which the property and rights and interests in and with respect to property on which they are based was nationalized or taken by the Government of Yugoslavia and on the date of this Agreement. (Agreement between the Government of the United States and the Government of the Socialist Federal Republic of Yugoslavia Regarding Claims of United States Nationals, November 5, 1964, which entered into force on January 20, 1965, 16 U.S.T. & O.I.A. 1965, T.I.A.S. No. 5750 (1964).)

Thus, where property was owned by a natural person at the time of its nationalization or other taking, a claim based upon such loss of property is not compensable under the Agreement unless such person was a national of the United States at the time of nationalization or other taking which must also have occurred between July 19, 1948 and the date of the Agreement.

For a definition of the term "nationals of the United States," reference is made to Section 2(c), Title I, of the International Claims Settlement Act of 1949, as amended (supra), which provides that:

The term "nationals of the United States" includes  
(1) persons who are citizens of the United States; and  
(2) persons who, though not citizens of the United States, owe permanent allegiance to the United States. It does not include aliens.

As to item (1), the term citizen of the United States includes all persons born or naturalized in the United States, and subject to the jurisdiction thereof (U.S. Const. Amend. XIV, §1). Also, a person does not become a citizen of the United States by way of naturalization until the procedure of naturalization is fully complied with and the order divesting the person of his former nationality and making him a citizen is signed by the judge of the court having jurisdiction (Petition of Sproule, D.C. Cal. 1937, 19 F. Supp. 995).

As to item (2), the Commission has held that persons who though not citizens of the United States owe permanent allegiance to the United States are those who were born in certain outlying insular possessions of the United States or born elsewhere of parents already possessing that status and does not include an alien who resides in the United States, who is an employee of

the United States Government and has sworn allegiance thereto. (See the Claim of Edward Krukowski, Claim No. PO-9532, Decision No. PO-927, 21 FCSC Semiann. Rep. 27 [July-Dec. 31, 1964].) Neither does it include a person who in the course of applying for his United States citizenship filed a declaration of intention and a petition of naturalization and took certain oaths. (See the Final Decision in the Claim of Walter Ludwig Koerber, Claim No. W-3917, Decision No. W-1322.)

In the matter of the Claim of Jacob Meisler, Claim No. PO-4436, Decision No. PO-286, 16 FCSC Semiann. Rep. 30 [Jan.-June 1962], and the Claim of Vlad Metchik, Claim No. PO-1907, Decision No. PO-314, 17 FCSC Semiann. Rep. 45 [July-Dec. 31, 1962], the Commission held that the principle of international law regarding the nationality of a claimant seeking espousal by one state of his claim against another state, which has also been expressed as requiring that the aggrieved person be a national of the espousing state at the time the claim or loss accrued or arose, applies to claims authorized under Section 4(a) of Title I of the International Claims Settlement Act, as amended (supra).

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), as amended, 32 Fed. Reg. 412-13 (1967).)

The issues involved in claims before the Commission include the nationality of claimant and of all predecessors from whom claimant's interest in the claim is derived from the date of loss to the date of filing of the claim, claimant's ownership of the subject property or the extent of such ownership interest therein, the dates and circumstances of the asserted loss, and the value of the property at the time of loss. To sustain the burden of proof, claimant is required to submit evidence upon which the Commission can base findings of fact and conclusions of law with respect to each of the elements discussed above.

By Commission letters dated October 10, 1967 and November 27, 1967 claimant was advised through counsel of the scope of the Agreement. Also, suggestions were made as to the type of evidence necessary to establish a compensable claim and the sources from which it may be obtained. This evidence has not been received to date.

Claimant became a national of the United States on July 13, 1962 and asserts that the property on which this claim is based was nationalized or otherwise taken about 1949.

In view of the foregoing, the Commission finds that claimant has failed to establish that the subject property was nationalized or otherwise taken by the Government of Yugoslavia between July 13, 1962, the date of his naturalization, and January 20, 1965, the effective date of the Agreement. Therefore, this claim is not a claim of a national of the United States as defined by Articles I and II of the Yugoslav Claims Agreement of November 5, 1964 and it is, accordingly, denied.

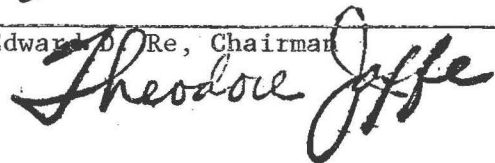
The Commission deems it unnecessary to consider other elements of this claim.

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

**FEB 14 1968**



Edward S. Re, 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. 85315(e) and (g) as amended, 32 Fed. Reg. 412-13 (1967).)