

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

IN THE MATTER OF THE CLAIM OF

PETER VLCKO

Claim No. CZ-2-0244

Decision No. CZ-2-0695

Oral Hearing held on November 17, 1984 at 2:00 p.m.

Counsel for Claimant:

Howrey & Simon
1730 Pennsylvania Avenue, NW
Suite 900
Washington, DC 20006
by: Kenneth Krosin, Esq.

FINAL DECISION

This claim in the amount of \$57,074.59 against the Government of Czechoslovakia under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981 (Public Law 97-127, 95 Stat. 1675) is based upon the loss of personal property and retirement benefits in Czechoslovakia.

Under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981, the Commission is given the following jurisdiction:

"The Commission shall receive and determine, in accordance with applicable substantive law, including international law, the validity and amount of claims by nationals of the United States against the Government of the Czechoslovak Socialist Republic for losses resulting from the nationalization or other taking of property owned at the time by nationals of the United States, which nationalization or other taking occurred between August 8, 1958, and [February 2, 1982]."

By Proposed Decision issued September 22, 1983, the Commission denied this claim on the ground that there was no evidence to conclude that any personal property was taken after August 8, 1958, and that there was no evidence that the Government of Czechoslovakia had repudiated, cancelled or annulled any pension rights which could constitute a nationalization or other taking of property after August 8, 1958. Finally, the Commission denied the claim for the return of monthly payments made into a retirement fund on the ground that there was no evidence that such funds were nationalized or expropriated by the government of Czechoslovakia after August 8, 1958.

By letter dated October 5, 1983, claimant objected to the Proposed Decision, but did not request an Oral Hearing. Subsequently, claimant requested that he be granted an Oral Hearing, and despite the fact that the request was not timely made pursuant to the regulations of the Commission, this request was granted by the Commission.

At the Oral Hearing, claimant, through counsel, conceded that no evidence had been submitted which could form the basis of a finding that the personal property of claimant, left behind in Czechoslovakia when claimant escaped in 1948, was taken after August 8, 1958, or at a time when it was owned by a United States national.

Counsel further asserted that no claim had been made for actual pension benefits and directed his argument solely to the issue of the return of contributions deducted from claimant's salary to the military pensions system prior to¹ 1948.

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1. Counsel is in error in his assertion that no claim was originally made for return of benefits. It is clear that the claimant claimed both for benefits, or in the alternative, payments he had made into the system. Based upon counsel's statement, however, the Commission concludes that the claim for retirement benefits is no longer being pursued.

It is established, both by claimant's statement and a letter from the government of Czechoslovakia, that claimant served in military service from October 1, 1931 until June 14, 1948. According to a letter from the Czech government to claimant, the period from March 14, 1939 to May 8, 1945 is not valued for pension benefits unless it is established that during that period an individual participated in the struggle against Fascism, which, according to the letter from Czechoslovakia, had not been documented in the case of claimant. Counsel suggests that the failure to credit claimant for pension purposes during the period from March 14, 1939 to May 8, 1945, is further evidence of an attempt by the government to deprive claimant of benefits otherwise due him.

Claimant's own written statement submitted to the Commission, however, confirms that after the occupation of Bohemia and Moravia, he was sent by German command to Slovakia to join its armed forces. In March of 1939, Adolf Hitler had declared Slovakia to be an independent state which was allied with Nazi Germany. Claimant continued to serve with the Slovakian army, including duty at the Russian front, in support of the military efforts of Nazi Germany. The fact that the Czechoslovak government has not documented his service during that period as participation in the struggle against Fascism, would, therefore, not appear to carry the implication ascribed to it by counsel.

On June 15, 1948, claimant escaped from Czechoslovakia. According to a letter dated July 5, 1983 to claimant, and an official response by the government of Czechoslovakia to an official request for information by the Foreign Claims

Settlement Commission, administrative proceedings were taken by the Ministry of Defense against claimant after his escape which divested claimant of his military rank. These procedures were pursuant to provisions contained in paragraph 33, section 1, line A, of Martial Law, as declared by No. 57/1946, Digest of Laws. Pursuant to section 2 of that same paragraph, such action divested claimant of any rights for any military pension.

Claimant asserts that during the time of his military service, he was required to and did contribute 78,600 crowns (the equivalent of approximately \$2,000.00) towards his retirement. It is for the loss of this contribution that claimant now asserts claim.

It is uncontroverted in the record that claimant was divested of any pension rights by action taken by the Czech government shortly after his escape from Czechoslovakia in 1948. Regardless of the circumstances or even the legality of any action taken at that time, such action could not constitute a nationalization or other taking of property occurring after August 8, 1958. Claimant states that once divested of his pension rights, he was entitled, under Czech law, to a return of his contributions. The Commission finds this purported legal opinion interpreting the content and effect of Czech law to be otherwise unsupported in the record, and notes that the Commission has been provided with no basis, whatsoever, to conclude that claimant is qualified to make such an opinion.

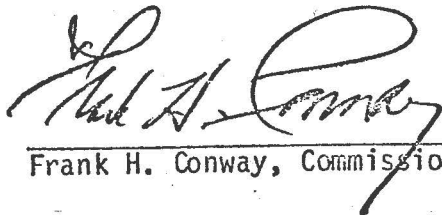
It is clear that the record is devoid of any evidence that the government of Czechoslovakia ever recognized any debt to the claimant to return contributions made to the Czech retirement system, much less any evidence of a repudiation

of such debt occurring between August 8, 1958 and February 2, 1982. Therefore, claimant has failed to establish that any property owned by him was nationalized or otherwise taken after August 8, 1958.

The Commission, therefore, has no basis to find this claim compensable and affirms its original denial as its final determination of this claim.

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

JAN 23 1984


Frank H. Conway, Commissioner


Joseph W. Brown, Commissioner

This is a true and correct copy of the decision
of the Commission which was entered as the final
decision.

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

IN THE MATTER OF THE CLAIM OF

PETER VLCKO

Claim No. CZ-2-0244

Decision No. CZ-2-0695

PROPOSED DECISION

This claim in the amount of \$57,074.59 against the Government of Czechoslovakia under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981 (Public Law 97-127, 95 Stat. 1675) is based upon the loss of personal property and retirement benefits in Czechoslovakia.

The evidence of record indicates that claimant became a United States citizen by naturalization on January 11, 1955.

Under subsection 5(a) of the Czechoslovakian Claims Settlement Act of 1981, the Commission is given the following jurisdiction:

"The Commission shall receive and determine, in accordance with applicable substantive law, including international law, the validity and amount of claims by nationals of the United States against the Government of the Czechoslovak Socialist Republic for losses resulting from the nationalization or other taking of property owned at the time by nationals of the United States, which nationalization or other taking occurred between August 8, 1958, and [February 2, 1982]."

Accordingly, under the law the Commission can grant awards only for property which was taken after August 8, 1958, at a time when it was owned by a United States national.

At the time of filing his claim, claimant asserted the loss of furnishings left in his apartment after his escape from Czechoslovakia in 1948, and after his wife and sons left in 1949. Claimant states that after the departure of his wife, her parents were evicted from the apartment and the living quarters were assigned to a Soviet military officer.

Claimant also asserts the loss of retirement benefits which had accrued during the years when he served in the Czechoslovak Armed Forces, from 1931 to 1948. He states that he reached the age of 55 on May 28, 1967, and therefore became entitled to monthly pension benefits equal to his previous monthly salary which, when he left Czechoslovakia, was 8,000 crowns. Alternatively, claimant asserts that, if he is not entitled to the retirement benefits, then he is entitled to a return of the premiums which he paid into the retirement fund during the years when he worked in Czechoslovakia.

With respect to the loss of the furnishings in his apartment which claimant stated were taken over by governmental authorities in 1949, the Commission is not authorized to grant an award for the loss of property occurring prior to August 8, 1958 since subsection 5(a) of the Act authorizes the Commission to grant awards only for the loss of property which occurred after August 8, 1958. Moreover, the claimant was not a United States citizen at the time this property was taken by the authorities, as is also required for compensation under the Act. Accordingly, the Commission finds that this portion of the claim must be and hereby is denied.

In an effort to assist the claimant in substantiating his claim, the Commission forwarded a request about the loss of his pension benefits to the Government of Czechoslovakia pursuant to Article 4 of the Agreement Between the United States and Czechoslovakia on the Settlement of Claims. The Czechoslovak Government responded to the request and indicated that, according to its 1922 and 1947 laws, claimant was not entitled to receive a military pension. Claimant himself submitted a decision reached by the Pension Office in Prague about his entitlement to pension benefits. This decision, too, stated

that claimant was not entitled to benefits because he had not complied with the laws of Czechoslovakia pertaining to the payment of retirement benefits.

However, even if the evidence of record had established claimant's entitlement to the retirement benefits from Czechoslovakia, the Commission finds that there has been no action constituting a taking of the benefits after August 8, 1958, as is required for compensation under the Act.

In the first Czechoslovakian claims program administered by the Commission under Public Law 85-604 (Title IV of the International Claims Settlement Act of 1949), which compensated eligible claimants for losses occurring prior to August 8, 1958, the Commission held that the mere non-payment of pension benefits to a United States citizen did not constitute a nationalization or other taking of property absent an express repudiation, cancellation, or annulment of the pension rights by the Government of Czechoslovakia. (See Claim of LADISLAV KAREL FEIERABEND, Claim No. CZ-2529, Decision No. CZ-1423.) As stated by the Commission in that Decision:

"The legislative history of Title IV of the aforesaid Act indicates that Congress did not intend to include compensation of creditor claims for the non-payment of debts, unless a specific action of the Government of Czechoslovakia shows that such creditor's rights were annulled, abolished or cancelled. Representatives of the Department of State testified before both Houses of Congress that it was not the intention of the Government of the United States to include in a future agreement with Czechoslovakia payment of creditor claims and that the draft legislation before Congress which was subsequently enacted into law does not direct payment of such claims."

The "future agreement" referred to in the foregoing Decision was finally signed in Prague and came into effect on February 2, 1982. Under this agreement Czechoslovakia paid the United States \$81.5 million in full settlement and discharge of the claims of the United States Government and its nationals "based upon measures of nationalization, expropriation, disposition,

or other restrictive measures involving takings of their properties, rights, and interests . . ."

This agreement was reviewed and specifically approved by Congress in Public Law 97-127. Although Congress had been apprised of the Commission's previous denials of pension claims, the Congress in section 5(a) of Public Law 97-127 provided no new directions to the Commission in determining the validity of claims arising after August 8, 1958. Rather, identical language was included requiring that a loss occur from "the nationalization or other taking of property" by the Government of Czechoslovakia. Not only did inclusion of this identical language indicate concurrence with the Commission's previous interpretation, but Congress went further and added section 11 of the Act specifically addressing the question of payment of social security benefits to United States residents. Section 11 contains no reference to the Commission, but rather directs the Secretary of State to prepare a report assessing the Czechoslovakian Government's compliance with the 1968 agreement on the reciprocal payment of social security benefits and to make recommendations to the Congress as to the courses of action the United States could take to achieve greater comparability and equity of benefits for the residents of the two countries.

Based upon this legislative history, the Commission affirms its previous holdings that the mere non-payment of pension benefits to a United States citizen does not constitute a nationalization or other taking of property absent an express repudiation, cancellation, or annulment of the pension rights by the Government of Czechoslovakia.

In order for this claim to be compensable, it must be established that the Czechoslovak government repudiated, cancelled or annulled the claimant's pension benefits after

August 8, 1958. The documentation in the claim file does not indicate such an action of the Czechoslovak government after that date; rather, it indicates that claimant was not entitled under the law to receive the benefits. There is therefore no basis for the Commission to find that the claimant's pension rights have been the subject of a taking by the Government of Czechoslovakia after August 8, 1958.

Claimant has also put forth the assertion that, even if he is not entitled to receive retirement benefits, he is entitled to the return of the premiums he paid into the retirement fund from his monthly salary while he was an employee in Czechoslovakia. Claimant states that these payments were confiscated by the Czechoslovak government and that he is entitled to compensation for their loss. The Commission, however, finds that the file contains no evidence to establish that the Czechoslovakian government acquired control over these payments in any manner that would constitute a taking of the property after August 8, 1958, as required for compensation under the Act.

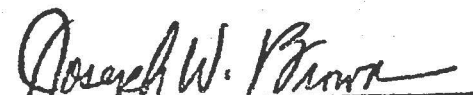
The payment of monthly premiums into a retirement fund was an obligation of the claimant as an employee in Czechoslovakia. Had the claimant remained in Czechoslovakia, reached a designated age, and fulfilled requirements of Czechoslovakian law, he would have been entitled to, not the return of the premiums paid, but the retirement benefits as specified under the law. Accordingly, since the payment of the premiums by the claimant did not constitute a taking of the money, and since the government did not have the obligation to return the actual premiums to the claimant, the Commission finds that their loss does not constitute a taking which is compensable under section 5(a) of the Act.

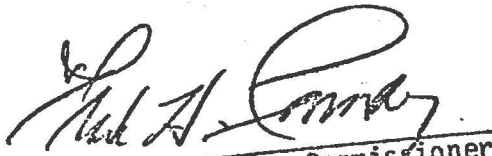
Based upon the foregoing, the Commission concludes that claimant has not established that he was entitled to receive retirement benefits from Czechoslovakia or that any such benefits or premiums paid by the claimant were taken by the Czechoslovak government after August 8, 1958. Accordingly, the Commission finds that this claim must be and hereby is denied.

The Commission finds it unnecessary to make determinations with respect to other aspects of this claim.

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

SEP 22 1983


Joseph W. Brown, Commissioner


Frank H. Conway, 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.)

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