

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

IN THE MATTER OF THE CLAIM OF

KENNETH LEROY JOHNSON, JR.

Claim No. V-0169

Decision No. V-0375

PROPOSED DECISION

This claim in the amount of \$16,417.00 against the Government of the Socialist Republic of Vietnam under Title VII of the International Claims Settlement Act of 1949, as amended by Public Law 96-606 (94 Stat. 3534), is based upon the loss of personal property in Gia Dinh as well as lost salary resulting from the termination of a contract of employment in South Vietnam.

The claimant was born in Boise, Idaho on October 2, 1945 and has been a lifelong citizen of the United States.

Under section 703 of Title VII of the International Claims Settlement Act of 1949, as amended, 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 amounts of claims by nationals of the United States against Vietnam arising on or after April 29, 1975, for losses incurred as a result of the nationalization, expropriation, or other taking of (or special measures directed against) property which, at the time of such nationalization, expropriation, or other taking, was owned wholly or partially, directly or indirectly, by nationals of the United States to whom no restoration or adequate compensation for such property has been made... ."

The record indicates that the claimant was employed in South Vietnam by Alaska Barge and Transport, Inc. under a one-year contract that was signed on January 1, 1975. With the impending military collapse of South Vietnam, however, the claimant was evacuated from the country on April 21, 1975 and forced to leave his household and other personal effects in his residence at no. 247 B Truong Minh Ky, Gia Dinh. The claimant has submitted an

inventory of this property which is dated April 15, 1975, just before his departure from South Vietnam, listing various items of personalty including a motorcycle, assorted household furnishings, appliances, and other goods with a total asserted value of \$2,467.00. The record also includes a mail order blank and several sales receipts evidencing the claimant's purchase of some of the items listed in his inventory. Based on the foregoing evidence, the Commission finds that KENNETH LEROY JOHNSON, JR. was the owner of the personal property listed in his 1975 inventory.

The record contains no evidence as to what became of the subject property after the claimant's departure from South Vietnam on April 21, 1975. However, the Commission has found that property left behind by Americans in South Vietnam would have been considered "property of the people" by the Communist authorities and taken under government control. In the absence of precise evidence as to when such action occurred, the Commission has held that such property was taken on or about May 1, 1975--the date the Communists completed their occupation of South Vietnam. (See Claim of BETTY JANET MITCHELL, Claim No. V-0358, Decision No. V-0259 (1984).) Accordingly, the Commission finds that the personal property involved in the instant claim was taken as of May 1, 1975.

As KENNETH LEROY JOHNSON, JR. was a United States citizen at the time of loss, the Commission concludes that he is entitled to an award under the provisions of Public Law 96-606.

In determining the value of the subject property, the Commission has given careful consideration to the inventory furnished by the claimant, as well as the supplemental evidence of the claimant's purchase of some of the specific items listed therein. The Commission finds that the \$2,467.00 asserted by the claimant is a reasonable estimate of the value of his property at

the time of loss. Accordingly, the Commission determines that the claimant is entitled to an award in the principal amount of \$2,467.00.

The Commission has concluded that in granting awards on claims under section 703 of Title VII of the Act, for the nationalization, expropriation, or other taking of property, interest shall be allowed at the rate of 6% simple interest per annum from the date of loss to the date of settlement. (See Claim of BETTY JANET MITCHELL, Claim No. V-0358, Decision No. V-0259 (1984).)

KENNETH LEROY JOHNSON, JR. is also claiming \$13,950.00 "for loss of salary, hardship, and breach of contract" resulting from the North Vietnamese conquest of South Vietnam which forced the premature termination of his employment with Alaska Barge and Transport, Inc. As aforementioned, the claimant signed a one-year employment contract on January 1, 1975 with Alaska Barge and Transport, Inc., which was operating in South Vietnam under a contract with the United States Government. The claimant's employment in South Vietnam terminated when he was evacuated on April 21, 1975 and this portion of the instant claim is presumably based on the salary he would have earned during the rest of the year had the contract been completed.

North Vietnam was in a state of war with South Vietnam, albeit undeclared, when the claimant signed his contract of employment with Alaska Barge and Transport, Inc. at the beginning of 1975. Both of the contracting parties were fully aware that the completion of the claimant's year of employment in South Vietnam depended upon the continued viability of the South Vietnamese regime and the successful defense of its territory. In signing the contract, therefore, the claimant assumed the risk that the fortunes of war would not terminate his employment prematurely. The claimant's gamble failed, of course, as South Vietnam was overrun in the spring of 1975.

International law does recognize certain obligations of a belligerent state with respect to foreign civilians located in territory under the control of the belligerent, as well as the concomitant rights of such foreign civilians. For instance, a belligerent state is prohibited under the 1949 Geneva Civilians Convention from taking the life of or inflicting bodily injury upon a foreign civilian (who has committed no act in violation of international or domestic law) or from subjecting a foreign civilian to uncompensated forced labor. (See M. WHITEMAN, DIGEST OF INTERNATIONAL LAW, Vol. 10, pp. 550, 563-4, 569 (1968).) However, it is also recognized that a belligerent's military operations, by their very nature, may incidentally inflict certain losses upon a foreign civilian which are not violative of international law. Falling in this category would be losses due to the destruction of tangible property or the cessation of business operations, when incidental to the proper conduct of military operations. These are considered war losses under international law and, as such, afford a foreign civilian no right of compensation against the belligerent state. (See G. HACKWORTH, DIGEST OF INTERNATIONAL LAW, Vol. V, p. 683 (1943).)

The final North Vietnamese offensive of the war caused Alaska Barge and Transport, Inc. to cease its business operations in South Vietnam and terminate the claimant's employment. Since the resulting business losses of the employer and employee--of prospective earnings by the company and salary by the claimant--were entirely incidental to North Vietnam's properly conducted military operations, the Commission finds that they constituted war losses under international law. As such, they imposed no duty of compensation upon North Vietnam.

The Commission concludes, therefore, that the claimant's asserted loss of salary and associated hardships resulting from the termination of his employment in South Vietnam with Alaska Barge and Transport, Inc. does not constitute a claim against

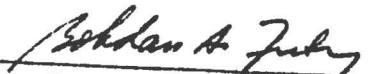
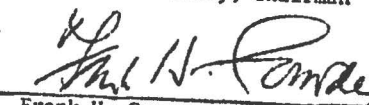

Vietnam for which an award is contemplated under Public Law 96-606. Accordingly, the Commission determines that this portion of the instant claim must be denied.

AWARD

Claimant, KENNETH LEROY JOHNSON, JR., is therefore entitled to an award in the principal amount of Two Thousand Four Hundred Sixty-Seven Dollars (\$2,467.00), plus interest at the rate of 6% simple interest per annum from May 1, 1975 until the date of settlement.

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

MAY 20 1985


Bohdan A. Futey, Chairman

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.

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.)