

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

IN THE MATTER OF THE CLAIM OF

ROBERT H. WORK
and
SARAHELEN WORK

Under the International Claims Settlement
Act of 1949, as amended

Claim No. CU -3408

Decision No. CU 5729

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 ROBERT H. WORK and SARAHELEN WORK in the amount of \$17,097.59, and is based upon the asserted ownership and loss of a debt from a Cuban national and losses arising from the asserted devaluation of Cuban pesos. Claimants have been nationals of the United States since their respective births.

Under Title V of the International Claims Settlement Act of 1949, as amended [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.

Claim is made for the amount of \$12,069.12 assertedly owed claimants by a Cuban national on promissory notes representing the balance due on the purchase of equipment and merchandise with leasehold interests for two automobile service stations in Santiago de Cuba and the loss of \$5,028.47 for the asserted devaluation of Cuban pesos held by claimant.

The record shows and the Commission finds that claimants sold to one Manuel Pequeno all their merchandise, equipment and leasehold interests in two automobile service stations in Santiago de Cuba for the amount of 13,524.11 pesos and loaned him the sum of 4,844.36 pesos for a total amount due and owing of 18,368.47 pesos or \$18,368.47 (the peso being considered at a par with the dollar). Claimants state that payments totalling 6,299.35 pesos were received but no payments were made after September 1960, leaving a balance of 12,069.12 pesos to be collected.

The Government of Cuba, on September 29, 1959, published its Law 568 concerning foreign exchange. Thereafter, the Cuban Government effectively precluded not only transfers of funds to creditors abroad, but also payment to creditors within Cuba by numerous, unreasonable and costly demands upon the debtors, who were thus deterred from complying with the demands of the Cuban Government. The Commission holds that Cuban Law 568 and the Cuban Government's implementation thereof, with respect to the rights of the claimants herein, was not in reality a legitimate exercise of sovereign authority to regulate foreign exchange, but constituted an intervention by the Government of Cuba in the contractual rights of the claimants, which resulted in the taking of American-owned property within the meaning of Section 503(a) of the Act. (See Claim of Etna Pozzolana Corporation, Claim No. CU-0049, 1967 FCSC Ann. Rep. 46.)

Accordingly, in the instant claim, the Commission finds that claimants suffered a loss on September 1, 1960 in the amount of \$12,069.12 as a result of the intervention by the Government of Cuba within the meaning of Title V of the Act.

Claimants assert a further loss in the amount of \$5,028.47 resulting from a reduction in the dollar value of pesos received by claimants from the purchaser of the service stations. The record establishes that claimants received 6,299.35 pesos from Manuel Pequeno, of which 574.72 were used at face value, 1,000 were deposited in a bank in return for a credit of \$290.00, 1,624.63 were exchanged with Cuban workers for \$406.16, leaving a balance of 3,100 of which claimants now possess 3,085. However, the record does not establish any devaluation of its currency by the Cuban Government nor does it appear that such a devaluation would be certifiable as a loss under Title V of the Act.

However, in regard to the 3,085 pesos in the possession of claimants, a different condition exists. Claimant received these funds in 1960. By Law 963, published in the Official Gazette on August 4, 1961, a currency exchange was ordered, to be carried out on August 6 and 7, 1961. All old currency was to be turned in at designated centers in exchange for new Cuban bank notes. No one was allowed under the Law to receive more than 200 new pesos, and all currency in excess of that amount was placed in a special account in the individual's name. After the exchange old currency had no value. A 60-day extension was provided in Article X for those showing good reason for their inability to surrender their money on the specified days of exchange. Article XI of Law 963 declared all currency which, at the time of promulgation, was outside the territory under the jurisdiction of the Cuban State to be null and of no legal force.

The record reflects that claimants were outside the jurisdiction of the Cuban State and unable to convert the peso currency into United States dollars at the time of the issuance of Law 963. Accordingly, the Commission concludes that Cuban Law 963 and its implementation with respect to the claimants herein constituted a taking of property by the Government of

Cuba within the contemplation of Title V of the Act; that the loss in the amount of 3,085 pesos occurred on August 4, 1961; and the pesos had a value of \$3,085.00 on that date. (See Claim of Betty G. Boyle, Claim No. CU-3473.)

The Commission has decided that in certification 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 the Claim of Lisle Corporation, FCSC Claim No. CU-0644), and in the instant claims, it is so ordered, as follows:

| <u>From</u> | <u>On</u> |
|-------------------|--------------------|
| September 1, 1960 | \$12,069.12 |
| August 4, 1961 | <u>3,085.00</u> |
| | <u>\$15,154.12</u> |

CERTIFICATIONS OF LOSS

The Commission certifies that ROBERT H. WORK 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 Seven Thousand Five Hundred Seventy-seven Dollars and Six Cents (\$7,577.06) with interest at the rate of 6% per annum on \$6,034.56 from September 1, 1960 and on \$1,542.50 from August 4, 1961 to the date of settlement; and


The Commission certifies that SARAHELEN WORK 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 Seven Thousand Five Hundred Seventy-seven Dollars and Six Cents (\$7,577.06) with interest at the rate of 6% per annum on \$6,034.56 from September 1, 1960 and on \$1,542.50 from August 4, 1961 to the date of settlement.

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

AUG 19 1970


Lytle S. Garlock, Chairman


Theodore Jaffe, Commissioner


Sidney Brodberg, 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. §531.5(e) and (g), as amended, 32 Fed. Reg. 412-13 [1967].)