CLAIM OF GEORGE M. KAWAGUCHI

[No. 146-35-2523. Decided June 26, 1950]

FINDINGS OF FACT

The claimant filed a claim on April 18, 1949, in the amount of $1,340. The claim involves a loss through sale of a 1940 Buick 8-cylinder business coupe. The claimant was born on June 21, 1911, at Selma, California, of Japanese parents both of whom were born in Japan. Claimant was not married at the time of his evacuation. At no time since December 7, 1941, has the claimant gone to Japan. On December 7, 1941, and for some time previously, the claimant actually resided at the Kuroda Hotel at 312 East Second Street, Los Angeles, California. The claimant was residing at 18 South El Dorado Street, Stockton, California, when he was evacuated by order of the Military Commander, under authority of Executive Order No. 9066, to Stockton Assembly Center and from there to the War Relocation Authority Relocation Center, Rohwer, Arkansas. At the time the claimant was evacuated, he was unable to take the above-mentioned automobile with him to the Relocation Center, and therefore sold this automobile for the highest price possible in April 1942. He would not have sold it but for his evacuation. At the time there was no free market available on which claimant could have disposed of his automobile at a reasonable value, and the claimant acted reasonably in the circumstances. The fair and reasonable value of a Buick automobile of this type at the time of sale was $850. The claimant received $500 from the sale. The claimant's loss has not been compensated for by insurance or otherwise.

REASONS FOR DECISION

The claimant's formal statement of claim in this case indicates that he went to St. Louis, Missouri, from the War Relocation Center, that he was there inducted into the Army, and that he returned to Los Angeles from the Army in 1946. The claim is based upon the difference between the alleged replacement value of the car in 1946 and the price for which he sold it at the time of evacuation. There is thus squarely raised the question of whether or not the measure of damages to be adopted under the statute is the amount of loss when evacuation of the claimant took place or is the cost of replacing the lost property at some later time, as, for instance, when the claimant returned from the Relocation Center. The latter measure appears to have been taken here. Although the point was not pressed by the claimant, and a proposed award made in the field on the basis of the value at the time of evacuation was accepted by his attorney, the question is still inherent in the case and must be dealt with here. Moreover, even though the present claimant has elected not to press the replacement value argument, the Japanese American Citizens League, to which many claimants belong, aware of the magnitude of the question involved, has generally called to our attention a legal opinion of its counsel which seems to suggest that a number of factors might be "considered in the determination of damage or loss" and among these is "reproduction cost at the time of the claimant's replacement of the property." It seems appropriate, accordingly, to state the reasons why it is thought the replacement cost theory does not apply.

The conclusion reached in the above-mentioned memorandum of law "is that damage to property within the meaning of the Evacuation Claims Act of 1948, cannot be restricted to any particular formulae such as market value, or original cost less depreciation, or reproduction value. Evidence placed on all these types of values should, and no doubt will be, considered by the adjudication offi-

cers and the Attorney General in reaching the determination of fair value and in accomplishing the purpose of the Act, which is to indemnify the claimants for the losses suffered." This and other language in the memorandum, such as the suggestion that "reproduction cost at the time of the claimant's replacement of the property" can be considered in determining the amount of compensable loss, proceeds upon the assumption that there is a wide field of precedents from which to choose in determining the proper measure of compensation under the Act. Indeed, the majority of citations in the memorandum are to administrative decisions in the field of international law. No sound basis for such an assumption, however, has been found either in the terms of the Act or in its legislative history.

In the House committee's Report on the bill (House Report No. 732, 80th Cong., 1st sess.), the following statement is made:

> At the outset it will be observed that the present bill differs from that as introduced earlier in this Congress (H. R. 2768), and from that reported in the 79th Congress (H. R. 6780) primarily in the respect that the administration of the program is placed with the Attorney General instead of with a separate commission under the supervision of the Interior Department. The object of the committee in thus shifting the responsibility is predicated upon the belief that *the Department of Justice is perhaps more adequately equipped in specialized personnel more familiar with the disposition of claims against the Government than the Department of the Interior, and is better able to absorb such functions, partaking as they do of its normal phase of operations, than other governmental agencies more remote in skills.* [Emphasis supplied.]

The committee, in referring to "disposition of claims against the Government" must have had in mind the body of jurisprudence which has evolved from a long course of judicial litigations with respect to claims against the

United States, because there was no reason for the Committee to have supposed that the Department of Justice had any greater firsthand familiarity with administrative proceedings than the Department of the Interior or many other agencies. Moreover, when the bill reached the Senate, the "jurisdiction" conferred upon the Attorney General to adjudicate the claims was further clarified by the addition of the express requirement that they be determined "according to law." In view of the express terms of the Statute and the obvious intendment of Congress, it constitutes the conference on an administrative authority of quasi-judicial power to determine claims against the Government in the same way as the Court of Claims, which is authorized by statute to entertain suits against the sovereign under a jurisdiction limited by statute. The power thus conferred, not being "the judicial power" referred to in Article III of the Constitution, can be exercised by an administrative body. *Williams* v. *United States*, 289 U. S. 553, 579–580. It is only necessary, therefore, to fill in the detail of the congressional intent expressed in the phrase, "determine according to law," by reference to judicial decisions in cases asserting claims against the United States, wherever it is possible to do so consistently with other provisions of the Act.

The foundation has now been laid for consideration of the specific question, whether the award in this case can properly be based upon the replacement cost of the automobile when claimant returned to Los Angeles in 1946. As acknowledged in the above-mentioned memorandum of law, nothing in the Act or its legislative history indicates a congressional intention that the replacement cost, at the time of the claimant's replacement of the property, should be considered in computing the award. Absent such an indication, resort must be had to judicial decisions in cases involving claims against the United States in order to find the solution. There the answer seems clear. In all comparable cases which have been noticed, the amount of compensable loss is determined as of the date

when it occurred. See *Russell Co.* v. *United States,* 261 U. S. 514, 523. Moreover, the law of damages, as it applies generally, is not to the contrary. In the case of *Standard Oil Co.* v. *Southern Pacific Co.,* 268 U. S. 146, which is cited in the above-mentioned memorandum of law, the following statement appears at p. 155:

> It is fundamental in the law of damages that the injured party is entitled to compensation for the loss sustained. Where property is destroyed by wrongful act, the owner is entitled to its money equivalent, and thereby to be put in as good position pecuniarily as if his property had not been destroyed. In case of total loss of a vessel, the measure of damages is its market value, if it has a market value, *at the time of destruction. The Baltimore,* 8 Wall. 377, 385. Where there is no market value such as is established by contemporaneous sales of like property in the way of ordinary business, as in the case of merchandise bought and sold in the market, other evidence is resorted to. The value of the vessel lost properly may be taken to be the sum which, considering all the circumstances, probably could have been obtained for her *on the date of the collision;* that is, the sum that in all probability would result from fair negotiations between an owner willing to sell and a purchaser desiring to buy. *Brooks-Scanlon Corporation* v. *United States,* 265 U. S. 106, 123. And by numerous decisions of this Court it is firmly established that *the cost of reproduction as of the date of valuation* constitutes evidence properly to be considered in the ascertainment of value. *Southwestern Bell Telephone Co.* v. *Public Service Commission,* 262 U. S. 276, 287, and cases cited; *Bluefield Co.* v. *Public Service Commission,* 262 U. S. 679, 689; *Georgia Ry. & Power Co.* v. *Railroad Commission,* 262 U. S. 625, 629; *Brooks-Scanlon Corporation* v. *United States, supra,* 125; *Ohio Utilities Company* v. *Public Utilities Commission,* 267 U. S. 359. The same rule is applied in England. *In re Mersey Docks and Admiralty Commissioners* [1920], 3 K. B. 223; *Toronto City Corporation* v. *Toronto Railway Corporation* [1925], A. C. 177, 191. It is to be borne in mind that value is the thing to be found and that neither cost of reproduction new, nor that less depreciation, is the measure or sole guide. The ascertainment of value is not controlled by artificial rules. It is not a matter of formulas, but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts. *Minnesota Rate* cases, 230 U. S. 352, 434. [Emphasis supplied.]

While it is true in many instances that the measure of damages followed is greater than the value of the property at the time of its loss, this additional amount is generally based upon deprivation of the use of money that should have been paid and not upon the decrease in its purchasing power in the interval between loss and payment. Thus, in granting just compensation for the taking of private property for public use, the courts hold that a claimant is "entitled to such addition as would produce a full equivalent of that value taken contemporaneously with the taking." *Jacobs* v. *United States,* 290 U. S. 13, 17, quoting from *Seaboard Air Line Railroad Co.* v. *United States,* 261 U. S. 299, 306. It is firmly established, however, that such compensation for delay cannot be given in the adjudication of claims against the United States unless required by the Constitution, as in the "taking" cases, or authorized by an express statutory provision. *United States* v. *Hotel Co.,* 329 U. S. 585, 588. And, it seems equally clear, even apart from the provisions of Section 2 of the Act, that the fact that his evacuation may have deprived the claimant of his opportunity to hold his property until it increased in value does not authorize consideration of the increment of value which a rising market would have given him, or what has been called the property's "retention value," as part of the loss. *United States* v. *Commodities Corporation,* 339 U. S. 121.

To summarize what has been said, the Act is an act of bounty and all rights of the claimants are to be found, therefore, within its four corners, but the Act itself is silent on the measure of damages to be applied; the At-

torney General is to determine all claims "according to law," and resort must be had to the general principles of law applied by the courts in cases involving claims against the Government; the general rule of such cases is to allow only the fair market value at the time of loss unless a greater right has been conferred by statute; and since no greater right is conferred by the Act itself, it follows as a general principle, and *a fortiori* under such an act as that now construed, that there is no authority conferred on the Attorney General to depart from the general rule of damages. Accordingly, the claimant's request to be compensated upon the basis of the replacement cost of the automobile in question as of a time later than the date of its sale, must be denied.

The evidence of the claimant's loss consists of his sworn statement plus the statements of persons with knowledge concerning the claimant's ownership and disposal of the property involved in the claim. A valuation of the claimant's property as of the time of the loss in the amount of $850 is reasonable. Of this amount the claimant received $500 as proceeds from the sale of the property which resulted in a net loss to the claimant of $350. Since claimant had no free market and acted reasonably in selling in the circumstances, the loss on sale is allowable. *Toshi Shimomaye, ante,* p. 1.