CLAIM OF SAWAYO MUKAI

[Nos. 146–35–94 and 129. Decided July 29, 1954]

FINDINGS OF FACT

Claim No. 146–35–94, in the amount of $1,182.50, was received by the Attorney General on December 13, 1948. It involves loss of personal effects due to theft from storage. Claim No. 146–35–129, in the amount of $12,705, was received by the Attorney General on December 20, 1948. It involves loss on the Tokyo Fishing Tackle Store, a retail business located at 611 Third Avenue, Seattle, Washington. This latter claim was originally filed by claimant's daughter, Mariko Mukai Ando, but it subsequently developed that claimant, Sawayo Mukai, was the real party in interest and she was accordingly substituted as claimant at the request of Mariko Mukai Ando by letter dated August 7, 1953.

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Claimant's personal interest in the community property covered by Statement of Claim No. 146–35–94 was fairly worth $450. On May 5, 1953, claimant was paid $443.43 pursuant to a compromise settlement award dated May 9, 1952, in compromise settlement of such items. This award was made under the erroneous impression on the part of the Government that No. 146–35–94 covered all items of claim asserted by the claimant under the Act. The claimant did not intend to compromise the items of claim asserted in No. 146–35–129 and made no intentional misrepresentation of the facts in this regard.

REASONS FOR DECISION

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Additional questions in this case are whether the compromise of the items covered by claimant's Statement of Claim in No. 146–35–94 should now bar the allowance of compensation on other items and whether the claimant can be awarded additional compensation on the items

compromised. Public Law 116 of the 82d Congress, approved August 17, 1951, under which the compromise agreement was made, limited the amount which could be awarded in the compromise of "any case" to $2,500. This Statute obviously contemplated the settlement of all items of claim asserted by a compromising claimant and was not intended to authorize piecemeal disposition of such items by the issuance of awards totaling more than that amount on the theory that a claimant might have more than one "case." Therefore, before a claimant may obtain compensation on other items of claim, not included in such a compromise, in an amount which would cause his total compensation to exceed $2,500, it must be shown that the original compromise agreement was made under such misapprehension as to avoid violation of the policy implicit in the Statute. In the instant case, unquestionably it was not the intention of the claimant to compromise all items of claim here involved and the claimant's interest in the items asserted in No. 146–35–129 was unknown to the Government. While it is true that the mistake on the part of the Government was due to the fact that No. 146–35–129 was presented by claimant's daughter, such action could not have been taken for the purpose of evading the limitations of Public Law 116, which had not been enacted. Moreover, experience has taught that in the absence of evidence to the contrary, no sinister significance can be attached to the common practice among Japanese aliens to transact affairs relating to their property interests in the names of their citizen children. Cf. *Fumiyo Kojima, ante,* p. 209. It appears that both parties were acting in good faith but each with so thorough a misunderstanding of the factual assumptions and intentions of the other as to make impossible a true meeting of the minds on the scope of the compromise. This, however, did not make the compromise award a nullity for thereafter the claimant could have elected to abandon the other items of her claim and neither the spirit nor the letter of Public Law 116 would have been violated. Accordingly,

when the claimant received payment on the compromise award in No. 146–35–94, the award was valid and the money was lawfully received. Technical rescission of the compromise agreement and award and restitution by the claimant of the funds received are unnecessary, at least in the present case, because by leaving the original compromise award and payment undisturbed, the financial position of the parties (apart from delay in payment of this award) is precisely the same as if rescission and specie restitution were accomplished simultaneously with this adjudication.

Even though the claimant suffered a greater loss on the items listed in No. 146–35–94 than the amount of $443.43, which she was paid, she is nonetheless limited to that amount, as full compensation on such items, by reason of Section 4 (d) of the original Act which provides in part that the "payment of an award shall be final and conclusive for all purposes * * * and shall be a full discharge of the United States * * * with respect to all claims arising out of the same subject matter." The award, although subject to rescission, was valid when the payment was made and the items in question clearly constituted its subject matter. In the present case, claimant has no reason to complain of this result for it permits the original compromise award to stand and this adjudication, in effect, to be confined to the items in No. 146–35–129, a result which the claimant must have anticipated and intended at the time of negotiating the compromise settlement. If it were now found that the compensation due on the items in No. 146–35–94 was less than the amount paid, a different case would be presented and, depending upon the interpretation to be given certain language in Section 4 (d), it might be necessary to deduct the difference from the present award. That is not the present case, however, and the result here is the same whether or not it is theoretically necessary or possible to treat the compromise agreement as rescinded.