CLAIM OF TAKESHI SAKURAI

[No. 146–35–13961. Decided October 8, 1954]

FINDINGS OF FACT

This claim, in the amount of $6,500, was timely received by the Attorney General at Washington, D. C., on December 20, 1949. It consisted entirely of an alleged loss of salary between March 4, 1942, and July 31, 1946, as a result of claimant's "discharge" from a permanent civil service position with the State of California.

Claimant, both of whose parents were Japanese, was actually residing in the United States on December 7, 1941, and has not since that date gone to Japan. Claimant was living at 1211 New Hampshire Avenue, Los Angeles, Los Angeles County, California, when he was evacuated on April 28, 1942, under military orders pursuant to Executive Order No. 9066, dated February 19, 1942. Claimant was a single man at the time of his evacuation, but was married on September 7, 1945. The claim may involve community property in part, but the precise nature of the claimant's interest need not be determined under the circumstances presented.

The claim had been summarily dismissed on February 12, 1953, as involving merely a loss of anticipated earnings for which claimant could not be compensated under Section 2 (b) (5) of the Act. Said dismissal provided, however, that claimant might have 60 days within which to request a hearing on the merits. Such request was timely made and a hearing was subsequently held.

Claimant received his permanent civil service status on August 1, 1941; he was suspended from his position by the State on March 4, 1942, primarily because he was of Japanese ancestry; following a hearing before the State

Personnel Board, the duly constituted agency of the State for matters of this kind, said Board reinstated him to his position on March 14, 1947; but claimant voluntarily resigned from said position on March 27, 1947, because "* * * I had another job already, and I knew I was going to get paid better * * *."

Among the findings of the State Personnel Board on March 14, 1947, were these: "That the respondents * * * [of whom claimant was one] by way of compromise settlement have * * * agreed that a decision shall be made in this matter whereby the Board shall allow salary for the period between suspension and evacuation [March 4, 1942, to April 28, 1942], and no more, less offsets of compensation earned or that reasonably might have been earned during such period * * * that the respondents are hereby reinstated to their respective positions * * * that the hearings on said charges were originally set by the State Personnel Board for November 30, 1943 * * *; that on or about November 30, 1943, continuance as requested was granted; that in consideration thereof each respondent stipulated to waive and did waive any and all claims to salary for the period of his continuance; that the period of such continuance commenced on November 30, 1943, and ended on September 17, 1946, the date of the hearing herein; that each respondent at the said hearing stipulated to waive and did waive any and all claim to salary for the period commencing with September 17, 1946, and ending with the date of the decision of this Board on said charges * * *; that said respondents * * * from the date of evacuation to January 2, 1945, by reason of removal, confinement, and exclusion * * * were not ready, able, or willing to perform, and did not perform the duties of their respective positions * * * for the State of California, and would not and could not have performed such duties * * * had the State Board of Equalization not suspended them as aforesaid * * *." Claimant was represented by counsel throughout the proceedings involving the State of California.

391156—56——24

At the hearing on his evacuation claim, claimant, through counsel, waived his claim for salary for the period between his suspension (March 4, 1942) and his evacuation (April 28, 1942), apparently because he had received equivalent compensation therefor.

REASONS FOR DECISION

The conclusions that we reach concerning the applicability of Section 2 (b) (5) of the Act in our view removes the necessity of considering a number of questions which have been ably argued by counsel for claimant and which, otherwise, might require answer. It is contended that the rights which were given the claimant by the laws of the State of California with reference to his employment by that State should be recognized as "personal property" within the meaning of those terms as used in Section 1 of the Federal Act. This includes, also, we are told, the rights to a remedy whereby the claimant was authorized to and did establish his right to reinstatement to the position after his suspension on charges preferred by State officials. For purposes of this adjudication, it may be assumed that these contentions are sound and also that, but for claimant's evacuation and exclusion from the place of his employment under military orders, he would have been able to have obtained his reinstatement at a much earlier date. Indeed, in the view that we take of this case, it may be assumed that, as of the date of his evacuation, the claimant had an unquestionable right to occupy his position with the State and to receive the benefits of the position; and that his employment was interrupted by his evacuation and exclusion with the consequent loss of his opportunity to earn the salary which would have been his due upon satisfactory performance of the duties of the position.

As we understand the argument, it is contended also that claimant had "property" rights to serve the State during each of the pay periods of his enforced absence, but at least to the extent that the establishment of such

rights was delayed due to the military exclusion orders their loss was a consequence of such exclusion within the meaning of the Federal Act, and that the value of the "property" rights thus lost was the total amount of the salary that he could have earned during such periods. In the case of *Mary Sogawa, ante,* p. 126, the question of whether damages could be paid under the Federal Act as if the evacuation and exclusion of claimant had constituted an actionable wrong, was thoroughly explored. For the reasons there stated, it continues to be our opinion that awards on evacuation claim must be limited to the value of any property that was lost. We continue, also, to be of the view stated in the adjudication of *George M. Kawaguchi, ante,* p. 14, to the effect that the measure of the value of the thing lost must be the price that it would have brought on a fair market as of the time of the loss. This, of course, does not necessarily mean that the property must have been salable and, in cases where it was not, it has been found permissible to establish an hypothetical market for the property. See *Noboru Sumi, ante,* p. 225. Nothing in the present record, however, indicates that anyone would have been willing to pay the claimant anything in order to obtain the privilege of stepping into his shoes with respect to his rights to pursue his remedy against the State at any time when claimant's exclusion could be said to have delayed the prosecution of such remedy. Moreover, so far as we are informed, there was never at any relevant time a sufficient lack of demand on the California labor market to have prevented anyone possessing claimant's qualifications from readily obtaining with the State or with private employers comparable employment with as good or better pay than that appertaining to claimant's position, with a consequence that it could not be found, on the basis of the information available to us, that claimant's position, as such, had any "market" value.

In the light of these considerations, the present claim is reduced strictly to the question of whether or not the

claimant is entitled to be compensated because he was deprived of the full use of his earning power during the period of his exclusion from the military areas on our west coast during World War II. The fact that this claimant had a position, around which the State of California had thrown certain protections, does not, we believe, distinguish the case in respect of compensability from that of any other able-bodied claimant who both before and after his evacuation proved his willingness and ability to work. It is true, in the present case, that the amount of claimant's potential earnings from this particular job could be measured with greater exactitude than would be true of many other classes of employees and, as a consequence, there are in this case fewer elements of uncertainty than there would be in many others. Among the cases that would be most difficult to determine would be that of the self-employed individual whose net income from his business consisted of returns on investments as well as compensation for his personal services. In such a case, determination of the amount of income attributable to claimant's personal services must be made under the law as it now stands in order to determine the going-concern value of the business that was lost. Methods could be found for evaluating losses of earnings in most cases if it was the intention of the Congress that such losses should be paid.

It should be noted, also, that even if Section 2 (b) (5) had not been included in the Act, it would be extremely doubtful that one's right to employ his talents gainfully could be considered a "property" right. Cf. *Mary Sogawa, supra.* Thus, even without the benefit of the legislative history of the Act and if Section 2 (b) (5) had not been added to the Statute, claimant's right to compensation in this case would be most doubtful.

Section 2 (b) of the Act (50 U. S. C. App. § 1982 (b)) provides, in part, as follows:

> The Attorney General shall not consider any claim—
>
> * * * * *

(5) For loss of anticipated profits or loss of anticipated earnings.

We do not understand it to be contended that the amounts actually paid the claimant by the State of California for the performance of the personal services appertaining to his position were not "earnings" within the meaning of that term as used in the passage just quoted. Rather, the contention seems to be that the amounts that claimant would have been paid for such services if he had not been prevented from rendering them by being removed from his place of employment, were not "anticipated" earnings within the meaning of that word as used in the Act. While we have encountered some difficulty in pursuing the claimant's arguments in this regard, we believe the contention, in effect, to be that the word "anticipated" is a narrower term than either "expected" or "future" and, therefore, the Congress must not have intended to exclude all claims for the loss of future or expected earnings. In its most usual usage in legal instruments, the word "anticipated" has reference to an act of reliance upon future events as, for example, the issuance of bonds by a government agency in reliance upon estimated tax receipts (see, e. g., *Arrow Wood* v. *Board of Education,* 107 S. W. 2d 324, 269 Ky. 464); or preventative action such as anticipation of a later patent in the claim of an earlier one (see, e. g., *Carnegie Steel Co.* v. *Cambria Iron Co.,* 185 U. S. 403, 423). The term has been used, also, to describe that which is reasonably expectable, i. e., "anticipated" profits on a contract of which a party was deprived because of an authorized change in the work. *Johnson* v. *Gila County,* 185 P. 929, 932, 21 Ariz. 136. It is in this latter sense that the term seems to be employed in the statutory provision in question. The claimant's argument seems to depend upon imputing to the word "anticipated" a meaning which would make it practically a synonym of the word "speculative" so that the proscription of the provision would apply only in those cases where the prospective earnings were less certain than those of the claimant in question. We,

however, have quite the contrary impression of the literal meaning of the term. The different shade of meaning conveyed by the word would tend to extend its coverage to probabilities upon which advance reliance might reasonably be placed, as distinguished from mere possibilities or hopes. Cf. *St. Louis Railroad* v. *Alexander,* 106 Tex. 518. In fact we are unable to think of any single word better calculated to forestall the type of argument made by claimant than the one to which it is directed.

Although we perceive no ambiguity in the terms of the Statute[1] as applied to the facts of the instant case, the earnestness with which the cause of the claimant has been advocated prompts us to consider the legislative history of the Act as if there were serious difficulties of interpretation where losses of "anticipated earnings" are involved.[2] The bill which ultimately became the Federal Act appears first to have been proposed to the 80th Congress by the then Secretary of the Interior who forwarded a draft of the same to the Speaker of the House of Representatives with a letter dated March 17, 1947 (See H. Rept. No. 732 to accompany H. R. 3999, dated June 27, 1947). This bill was introduced as H. R. 2768 and the language of the present Section 2 (b) (5), or its equivalent, was not among its provisions. In his letter the Secretary stated his understanding of the bill and, among other things, said:

> At the same time the standard [governing the determination of the claims] excludes claims that are largely speculative and less definitely appraisable, such as claims for anticipated wages or profits that might have accrued had not the evacuation occurred, for deterioration of skills and earning capacity, and for physical hardships or mental suffering.

---

[1] The provision has been applied without question in adjudicating the claims of *Fusataro Isozaki, ante,* p. 193; *Torao Nakamura, ante,* p. 277; *Mary Sogawa, supra;* and *Tobe Nagasaki, ante,* p. 303.

[2] For a fuller discussion of the general course of the legislative history, see the adjudication of the case of *Mary Sogawa, supra.*

The "standard" to which the Secretary referred was described by him as "jurisdiction to adjudicate claims by persons of Japanese ancestry for damages to or loss of real or personal property, or other impairment of assets, that arose from or as a natural and reasonable consequence of the evacuation and exclusion program." [3]

It is perfectly clear from the hearings on the bill that its advocates did not believe that amounts which could have been earned but for evacuation were within the intended coverage of the bill. Mr. Leonard Bloom, Assistant Professor of Sociology at the University of California, complained that the bill was inadequate for that reason. Mr. Hito Okada, then National President of the Japanese-American Citizens League, testified that the bill "did not take into account" such "tangibles as salary losses" and "the sums we might have been able to make had we not been evacuated." [4] No witness expressed

[3] The words "other impairment of assets" were subsequently deleted from the measure by the House of Representatives before the measure went to the Senate. See *Mary Sogawa, supra.*

[4] a. It is of importance from the standpoint of understanding the reason for the omission that, at this point in the testimony, the chairman of the subcommittee conducting the hearing remarked: "Of course, there were a lot of these elements which had been suggested [sic] by others. There were the boys who were drafted who had to leave their businesses, suffering loss; the property owners whose businesses were closed, they suffered all those losses too." A similar statement (quoted in full in the adjudication of the claimant *Mary Sogawa, supra*) was made by him on the floor of the House of Representatives when the measure was being debated, which leads to the impression that it was his view that the nation was not morally obligated to compensate evacuation claimants for losses of earnings because members of the armed forces and many others had had to shoulder this type of loss as a consequence of our war efforts.

b. It may be doubted that Mr. Okada's testimony is regarded by the present leadership of the League as representing its position. In a recent statement to the House Judiciary Committee with reference to H. R. 7435, 83d Cong., 2d sess., the League characterized as "outrageous" the decision, in the case of *Mary Sogawa, supra*, that evacuation expenses were not within the coverage of the Act, notwithstanding the fact that Mr. Okada had expressed the same view at this same hearing. However, this is of no importance in seeking congressional intent because the Congress had as much right to rely upon Mr. Okada's views as it does upon the views of the present leaders of the group.

an opinion to the effect that claims for losses of earnings were compensable under the terms of the bill as it then stood.

After the hearings a substitute bill (H. R. 3999) was introduced, transferring the claims program to the Attorney General and eliminating the provision authorizing payment for "impairment of assets" above noted. Otherwise, the substituted bill, as it originally passed the House of Representatives, was practically identical with H. R. 2768 as to which the testimony had been given.

At the Senate hearings a statement was presented by the Japanese-American Citizens League in which no contention was made that the bill was intended to cover losses of earnings. That statement indicated that there might "be deficiencies in this legislation, such as the discrimination in favor of property holders over wage earners" but pointed out that notwithstanding the fact that a better bill might be drawn it was highly important to obtain the passage of immediate legislation promptly and to leave its improvement to future amendment. Although the representative of that organization, who appeared before the subcommittee, seemed to wish to avoid taking a position on the matter of earnings, he was forced to do so by a question from the chairman and he conceded that he was afraid that the bill did not cover claims for such losses. Since the colloquy tends to explain the reason for the subsequent inclusion of Subsection (5) of Section 2 (b) as a committee amendment to the bill (See 94 Cong. Rec. 8748) it is set forth in full in the note below.[5] A careful

[5] The stenographic transcript of the hearings conducted on May 21, 1948, at p. 114, is, in part, as follows:

"Senator COOPER. Is it your opinion that the bill would extend the award of damages for the loss of earnings?

"Mr. MASAOKA. We would like to have it that way, but I am afraid that it does not.

"Senator COOPER. My opinion is that it does, and that is the reason I asked you. There is no exclusion, except damage to property which has been vested in the United States under the Trading With the Enemy Act or damages for personal injuries or death.

"Mr. MASOAKA. We are interested in obtaining as liberal and gen-

review of the legislative history does not disclose any evidence of any intention on the part of the Congress to compensate any claimant for the loss of his opportunity gainfully to employ either his property or his personal services. That, basically, is the reason for the decision in the case of *Toshiko Usui, ante,* p. 112, with reference to "anticipated profits," in which those words were held to preclude allowance of the difference between the amount claimant agreed to receive as rental of property and the true rental value of the property. As indicated above, there is considerable evidence of a common understanding at the time that the bill which became the Act was not to provide compensation for such losses. Apart from the rather ambiguous statement quoted from the letter of the Secretary of the Interior, there is nothing to indicate that the reason for such omission had anything at all to do with the speculative nature of such losses. Rather, the better evidence, such as it is, tends to indicate that the reason for the exclusion of this type of loss was that it was common to many others who were called upon to make sacrifices in connection with the prosecution of the war. Cf. *Mary Sogawa, supra.*

In summary, it is our view that Section 2 (b) (5) of the Federal Act proscribes consideration of any claim for any money that a claimant was prevented from earning due to his removal from his place of employment as a consequence of his evacuation and exclusion, regardless of the clarity with which such earning could be foreseen and regardless of the nature of claimant's right to render the services for which he was to be paid. This is not to say that in no case could loss of an employment contract be compensated. Perhaps there are such cases but, as previously pointed out, this is not one of them.

---

erous a bill as possible, naturally. In fact, we are prejudiced on that particular point. The more liberal interpretation, I think the more justice will be meted out to these people."