CLAIM OF GEORGE TANAKA

[No. 146-35-2482. Decided October 13, 1953]

FINDINGS OF FACT

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REASONS FOR DECISION

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In the present case the determination of loss on sale of growing crops is made by multiplying the potential market value of the crops on maturity [1] by the average percentage of the total of costs of planting, growing, harvesting, and marketing the crops that had been incurred by the time of such loss; [2] and by subtracting from

[1] In the circumstances of this case, there being no indication of factors giving rise to unusual acceleration or depression of market values after the sale of the growing crops occurred, the actual market value of like crops after harvesting is assumed to have been the potential market value of the crops in question at the time of sale. Government market reports on sales of similar produce in the area at the time of normal maturity of the crops in question are considered to be the best evidence of that value and are utilized for that purpose in this case. See and cf. *Daily* v. *United States*, 90 F. Supp. 699, 701, 702; *United Verde Copper Co.* v. *Ralston*, 46 F. 2d 1, 2; *American Smelting and Refining Co.* v. *Riverside Dairy and Stock Farm*, 236 Fed. 510, 513; *United States Smelting Co.* v. *Sisam*, 191 Fed. 293, 296, 297; *Miller & Lux, Inc.* v. *Pinelli*, 84 Cal. App. 42, 47; *Wolfsen* v. *Hathaway*, 32 Cal. 2d 632, 644; *Bagdasarian* v. *Gragnon*, 31 Cal. 2d 744, 755; *Teller* v. *Bay and River Dredging Co.*, 151 Cal. 209, 212; *Beville* v. *Allen*, 28 Ariz. 397, 401; *Lester* v. *Mining Co.*, 27 Utah 470, 472–473; *Shotwell* v. *Dodge*, 8 Wash. 337, 343.

[2] This percentage is taken from tables prepared to facilitate the processing of offers to compromise similar claims pursuant to Public Law 116, 82d Cong., approved August 17, 1951. Such tables are based on studies made by Professor R. L. Adams of the University of California, which are set forth in his book entitled "Farm Management Crop Manual," Rev. Ed. Jan. 1941. Our investigation indicates that this work is generally regarded by experts in the field to be the most authoritative of its kind. Claimants are privileged, of course, to introduce other evidence on the subject, but that was not done in the present case.

that figure the amount received by claimant on the sale of the crops.

Since the Japanese-American Citizens League has urged the adoption of a different method of evaluation, a statement of our reasons for rejecting it is in order.

It is pointed out by the League, that most courts, when confronted with the problem of evaluating growing crops, have ruled that the "market price of probable yield, less the cost of marketing, harvesting, and bringing to maturity is the proper method for the determination of value of growing crops." [3] (J. A. C. L. Legal Monograph Series #5.) This method has been justified on the ground that since "as a practical matter that value [at the time of injury or destruction] cannot actually be determined, the nearest time thereafter when a market value can be placed upon the crops is considered." *United States* v. *576,734 Acres of Land,* 143 F. 2d 408, 410 (cert. den., 323 U. S. 716). It will be observed that this would place the claimant in the same financial position that he would have occupied had he been permitted to harvest and market his crops and had he been successful in that endeavor for no reduction would be made on account of profits or earnings, attributable to risks, managerial skill, etc., accruing between the time of loss and the date selected for the determination of the market price. See *Teller* v. *Bay and River Dredging Co.,* 151 Cal. 209, 213.

As stated in the case of *George M. Kawaguchi, ante,* p. 14, it "is only necessary * * * to fill in the detail of the congressional intent expressed [in the Evacuation Claims Act] in the phrase, 'determine according to law,' by reference to the judicial decisions in cases asserting claims against the United States, wherever it is possible to do so consistently with other provisions of the Act." Here it is not possible to do so, for Section 2 (b) of the Act expressly provides that the "Attorney General shall not consider any claim * * * (5) for loss of anticipated

[3] See, e. g., cases cited in Footnote 1, *supra.*

profits or loss of anticipated earnings." Since "the judicially approved method" of evaluation suggested by the League would plainly permit recovery of such anticipated profits and earnings, we are forbidden its use. Cf. *United States* v. *Hotel Co.*, 329 U. S. 585, 588, 590.

The method of evaluation employed herein attempts to attribute to a growing crop that portion of prospective profits and earnings due to work already done and risks already incurred which the owner, if a willing seller, under no compulsion to sell, would have insisted upon receiving as part of the sale price; but at the same time, it seeks to eliminate that part of the net gain that a willing buyer would have demanded as a reward for his investment and for incurring the future risks of maturing, harvesting, and marketing the crop. Obviously, the formula is imperfect because the events giving rise to prospective net gains do not necessarily coincide with or depend upon the incurrence of expenses. However, in absence of circumstances making it inappropriate to do so, there is sufficient relationship between the average of investments of work and money in growing crops and their accretion in value to permit the use of the former in determining the latter. As shown by all but the last of the cases herein cited, knowledge that exact accuracy cannot be achieved does not relieve the trier of facts of his obligation to do the best that he can with the guides that he has, provided, of course, that the evidence is sufficient to permit the formulation of a judgment that seems reasonably accurate in view of the imponderables always present in evaluating other than fungible goods.

The present adjudication merely holds that an award must not, in the guise of an evaluation, include allowance "for loss of anticipated profits or loss of anticipated earnings" and that the method of evaluation employed herein satisfies the requirements of the Act in the circumstances of this case. Any claimant is privileged to demonstrate, if he can, a better method of utilizing the proof that he is able to adduce.