CLAIM OF TETSUO NODA

[No. 146–35–3377. Decided October 19, 1950]

FINDINGS OF FACT

This claim, in the amount of $452.05, was received by the Attorney General on May 6, 1949, and concerns personal property loss of several different kinds, all representing community estate of claimant and his wife, Teruko Noda. Claimant and his wife were both born in Japan of Japanese parents. At no time since December 7, 1941, has either gone to Japan. On December 7, 1941, and for some time prior thereto, claimant and his wife actually resided at 1009 Campodonico Street, Guadalupe, California, and were living at that address when evacuated on April 29, 1942, under military orders pursuant to Executive Order No. 9066, to the Tulare Assembly Center and from there to the Gila River Relocation Center in Arizona. Claimant was not permitted to take the items involved with him to the relocation center and shortly before his evacuation he sold the bulk of his property for the highest prices he could obtain. Claimant would not have sold this property but for his evacuation, and he elected to sell rather than store because he needed funds for use of himself and family for and during their evacuation. Claimant's act of selling was reasonable, therefore, in the circumstances. At the time of the sale no free market was available to claimant for disposing of the property at its then fair value, namely, $431.20, and claimant received only $153.50 from its sale, with resultant loss of $277.70.

In addition to the property which he sold, claimant was possessed of a piano and bookcase, which he particularly valued, together with books, dishes and other miscellany,

and also of a cabinet-style radio containing a shortwave band. Claimant stored all of these items, except for the shortwave radio, in a building owned by his employer, paying $10, a reasonable amount, for drayage. Claimant would not have stored the goods but for his evacuation, and his payment for drayage represented reasonable action. In keeping with existing governmental regulations prohibiting the possession of contraband by persons of Japanese ancestry, claimant deposited the shortwave radio with the local sheriff, who turned it over to the United States Marshal in Los Angeles for impounding. While claimant was at the relocation center, WRA, at his request, transferred his stored property to its central warehouse in Los Angeles. On the lifting of the exclusion orders, claimant found that he could not get his old job back in Guadalupe and decided to make his home in San Francisco. After settling in the latter city, he requested WRA to send him both his stored property and his impounded radio. WRA complied with his request insofar as it related to the stored items, but provided shipment only as far as the San Francisco railway depot. In consequence of this fact, claimant had to pay $19.83, a reasonable amount, for drayage of the goods from the depot to his home. Claimant acted reasonably in making this payment. With respect to the radio, WRA was unable to assist claimant prior to its closing date because of the large backlog of requests at the Los Angeles U. S. Marshal's office, and claimant therefore had to bear the entire cost of shipment, namely, $11.72.

The losses involved have not been compensated for by insurance or otherwise.

REASONS FOR DECISION

Claimant's $277.70 loss on sale is allowable. *Toshi Shimomaye, ante,* p. 1. On the facts found, the $29.83 expended by claimant for drayage of his property to and from storage is also allowable. *Frank Kiyoshi Oshima, ante,* p. 24; cf. *Nizo Okano, ante,* p. 41. While the

Oshima case, *supra,* dealt only with payments for storage *per se,* it is obvious that its underlying rationale likewise applies to expenditures for delivery to and from storage. As for the element of causal connection with respect to the $19.83 payment, it is true, of course, that the original storage was in Los Angeles and the subsequent delivery in San Francisco. Examination of the pertinent provisions of the WRA Manual (§§ 100.3.8E and 150.1.9B–le) discloses, however, that evacuees living "within reasonable trucking distance, * * * ordinarily * * * approximately 25 miles," from a WRA warehouse were required to furnish their own drayage upon their return from the relocation center. It is accordingly plain that the change in *situs* in the instant case was without effect, and that the delivery by WRA to the railway depot placed claimant in essentially the same position he would have been in had he not changed his place of residence. Moreover, since these same sections further provide that "all evacuees will be expected to pick up all property transported for them hereunder at the common carrier depot * * * ," it is equally clear that no question of failure to utilize existing government facilities is involved, and that claimant acted reasonably in making the $19.83 payment. Claimant's $11.72 expenditure for the transportation of his radio is not cognizable since its impounding was not a proximate consequence of his evacuation pursuant to Executive Order No. 9066, but resulted from Presidential Proclamation No. 2525 (6 F. R. 6321) dealing with contraband. Such matters do not come within the purview of the instant Statute, but are governed by the provisions of Public Law 17, 81st Congress, enacted March 15, 1949 (63 Stat. 12). This portion of the claim will accordingly be transferred to the Administrative Division for determination under the latter enactment. This claim includes all interest of the marital community in the subject property since claimant's wife has made no separate claim, although eligible to do so. *Tokutaro Hata, ante,* p. 21.

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