CLAIM OF TORAO NAKAMURA

[No. 146-35-702. Decided August 6, 1951]

FINDINGS OF FACT

1. * * * On December 7, 1941, and for some time prior therto, the claimant resided at 1035½ West First Street, San Pedro, California. In February 1942 claimant moved to 1715 East First Street, Los Angeles, California, when advised that persons of Japanese ancestry were to be excluded from San Pedro, California, and was living at this Los Angeles address when he was evacuated on May 29, 1942, with his wife under military orders pursuant to Executive Order No. 9066, dated February 19, 1942, and sent to Colorado River Relocation Center, Poston, Arizona.

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4. In the middle of February 1942, claimant was advised that he would have to remove from San Pedro and so hired a truck to haul his furniture and other belongings to Los Angeles at a cost of $25. At that time he had no knowledge that a later removal from Los Angeles would be necessary.

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6. From the middle of February 1942 until evacuation, claimant was unable to get employment and spent $200 for living. On his return from the Relocation Center in October 1945, he could not get a job until December and spent $400 for living.

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REASONS FOR DECISION

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The carriage expense from San Pedro to Los Angeles in February 1942 must be disallowed. That such an expense may constitute a "loss" in a proper case is well established. *Kinjiro and Take Nagamine, ante,* p. 78.

But Section 1 of the Act expressly provides that such a loss must have been a consequence of a "voluntary departure *from a military area* prior to but in anticipation of an order of exclusion therefrom" [emphasis supplied], in order to be compensable. The present claimant did not actually depart "from a military area" because, at the time of his departure from San Pedro, the region which included San Pedro did not constitute a "military area" and it did not become so until the issuance of Public Proclamation No. 1 of the Western Defense Command on March 2, 1942, under which "Military Area No. 1" was established. This answer would be sufficient but for the argument made by the Japanese-American Citizens League, as *amicus curiae,* to the seeming effect that there is such incongruity and ambiguity in the language as to warrant a reading of it that is different from its literal purport.

The inclusion in Section 1 of the language in question appears to have been prompted by the fact that many persons of Japanese ancestry living in military areas actually anticipated the evacuation orders and departed therefrom, frequently suffering in the process the same kind of losses that were suffered by others as a consequence of their involuntary evacuations. Upon the issuance of Public Proclamation No. 1, such persons were encouraged by the Government so to depart from Military Area No. 1 which was established by that Proclamation.[1] It is clear that the language in question fully covers such cases.

[1] In view of the explicit warnings given such voluntarily departing persons to go beyond the limits of Military Area No. 1, it does not appear to be contended that one who thereafter merely moved within the area should be entitled to compensation for losses that are attributable to that move alone. In *Gunnosuke Morimoto, anti,* p. 219, it was held that a person who moved from one point to another within Military Area No. 1, after it was created and did so knowing that he was subject to evacuation so long as he remained within its confines, did not act reasonably in the circumstances and the expense of carriage of his furniture between the two places was, therefore, not allowable.

It may be that many persons of Japanese ancestry moved from places that were not within military areas because they feared that they would be required to evacuate such places under less favorable conditions. The fact that such places later might or might not have been brought within military areas that were evacuated would seem a fortuitous circumstance having little to do with the relative merits of such cases. In any event there is no incongruity in distinguishing these cases from those of persons who actually departed from existing military areas, which are clearly covered by the last sentence of Section 1 of the Act.

In support of its contention that the language is ambiguous, the *amicus curiae* points out that Section 1 permits determination of claims "arising on or after December 7, 1941," whereas Military Area No. 1 did not come into being until March 2, 1942. This contention overlooks the fact that the Los Angeles-Long Beach Harbor Naval Defense Sea Area, at least, was in existence on December 7, 1941; that the Terminal Island portion of said area was actually evacuated in February 1942; and that persons who may have departed from that area on or after December 7, 1941, in anticipation of the order excluding them, plainly come within Section 1. *Sina Katsuma, ante,* p. 186. There is no ambiguity.

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On the facts found in paragraph 6, the expenses of $200 spent for living between the middle of February 1942 and claimant's evacuation on May 29, 1942, and the $400 spent for the same purpose after his return from the Relocation Center between October and December 1945 were not allowable. No real distinction can be made between the wages lost by the claimant in *Mary Sogawa, ante,* p. 126, because of the internment of her employer, and the money here spent by the claimant for living after his removal from San Pedro to Los Angeles. They represent merely two aspects of the same loss for claimant would have made no claim for living expenses had he

been employed in Los Angeles before his evacuation, nor for living expenses after his return but for his unemployment. Neither type of loss is cognizable by the Statute. The Statute allows recovery only for "damage to or loss of real or personal property" and, as was said in *Sogawa, supra,* these words "do not, of themselves, suggest that they were intended to cover transactions by which money was exchanged for things of equal value, and the legislative history of the Act clearly indicates that there was no consciousness of such an intention on the part of the legislators." It is obvious, therefore, that not only is a claim for living expenses to be denied on the narrow ground that it is directly related to the express prohibition of Section 2 (b) (5) against prospective profits or earnings, being a claim of loss corollary to and supported entirely by the corresponding but prohibited loss of wages during the same period; but it is also to be denied on the broad ground, fully discussed under the second point of *Sogawa's* case on expenditures for travel and carriage, that no legislative warrant exists for such a construction of Section 1. Thus two cogent reasons, either sufficient in itself, unite to deprive this part of the claim of all validity.