

CLAIM OF SHIGERU RICHARD HORIO

[No. 146-35-2673. Decided August 30, 1951]

FINDINGS OF FACT

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REASONS FOR DECISION

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The case is one of first impression. The claimant was a medical student in the University of California and had almost completed the last semester of his second year when he voluntarily departed from San Francisco to Salt Lake City whither his parents had preceded him. He left the school about a week before the order of evacuation applicable to his home would have been effective and the city on the very eve of this date. He worked for about 8 months in Salt Lake City and then resumed his medical studies at the University of Utah. In order to get credit for his interrupted last quarter at San Francisco, he had to take some of this work over again at Salt Lake City, and this first quarter (actually 2 months of the quarter) at the University of Utah beginning in January 1943 cost him \$65. The annual registration fee of \$10 and the annual nonresident fee of \$45, paid for the year 1943, he would have had to pay in any case to take his third year of the full course and consequently no portion of either of these fees was involved in his repeated period. He had to pay altogether \$383 more at Salt Lake City than he would have had to pay had he been allowed to remain in San Francisco. Of this amount, \$100 was the differential in tuition for the 2 years imposed on students from without the State of Utah, see *Utah Code Annotated* (1943), § 75-2-1; and the remaining \$283 apparently

was for the generally higher tuition at the Utah School. Claimant has claimed for the full \$383.* * *

It cannot be said that the education received by the claimant at the University of Utah was of less value than the money that he was required to pay for it, hence no part of such payment can be regarded as a loss compensable under the Evacuation Claims Act. *Mary Sogawa, ante*, p. 126. Assuming without deciding that the claimant's privilege of attending the University of California at less expense can be considered a form of property cognizable under the Act, this privilege was not lost as a consequence of his evacuation and temporary exclusion from that State. Since there was no time limit on the exercise of the privilege, the case may be likened to that of an evacuated person who found it necessary or desirable to purchase a new item of personal property, during the period of his exclusion, to replace a like article left behind in storage when he was evacuated. Although neither the stored article nor his ownership of it was of use to him at the time of such a purchase, obviously this property had not suffered "loss" or "damage" within the meaning of those words as used in Section 1 of the Act. Nor would the situation be changed if he thereafter found that he had no further use for the old article either because of his purchase of the new one or because of a change in his way of life. Cf. *Fusataro Isozaki, ante*, p. 193. If the present claimant's right to a cheaper education in California was "property," this was so only in the sense that it was in the nature of an option to buy a service. Such option, however, was neither lost nor damaged and could have been exercised by him upon his return. Accordingly, all that was lost in a property sense was the opportunity to use the property at the desired time; a loss suffered by all evacuated persons who left property behind and one for which no compensation is provided by the Act.

The tuition and fees paid by the claimant to the University of California for the semester which he was not permitted to complete, however, stand on a different foot-

ing. To the extent that he was required to duplicate this work by the University of Utah in order to receive credit for it, the money thus paid to the University of California constituted a loss of personal property as a reasonable and natural consequence of his evacuation because, to that extent, as an immediate result of his evacuation, he was prevented from receiving that for which he had actually paid. Cf. *Shuzo Kumano, ante*, p. 148.

The amount of his loss must be measured by that proportion of the semester's work which he had to repeat at Utah to satisfy his examiners there and obtain the necessary credit for his second year. He took 2 months' study at Utah to do this, January and February 1943. The California semester, being one-half of the academic year, or $4\frac{1}{2}$ months, was lost to claimant, therefore, to the extent of 2 months. Since the total fees and tuition were \$153 a semester at California, his loss would be $\frac{4}{9}$ of this sum, or \$68. Accordingly, the claimant is entitled to be compensated in that amount.