

## CLAIM OF FUSATARO ISOZAKI

[No. 146-35-137. Decided May 2, 1951]

## FINDINGS OF FACT

This claim, in the amount of \$775, was received by the Attorney General on December 22, 1948. The claim alleges personal property loss of several different kinds, namely, through forced sale, disappearance from storage, damage in transit incidental to resettlement, postevacuation voluntary abandonment, disappearance of goods rented for a consideration, and preevacuation expenses. Claimant was born in Japan of Japanese parents. On December 7, 1941, and for some time prior thereto, claimant resided at Route 2, Box 71, Holtville, Imperial County, California, and he was living at this address when evacuated on May 21, 1942, under military orders pursuant to Executive Order No. 9066, to the Poston Relocation Center, Poston, Arizona. At the time of his evacuation, claimant was employed as a "commission boss" or ranch foreman for a vegetable growing and packing company superintending agricultural operations and having charge of feeding and housing Japanese farm laborers, and was possessed of a considerable amount of property which he used in his work. Included therein were a 1/2-ton pickup truck, refrigerator, gas heater, dishes, dining room furniture and equipment, kitchen utensils, cooking equipment, and some miscellany. Likewise included were five double beds, with springs and mattresses, and certain agricultural implements consisting of a walking plow, cultivator, middle buster (a machine to make furrows), and two wagons. Because he was not permitted to take any of the foregoing with him to the relocation center, claimant endeavored to dispose of all his property by sale. He was

successful in part, succeeding in selling his truck, refrigerator, plow, cultivator, and one of the wagons. Because no free market was available to him for selling these items at their then fair value, \$819.50, claimant received only \$710 from their sale with resultant loss of \$109.50.

Claimant was likewise successful in obtaining monetary return from his five double beds. Although unable to sell the latter, he did succeed in effecting a rental agreement with the company's overseer whereunder he received \$10 for rental of the beds during the evacuation. While claimant was at the relocation center, the overseer and the beds both disappeared and claimant has never recovered his property despite diligent efforts to do so. Claimant has offered no evidence as to the date of disappearance of the beds, but their fair value at the time of his evacuation was \$25. Of this amount, claimant received \$10 under the rental agreement. His loss, therefore, was \$15.

Unable to sell the rest of his property, claimant left his other wagon and middle buster on the farm of a friend. While he was at the relocation center, the items, the then fair value of which was \$20, disappeared. The remaining goods, i. e., the gas heater, dishes, dining room furniture, equipment, etc., claimant stored in one of the company's buildings. Resettling in Glendale, California, upon his return from the relocation center, claimant had need for the gas heater and dishes and accordingly wrote the company to send him these two items. The company did so, but the goods arrived in such poor condition that they were no longer usable and had to be discarded. The then fair value of the gas heater and dishes was \$22.50. Claimant made no effort to regain the remainder of the property stored with the company because it had become worthless to him due to the fact that the company would not re-employ him.

In addition to the foregoing, claimant alleges expenditures totalling \$50 for articles of clothing purchased in preparation for his evacuation and subsequently used at

the relocation center. The claim originally also included allegations of loss from forced sale of a movable house and expenditure for storage. The former is not established by the evidence, however, and the storage item was withdrawn by claimant of his own volition.

Claimant was unmarried and sole owner of the property involved at the respective times of loss and his losses have not been compensated for by insurance or otherwise. Claimant's several acts of disposition were reasonable in the circumstances.

Following his return from the relocation center, claimant continued to live in California until the spring of 1950 when he left for Japan, at his own expense, to reside permanently in the latter country. His departure was wholly voluntary, no element whatsoever of Government removal being involved therein.

#### REASONS FOR DECISION

Of the several items of loss claimed, compensability of claimant's loss on sale and through disappearance of the wagon and middle buster left on his friend's farm is clear. *Toshi Shimomaye, ante*, p. 1; *Akiko Yagi, ante*, p. 11. Equally clear is the fact that claimant's preevacuation expenses are not compensable. *Mary Sogawa, ante*, p. 126. With respect to the remainder of the claim, it is plain that compensability attaches to the loss of claimant's gas heater and dishes. It is true, of course, that this loss was not an incident of storage but of claimant's resettlement. Since the resettlement was a direct consequence of his evacuation, however, the property loss incident thereto is likewise of causal proximity and, therefore, statutorily cognizable. Cf. *Seiji Bando, ante*, p. 68.

Claimant's loss from the disappearance of the five double beds rented to the company overseer is also compensable. Here again the principle of *Akiko Yagi, supra*, is applicable since the rental involved represented a form of property disposition incident to claimant's evacuation and, constructively, was tantamount to storage. As for

the articles left unclaimed due to claimant's inability to regain his former employment, it is plain that compensability cannot lie since no "loss" within the statutory meaning of the term has been shown. Cf. *Sogawa, supra*. It is conceivable, to be sure, that the cessation of usefulness of the articles in consequence of claimant's loss of employment may constitute a form of "impairment of assets" arising out of his evacuation. That such speculative matters are not within the realm of statutory cognizability, however, is conclusively established by the Statute's legislative history. Thus, not only does the Krug letter incorporated in the House Report on the bill specifically refer to the applicable standard under the Statute as one which "excludes claims that are largely speculative and less definitely appraisable" (H. Rept. 732, 80th Cong., 1st sess., p. 3), but, as pointed out in *Sogawa, supra*, Congress made certain of the matter by striking from the original version of the bill the phrase "or other impairment of assets, that fairly arises out of \* \* \* the evacuation and exclusion of such person." Moreover, any such claim would obviously come within the prohibition of Section 2 (b) (5) of the Statute since it has at its core loss of anticipated earnings.

Claimant's departure for Japan does not affect his right to recover under the Statute. *Kumahichi Taketomi, ante*, p. 162.