CLAIM OF MARY SOGAWA

[No. 146–35–3083. Decided December 20, 1950]

FINDINGS OF FACT

1. This claim, in the amount of $615, was received by the Attorney General on April 27, 1949. It involves a claim for reimbursement in the amount of $109.50, which claimant was forced to expend for 3 suitcases, a trunk, pillow, 2 blankets, 3 sheets, and 3 pillowcases in preparing herself for life in the relocation center; loss of earnings estimated at $300; and claim for reimbursement for $115, arising out of train fare and transportation charges when claimant returned to Los Angeles on or about December 3, 1947, to resettle. The claimant was born on November 24, 1919, in Gill, Colorado, of Japanese parents. On December 7, 1941, and for some time before, claimant actually resided at 1921 Redcliff, Los Angeles, California; and was living at that address when she was evacuated on May 7, 1942, under military orders pursuant to Executive Order No. 9066, and sent to Rohwer Relocation Center, McGehee, Arkansas. At no time since December 7, 1941, has claimant gone to Japan. Claimant was unmarried at the time of her evacuation, her maiden name being Ogawa. In 1948 she married George Sogawa.

2. Claimant was unemployed during the period from December 7, 1941, to May 7, 1942. She lost her position as a domestic servant because of the internment of her employer as an alien enemy.

3. Immediately before claimant was evacuated, she spent $109.50 for luggage and bedclothing. Claimant still owns the trunk and three suitcases for which she paid $88, the rest of the above sum having been paid for bedclothes.

4. Claimant also spent $115 for train fare, including transportation charges for her luggage, to return to Los Angeles, California, on or about December 3, 1947, from St. Louis, Missouri, whither she had gone on indefinite leave from the Relocation Center on April 13, 1943, to obtain employment offered her.

REASONS FOR DECISION

Five months before claimant's evacuation she lost her position as a domestic servant because of the internment of her employer pursuant to the Alien Enemy Act (R. S. § 4067; 50 U. S. C. § 21) and she remained unemployed for that entire period. She seeks compensation for the "room and board," as well as for the cash payments, that she would have received had her employment continued. Insofar as the claim is based upon the loss of her former position, it is obviously removed from consideration by Section 2 (b) (2) of the Evacuation Claims Act (50 U. S. C. App. § 1982 (b) (2)) because it arose out of action taken by a Federal agency pursuant to R. S. § 4067. It may be that her failure to obtain employment during the latter months of the period was due to her prospective evacuation. However, even if so, the claim is clearly barred by Section 2 (b) (5) of the Act as a "loss of anticipated earnings." The suggestion in the memoranda of the Japanese American Citizens League, amicus curiae, that the amount spent by claimant for bedding (Finding No. 3, *supra*) must be regarded as a compensable loss because she would have continued to receive the use of such things as an incident of her employment if it had continued or if a similar position had been obtained, is, accordingly, without legal merit.

The remaining items of claim present a much more serious and troublesome question. Briefly stated that question is whether or not, in providing for the determination and payment of compensation "for damage to or loss of real or personal property (including without limitation

as to amount damage to or loss of personal property bailed to or in the custody of the Government or any agent thereof), that is a reasonable and natural consequence of the evacuation or exclusion of such person," the Congress should be held to have intended to reimburse claimants for their expenses of evacuation such as those involved in the instant case.[1]

It is clear that the words "damage to or loss of real or personal property" 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. The matter of evacuation expenses was brought to the attention of the House Committee on the Judiciary, when it was considering the measure (H. R. 2768, 80th Cong.), both by a summary of a "Survey of Evacuation Loss of Americans of Japanese Ancestry" and by oral testimony. According to the survey (JACL Mimeographed Copy of Transcript, p. 13), "Fees and Expenses" averaged about $17 per family. The explanation of this item (*Id.*, p. 14) was as follows:

> Fees and expenses include fees for attorney or agent, storage and transportation charges for property, travel and medical expenses directly attributable to evacuation, and expenses for clothing suitable to camp life, etc. Most families were unable to provide accurate enough detail and their estimates were not accepted.

The inclusion of the item, "Fees and Expenses," may not be regarded as necessarily indicating an interpretation of

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[1] It is contended by the *amicus curiae* that the claimant was in effect officially informed that she must provide her own bedclothing or do without it in the Relocation Center and that the items purchased would probably have been in excess of her needs if she had remained in the relatively mild climate of Los Angeles; that the luggage probably would have been of no use to her if she had not been evacuated and is of no use to her now; and that her delay in returning to Los Angeles after the exclusion orders were revoked in 1945 was probably reasonable. For purposes of this decision we may assume, without deciding, that all these things are true and that, but for her evacuation, the expenditures in question would not have been made.

the bill entitling claimants to reimbursement of such expenses because the summary also included estimates as to losses of income, which, as shown by its covering statement (*Id.*, p. 10) were understood by its author not to have been within the coverage of the bill. A description of expenses similar to those in the present case was also given to the committee in the oral testimony (*Id.*, p. 46) and the definite opinion was expressed, and never contradicted, that the bill, even as it then stood (see discussion below) did not take such expenses into account. The committee also had before it a letter from the Secretary of the Interior which itemized in considerable detail the losses which, in the view of the Secretary, would and should be compensated under the bill. None of the "loss" situations mentioned in that letter embraced expenses such as those here involved nor was it suggested that the bill would or should cover any analogous expense or loss. It is significant that the committee incorporated this letter in its report (No. 732 to accompany H. R. 3999, 80th Cong.) with the statement that the "obligation of the Government to those who would be redressed by the bill is clearly expressed" in the letter, notwithstanding the information that it had received concerning potential claims involving such expenses. It may be noted, also, that the report of the Senate committee (No. 1740) made reference to the report of the House committee as setting forth "a complete statement of the facts and circumstances, as a result of which this legislation was proposed" notwithstanding the fact that it, also, had been informed of the nature and severity of such expenses by a prepared statement of the present *amicus curiae* (Item 6). The fact is that there is no suggestion anywhere in the regularly published legislative history of this Act that compensation should be paid for the expenses borne by the claimants in connection with their evacuation and, as has been indicated, the inference to be drawn from the references to such expenses are to be found in the unpublished proceedings of the committee is that they at no

time were considered to be within the coverage of the proposed legislation.

More important than any of the circumstances mentioned, however, is the fact that the House committee's revision of the measure (H. R. 3999) eliminated from it language that would have authorized compensation for "other impairment of assets, that fairly arises out of" the evacuation, notwithstanding its knowledge that the funds of the evacuees had been depleted by such expenses. This was the only change that the House committee made in the substantive provisions of the proposed legislation and the fact that it was regarded as a substantial change is shown by a statement, by the chairman of the subcommittee that held the hearings, to the effect that he believed "the rewriting of the bill will result in [total awards in] a much less amount" than otherwise would have been the case (93 Cong. Rec. 9872). The inference necessarily to be drawn from this history is that there was no consciousness of intention on the part of the legislators that compensation should be paid for evacuation expenses through awards made under the Act.

We do not understand it to be contended that an exchange of money for goods or services of equal value involves an economic "loss" within the literal meaning of that word, as obviously it does not. The contention rather seems to be that, in common understanding, the expenditure of money by the evacuees, in the peculiar circumstances, involved a loss of property and that it was in this sense that the word "loss" was used in the Act; e. g., "the victim of a broken leg in an automobile accident in common understanding suffers the loss of the $50 he is required to pay for a pair of crutches * * * [and if] he is entitled to reimbursement for his loss the law does not repudiate the common understanding by advising him that he lost nothing by the purchase of the crutches because they were worth what he paid for them." It is thus clear that the argument advanced by the *amicus curiae* stems from a basic assumption that the Attorney

General is authorized by the statute to award compensation to the claimants as if their evacuation and exclusion from the areas in which they lived had constituted an actionable wrong to their persons, entitling them to relief on the analogy of the law of tort damages.

Plainly, there is nothing in Section 1 of the Act, which confers the right to compensation, that in any way suggests that the words "damage to or loss of real or personal property" are to be given other than their literal meaning. However, a possible ambiguity is created in this regard by Section 2 (b) (4) which directs the Attorney General not to consider any claim "for damage or loss on account of death or personal injury, personal inconvenience, personal hardship, or mental suffering." Looking at the Act alone it is hard to understand the necessity for such a provision unless Section 1 is susceptible of an interpretation permitting compensation for such a "damage or loss" but for such proscription. This inconsistency between the sections is sufficiently serious to send us to the legislative history for an explanation of the matter.

The bill originally introduced in the 80th Congress (H. R. 2768) provided for the creation of a commission under the general supervision of the Secretary of the Interior which should have authority to adjudicate the claims in question. The language of Section 2 of that bill was the same as that of Section 1 of the present Act with certain significant differences. Its provision (with emphasis supplied to the words omitted from the Act) was that the *"Commission"* should have "jurisdiction to *adjudicate* any" such claim that *"is substantiated in such manner as the Commission may prescribe,* for damage to or loss *or destruction* of real or personal property (including without limitation damage to or loss of *or destruction* of personal property bailed to or in the custody of the Government or any agent thereof), *or other impairment of assets, that fairly arises out of* or is a reasonable and natural consequence of the evacuation or exclusion of such person" etc. It also contained an additional sentence indicating that

the Commission should have a very wide latitude of discretion in determining the awards that would be fair in particular cases, as follows:

> Existence or intervention of other causes effecting the damage or loss, including action or nonaction by the claimant or his representatives, shall be considered by the Commission in determining the amount of relief that will be fair and equitable according to the facts as they appear in each case.

The provision of Section 2 (b) (4), *supra,* of the present Act appeared in Section 3 of that bill, where, to say the least, it had a more obvious role tha nit does in the present Act.

As previously noted the House eliminated the words, "other impairment of assets, that fairly arises out of." [1] The explanation given for this lone substantive change (93 Cong. Rec. 9871–9872) was:

> The committee also substantially rewrote the bill. We appreciated the fact that war brings a loss to many people. A young man, for example, who enlists or is drafted, who is runing a small business and has to turn the key in the door, goes away; when he comes back he finds he has lost several years out of his life, a loss for which no compensation can ever be made.
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> So we have done the best we could in writing this bill to allow compensation only to those elements of damage which can be traced directly to the evacuation order.

It is thus clear that, at least so far as the committee was concerned, the moral obligation of the people of the United States was merely that they should alleviate to some extent the disproportionate financial burden that the Government's war measures had thrust upon the claimants.

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[1] It also eliminated the provision for the creation of a Commission to adjudicate these claims and in lieu thereof provided that such function should be performed by the Attorney General. The significance of that change, as indicating the intention of the Congress to adopt by reference the substantive rules of decision, established in a long course of litigation of claims against the Government by the courts, has been pointed out in an earlier decision. See *George M. Kawaguch, ante,* p. 14.

The measure was viewed much in the same light as if veterans of the armed forces had been its beneficiaries. There is no suggestion that it was intended to redress a wrongful act of Government.

It is true that in the debates and elsewhere in the legislative history, statements will be found such as "we are attempting to redress a wrong which has been suffered by these persons of Japanese ancestry by reason of an action of our Government" (*Ibid*) but it is equally true that the propriety of such action was as staunchly defended. (See, *Id.*, 9873). The Supreme Court had sustained the legal validity of the evacuation (*Korematsu* v. *United States,* 323 U. S. 214) notwithstanding the conviction of some of its members that the apparent military necessity was insufficient to justify such action. It is probably true that there was a divergence of views among the members of the Congress along somewhat the same lines. However, even if it should be assumed that the majority of the members, in approving the language of the bill as it then stood, which would have given the Attorney General much discretionary authority "in determining the amount of relief that would be fair and equitable according to the facts as they appear in each case," intended that he should be authorized to adjudicate the claims as if he was compensating the claimants for actionable wrongs against their persons, any question as to the effect of such intention was obviated, we believe, by the action of the Senate in eliminating such language and substituting in lieu thereof the present provision that the Attorney General shall have jurisdiction to "determine according to law any claim" filed under the Act. With reference to very similar language contained in an Act conferring jurisdiction upon the Court of Claims, the Supreme Court in the case of *United States* v. *Irwin,* 127 U. S. 125, 129, said:

> But, in our opinion, the controlling words of the Act are those which declare that the claims of the parties are thereby referred to the Court of Claims "for adjudication according to law." The force of this phrase can-

> not be satisfied by anything less than a formal, regular, and final judgment of the judicial tribunal, to which the matter is submitted, acting upon the acknowledged principles of law applicable to the circumstances of the case.

The substitution of the word "determine" for the word "adjudicate," which had been used in earlier drafts, strongly suggests that the language was consciously chosen for the purpose of binding the Attorney General to judicial standards in making his determinations but to give him more discretion where mere procedural matters are concerned. See *Barlow* v. *United States,* 87 C. Cls. 281, 283.

The foregoing discussion of the legislative history of the Evacuation Claims Act makes it clear, we believe, that it was intended to be an act of bounty in the same sense that a statute providing benefits for veterans could so be characterized. In administering it, it is the duty of the Attorney General to make awards that are as liberal as the terms of the statute will permit. He is required, however, to apply the same rules of interpretation that a Federal court would apply in like circumstances. The requirement that this claim must be determined "according to law" clearly means that it may not be adjudicated as if the claimant's evacuation constituted a legal wrong, in the teeth of the decision of the Supreme Court in the *Korematsu* case, *supra,* to the contrary. More specifically, in providing that the claimants should be compensated for "damage to or loss of real or personal property" the Congress did not provide for the reimbursement to them of money spent for goods and services in circumstances such as those involved in the present case. This does not mean, of course, that the present decision forecloses consideration of claims involving expenses of a different character. See, e. g., *Nizo Okano, ante,* p. 41; *Kinjiro and Take Nagamine, ante,* p. 47.