

FOREIGN CLAIMS SETTLEMENT COMMISSION  
OF THE UNITED STATES  
WASHINGTON 25, D. C.

IN THE MATTER OF THE CLAIM OF

JAMES ALLEN BRITTAIN  
27 Page Avenue  
Asheville, North Carolina

Claim No. RUM-30,012

Decision No. RUM-344

Under the International Claims Settlement  
Act of 1949, as amended

GPO 16-72126-1

Counsel for Claimant:

William F. Hickey, Esquire  
Chief Legal Counsel  
Veterans of Foreign Wars  
610 Wire Building  
Washington 5, D. C.

FINAL DECISION

This is a claim against the Government of Rumania under Section 303(1) of the International Claims Settlement Act of 1949, as amended, for \$525.00 by JAMES ALLEN BRITTAIN, a national of the United States since his birth in the United States on March 23, 1923, for loss of property in Rumania during World War II.

In a decision issued on March 3, 1958, the denial of the claim was proposed. After consideration of objections filed and arguments presented at a hearing held on July 2, 1958, the Commission now finds that the claimant was the owner of certain personal property which was lost in Rumania as a result of World War II, and that such loss falls within the scope of Section 303(1) of the Act. The Commission further finds that the loss or damage actually sustained amounted to Five Hundred Twenty-five Dollars (\$525.00) and concludes that claimant is entitled to an award under Section 303(1) of the Act for two-thirds of that amount, since under this Section awards are limited to two-thirds of the loss or damage actually sustained.

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A W A R D

Pursuant to the provisions of the International Claims Settlement Act of 1949, as amended, an award is hereby made to JAMES ALLEN BRITTAIN in the amount of three hundred fifty dollars (\$350.00).

Payment of any part of this award shall not be construed to have divested the claimant herein, or the Government of the United States on his behalf, of any rights against the Government of Rumania for the unpaid balance of the claim, if any.

It is ORDERED that the award granted herein be certified to the Secretary of the Treasury.

Dated at Washington, D. C.

JUL 30 1958

*Whitney Gilliland*

*Earl Rice*

*Henry S. Clay*

COMMISSIONERS

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*WB*  
*OSB.*



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PROPOSED DECISION

This is a claim against the Government of Rumania under the provisions of Section 303 of the International Claims Settlement Act of 1949, as amended, for the loss of certain personal property valued at five hundred twenty-five dollars (\$525.00), allegedly taken from the person of the claimant, then a member of the Armed Forces of the United States, following a parachute landing in Rumanian territory and capture by Rumanian authorities during World War II.

Section 303 of the Act, in the pertinent part, authorizes the Commission to receive and determine in accordance with applicable substantive law, including international law, claims of nationals of the United States against the Government of Rumania arising out of the failure to--

(1) to restore or pay compensation for property of nationals of the United States as required by articles 24 and 25 of the treaty of peace with Rumania;

(2) pay effective compensation for the nationalization, compulsory liquidation, or other taking, prior to August 9, 1955, of property of nationals of the United States in Rumania.

The claim here under consideration appears to be one substan-

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tially cognizable under the language of the Military Personnel Claims Act of 1945.<sup>1/</sup> This Act authorized the payment of claims of civilian employees and military personnel of the Armed Forces of the United States "for damage to or loss, destruction, capture, or abandonment of personal property incident to their service." The history of this Act was carefully traced and its purpose was aptly stated by a court in one of the leading cases on the subject.<sup>2/</sup> In its decision, the court stated, in part, as follows:

The Act was the culmination of years of effort to secure for military personnel a comprehensive system of compensation for loss of personal property in the service.

\* \* \* It was manifestly the intent of the Congress that the Military Personnel Claims Act should remain as the single comprehensive remedy for property losses of military personnel incident to their service."

The Court cited the applicable Air Force Regulations promulgated under the Act (AFR-112-7, 15 Federal Register 1511, §836.92(b), 32 C.F.R. (1951 Revised Edition) §836.92(b)), and quoted, as one example of claims payable thereunder, the following regulation:

(4) Enemy action or Public Service. Where property is damaged, lost, destroyed, captured, or abandoned as a result of enemy action or threat thereof, combat or activities incident thereto, belligerent activities or unjust confiscation by a foreign power or its nationals, civil disturbances, public disasters, or the saving of Government property or human life." (Emphasis supplied).

In cases in which the question has arisen, the remedy has been held to be exclusive,<sup>3/</sup> regardless of whether the property in question belonged to a serviceman or to another.<sup>4/</sup> Nothing appears either in the language or the history of Public Law 285 which would support a finding that in the enactment of this measure the Congress intended

<sup>1/</sup> 59 Stat. 225; 31 U.S.C. 222 c.

<sup>2/</sup> Fidelity-Phenix Fire Ins. Co. v. U. S., 111 F. Supp. 899 (1953).

<sup>3/</sup> Preferred Ins. Co. v. U. S., 222 F. 2d 942 (1955); certiorari denied, 350 U. S. 837, rehearing denied, 351 U. S. 990.

<sup>4/</sup> Wallis v. U. S., 126 F. Supp. 673 (1954).



to provide a measure of compensation for claims for which no provision had previously been made. Thus, in the report<sup>5/</sup> of the Senate Committee which recommended enactment of H. R. 6382, the bill which became Public Law 285, there appears the following statement:

The purpose of the present bill is to establish a claims program for the benefit of American nationals whereby they may obtain at least partial compensation for (1) war damage, nationalization, and pre-war government debt (bond) claims, against the Governments of Bulgaria, Hungary, and Rumania.

The Committee pointed out that these countries had failed to honor their obligations under the respective treaties of peace to compensate for war damage inflicted on American-owned property, and had failed to provide compensation "for property which was nationalized or otherwise taken subsequent to the date of the treaties."<sup>6/</sup>

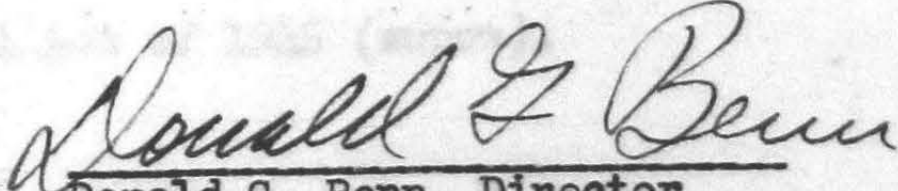
The Commission is of the opinion that losses sustained by military personnel of the United States incident to their service are not compensable under Public Law 285, 84th Congress.

For the foregoing reasons, this claim should be and hereby is denied. The Commission deems it unnecessary to make determinations with respect to other elements of this claim.

Dated at Washington, D. C.

FOR THE COMMISSION:

MAR 3 1958

*th*  
*WB*  
*Mr*  
  
Donald G. Benn, Director  
Balkan Claims Division

<sup>5/</sup> Senate Report No. 1050, 84th Cong., 1st Sess., p. 1.

<sup>6/</sup> Ibid. at p. 2.

Commissioner Pace:

I cannot find myself in agreement with the proposed decision on this claim. I find no language in the International Claims



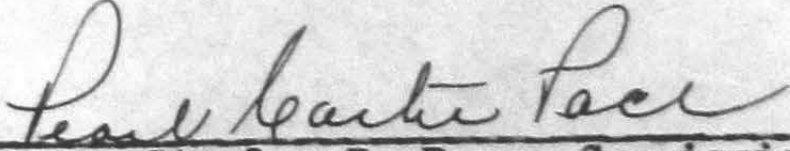
Settlement Act of 1949, as amended, (Public Law 285, 84th Congress) nor in the intent of Congress as revealed by the history of the legislation, which would preclude a claimant, otherwise eligible, from receiving an award under this act, solely by reason of the fact that he may have been entitled to some compensation for his loss if he had filed a claim under the Military Personnel Claims Act of 1945.

It is my opinion that the cases cited are not directly in point. The courts in such cases decided that under the Military Personnel Act of 1945, the United States was liable for certain losses, sustained by the members of the military forces and civilian employees of the military and that such remedy was exclusive where the property loss bore some substantial relation to the claimants military service. Quoting from Section (a) of the Act, - "such property must be reasonable, useful, necessary or proper under the attending circumstances."

The instant claim is distinguishable in two respects. Firstly, it is not a claim against the United States, but a claim against the government of Rumania. And, secondly, it cannot be said on the basis of the record before the Commission, that the property on which the claim is based was militarily reasonable, useful, necessary or proper under the attending circumstances, all of which must be established as prerequisites for eligibility for compensation under the Military Personnel Act of 1945 (supra).

Dated at Washington, D. C.

MAR 3 1958

  
Mrs. Stanley D. Pace, Commissioner