



COMPTROLLER GENERAL OF THE UNITED STATES  
WASHINGTON 25

B-79080

October 12, 1948

Mr.

108 East Congress Street,  
Lincolnton, North Carolina.

Dear Mr. :

Reference is made to your letter dated June 8, 1948, in effect requesting review of settlement dated May 20, 1948, which disallowed your claim for \$4,300, representing the amount of loss alleged to have been sustained by you as a result of the removal and destruction of certain structures, being your personal property located on a tract of land in Union County, North Carolina, acquired by the Government by condemnation proceedings from the fee simple owner for a hospital site at Camp Sutton, North Carolina, and designated as Tract No. 137.

The record indicates that you leased a portion of the aforesaid tract for a period of five years with an option to renew for a further period of 15 years by lease dated April 8, 1942, and thereafter you erected thereon an 18' x 36' streetcar lunch room and a 48' x 60' storage house with the privilege of removal of the structures at the expiration of your lease. The above tract being essential for the expansion of Camp Sutton, possession thereof was taken by the United States after filing a petition for condemnation and order of possession on November 2, 1942, pursuant to the authority contained in the act of February 26, 1931, as amended, 40 U. S. Code 258a, and the act of July 2, 1917, as amended, 50 U. S. Code 171 and 171a. Title to the subject tract was acquired by the United States on Declaration of Taking No. 1 filed September 20, 1943, and in a judgment filed December 19, 1944, the United States District Court for the Western District of North Carolina entered an order for the payment to the owner of \$1,237 representing the fair cash market value of the tract as of November 2, 1942. The record shows that this award by the court did not include any amount for the structures placed on the premises by you and that the buildings and improvements had been, in fact, entirely removed before the cause was heard. An appraisal report, filed by the United States Land Appraiser on Tract No. 137, dated September 25, 1942, showed a streetcar lunch room and shed in poor condition, value \$50; and a storage building 48' x 60'

in poor condition, value \$150. It appears that these structures were appraised as a part of the realty and not as severable personality. Also, there is evidence that the structures in question were removed sometime between the date of the aforesaid appraisal report and the decree of award by the Federal District Court either by the Armed Forces of the United States or by the Government contractor for the purpose of clearing this site for the construction of the base hospital.

On June 16, 1947, you submitted a claim to the War Department in the amount of \$4,300 as damages for the removal of the above-described property, and in support thereof attached an affidavit by two local citizens which stated that the storage building was worth \$2,300 and that the dining car with shed and equipment was worth \$2,000. Your claim was transmitted to this Office by the War Department for direct settlement with the recommendation that the claim be allowed in the amount of \$200, representing the amount found by the Government appraiser to be the value of the structures at the time of the taking.

By the settlement of May 20, 1948, referred to above, your claim was disallowed for the reason that it had been asserted without a showing as to the dispossession of the property or circumstances indicating an interference with your planned enterprise or that you had not abandoned the business venture including the buildings, the burden of establishing such a claim being on the claimant. In your letter of June 8, 1948, it is stated that for the past 14 years you have been in the type of business in which you had planned to engage on the premises here in question and that prior to the commencement of this venture the Government had taken possession of the property. It appears, therefore, that you were in possession of the premises at the time of taking by the United States and that the enterprise had not been abandoned prior thereto.

The property in question was taken by the United States pursuant to the authority of the acts of February 16, 1931, and July 2, 1917, supra, which authority included the right to take personality located on the realty condemned or used therewith. See United States v. Certain Parcels of Land, Etc., 55 F. Supp. 257. Since the record shows that the subject property was removed from the premises before the cause was heard and that the verdict of the jury on which the judgment of December 19, 1944, was based did not include any compensation to cover the value of the lunch room and storage barn, there would appear to be a proper basis for the consideration of your claim. See Forest of Dean Iron Ore Co. v. United States, 106 C. Cls. 250.

As hereinbefore stated, your claim in the amount of \$4,300 is

supported by an affidavit of two local citizens that the value of your property is \$4,300, but opposed to this valuation of the property is the United States Land Appraiser's report made at the time of the taking, showing the fair market value thereof to be \$200. Manifestly, this Office has no first-hand knowledge as to the value of such property. Hence, it must rely upon the appraisal report of the United States Land Appraiser, such report being the only official document in the record which tends to establish the value of the subject property at the time of taking, and the recommendation of the Department of the Army which is based upon such appraisal report.

Accordingly, you are advised that allowance of your claim is today being authorized in the amount of \$200, as administratively recommended, such amount to be in full and final settlement of all claims arising in connection with the transaction.

Respectfully,

(Signed) Lindsay C. Warren

Comptroller General  
of the United States