CLAIM OF KUNEO JACK SAKAI

[No. 146-35-24068-A. Decided October 13, 1953]

FINDINGS OF FACT

This claim—transmitted by claimant through the mail—was received by the Attorney General after midnight of January 3, 1950. The envelope in which it was enclosed bears the postmark "Jan. 2, 1950."

REASONS FOR DECISION

The instant case relates to the "Limitation" provisions set forth in Section 2 (a) of the Statute and reads:

> The Attorney General shall receive claims for a period of eighteen months from the date of enactment of this Act. All claims not presented within that time shall be forever barred.

Initially to be determined is the time of expiration of the 18 months' period thus prescribed. The Statute having been approved on July 2, 1948, and the said day being excluded from computation as a matter of law,[1]

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[1] *Sheets* v. *Selden's* Lessee, 2 Wall. 177, 190; *Burnet* v. *Willingham L. & T. Co.*, 282 U. S. 437; *Fogel* v. *Commissioner of Internal Revenue*, 203 F. 2d 347; *United States* v. *Senecal*, 36 F. 2d 388. See also Rule 6 (a) of the *Federal Rules of Civil Procedure*, 28 U. S. C. 723 (c), which provides in pertinent part: "In computing any period of time prescribed or allowed by these rules, by order of court, or *by any applicable statute*, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Sunday or a legal holiday, in which event the period runs until the end of the next day which is neither a Sunday nor a holiday." [Emphasis supplied.] As appears from the authorities, the rule is merely declaratory of established common-law principles. See cases cited *supra* together with *Sherwood Bros.* v. *District of Columbia*, 113 F. 2d 162. Moreover, having had legislative authorization and approval, the rule has the

the 18 months' period normally would have expired at midnight of January 2, 1950. The latter day, a Monday, having been a legal holiday due to the fact that January 1, 1950, fell on the Sunday immediately preceding, the period was automatically extended until the end of the next day. *Union National Bank* v. *Lamb,* 337 U. S. 38, 40–41; *Rimmer* v. *United States,* 172 F. 2d 954; Rule 6 (a), *Federal Rules of Civil Procedure,* 28 U. S. C. 723 (c). It follows, therefore, that the 18 months' period prescribed by the Statute expired at midnight of January 3, 1950.

The statutory bar date being thus clear, the question here presented is readily seen. As appears from the findings of fact, the instant claim was received by the Attorney General after midnight of January 3, 1950. It was mailed prior to that time, however, and within the 18 months' period prescribed by the Statute. Does this fact render the claim timely and exempt it from the statutory bar? That the answer to this question must necessarily be in the negative is plain from the meaning of the terms "receive" and "presented" employed in the Statute. As appears from the authorities and as is matter of common knowledge, "receive" is variously defined as meaning to come into possession or acquire physical custody of; to take or accept something that is offered, given, sent, or the like; to get or obtain as a result of delivery, transmission, or communication. See *Webster's New International Dictionary* (2d ed., 1948), p. 2076; 75 C. J. S. 642–644; *Bowles* v. *Nelson-Ricks Creamery Co.,* 66 F. Supp. 885, 888. The essence of the term, in its commonly accepted meaning, is the concept that something has been physically delivered or placed in the hands of the recipient. 75 C. J. S., *supra; Labarthe* v. *McRae,* 35 Cal. App. 2d 734, 737. Again, the verb "present," of which "presented" is the past participle,

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force and effect of a congressional enactment and provides the method for computation of time prescribed or allowed not only by the rules or by order of court but by "any applicable statute." *Union National Bank* v. *Lamb,* 337 U. S. 38, 40–41; *Wilkes* v. *United States,* 192 F. 2d 128.

means to give, hand to, or deliver; to bring to one's attention or cognizance; to lay out or put before a person for acceptance. *Webster, supra,* p. 1955; 72 C. J. S., 491. Cf. *Black's Law Dictionary* (3d ed.), 1406–1407, and see, also, *National Labor Relations Board* v. *North American Aviation,* 136 F. 2d 898, 899. As is apparent from the foregoing, the statutory intent is clear and unmistakable. To be "presented," within the meaning of the Statute, a claim must be physically delivered to or laid before the Attorney General so that he may take it into possession and acquire physical custody thereof. Since deposit in the mails does not constitute such physical delivery and presentation but merely represents the initial step in the transmission process preliminary thereto, it manifestly cannot come within the statutory purview. It accordingly follows that the instant claim may not be considered timely and is barred by the limitation provision of the Statute.

While the foregoing is dispositive of the matter, a further aspect remains for consideration. In a memorandum submitted by the Japanese American Citizens League, as *amicus curiae,*[2] the suggestion is advanced that the above result may be averted under Section 6 (h) of the Statute which, the *amicus curiae* asserts, confers administrative discretion upon the Attorney General to provide by regulation that claims received subsequent to the bar date but mailed and post-marked prior thereto shall be deemed timely presented. That the suggestion is untenable and reflects a misconception of the authority conferred by Section 6 (h) is plain from the express terms of the latter. Thus, the section provides:

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[2] It should be noted that by letter dated July 27, 1953, counsel for claimant were apprised of the problem here involved in full detail and solicited to submit a brief presenting authorities and argument in support of the contention that the instant claim was timely within the meaning of the Statute. No such brief has been received, however.

> SEC. 6. For the purposes of this Act the Attorney General may—
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> (h) prescribe such rules and regulations, perform such acts not inconsistent with law, and delegate such authority as he may deem proper in carrying out the provisions of this Act.

As is apparent from the foregoing, the administrative discretion vested in the Attorney General by Section 6 (h) is narrow in compass and expressly confined to "carrying out the provisions of this Act." As already seen, the provisions of Section 2 (a) of the Statute are plain and unambiguous and the legislative intent expressed therein clear and unmistakable. The section specifically provides that the Attorney General shall receive claims for a period of 18 months from the date of statutory enactment, i. e., until midnight of January 3, 1950, and that all claims not presented within that time are to be forever barred. This being the case, it is patent that a regulation permitting recognition of claims presented and received after January 3, 1950, amends the Statute and extends its provisions. Manifestly, such a regulation would be contrary to law. *Koshland* v. *Helvering*, 298 U. S. 441; *Manhattan General Equipment Co.* v. *Commissioner of Internal Revenue*, 297 U. S. 129; *Campbell* v. *Galeno Chemical Co.*, 281 U. S. 599; *United States* v. *Missouri Pac. R. Co.*, 278 U. S. 269.[3]

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[3] For an example of valid exercise of the authority conferred by Section 6 (h), *see Hannah M. Ogawa, ante*, p. 301, in which a claim delivered to the United States Attorney at Chicago before midnight of January 3, 1950, was held to be timely even though forwarded to the Attorney General after that date since the United States Attorney could properly act as agent for the Attorney General in the receipt of claims.