L-41-568
Opinion No. 1941 R.R. 45

MEMORANDUM

Washington, D. C.
November 7, 1941

TO The Board

FROM General Counsel

SUBJECT Creditability of military service rendered during the Philippine Insurrection

QUESTION

The question has been raised whether the period of the Philippine Insurrection is a "war period" within the meaning of Sections 3A(d) and (e) of the Railroad Retirement Act.

OPINION

It is my opinion that the period of the Philippine Insurrection constitutes a "war period" which began on February 4, 1899 and ended on April 27, 1902, and it is recommended that the Regulations be amended accordingly.

FACTS[1]

The Philippine Insurrection was an aftermath of the war between the United States and Spain. At the outbreak of the war with Spain, on April 21, 1898, the territory known as the Philippine Islands was a Spanish colony. On May 1, 1898, an American fleet commanded by Admiral Dewey attacked and destroyed the Spanish fleet at Manila Bay and

---

1/ The following sources of information were consulted:

Annual Reports of the Secretary of War (1898 to 1903, inclusive); Report of the 1st Philippine Commission, Sen. Doc. No. 138, 56th Cong., 1st Sess.; Report of the Taft Philippine Commission, Sen. Doc. No. 112,56th Cong., 2d Sess.; Treaty of Paris and Accompanying Papers, Sen. Doc. No. 62, 55th Cong., 3rd Sess.; Foreman, The Philippine Islands (1906); Chadwick, The Relations of the United States and Spain - The Spanish-American War (2v.) (1911); Storey and Lichauco, The Conquest of the Philippines by the United States (1926); Malcolm and Kalaw, Philippine Government (1932); Malcolm, The Commonwealth of the Philippines (1936).

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

then proceeded to blockade the city of Manila, which was being defended by Spanish troops.

At this point in the war between the United States and Spain, certain native Filipinos took advantage of the situation to attack the Spaniards and to set up a government of their own. On May 19, 1898, Emilio Aguinaldo, who had previously led Filipino uprisings against Spanish rule, returned from exile to organize and lead a large, well-equipped force of Filipinos against the Spaniards. On May 24, 1898, Aguinaldo proclaimed a dictatorial government with himself at its head. The flag of the Philippines was formally unfurled and independence declared at Cavite on June 12, 1898. On June 18, Aguinaldo decreed the establishment of municipal and provincial governments, which were thereupon established in all the provinces in which the Filipinos had defeated the Spaniards, including most of the Island of Luzon (the most important island in the archipelago). On June 23, the dictatorial government was changed by decree to a revolutionary government with Aguinaldo as President. Pursuant thereto, five departments of government were created, and a civilian cabinet appointed on July 15, 1898. On August 6, 1898, Aguinaldo addressed a message to foreign governments, asking for formal recognition of the belligerency of the revolution and of the independence of the Philippines. In his message, he stated that the "revolution ruled" in fifteen provinces,2/ and that "complete order and perfect tranquillity reign, administered by the authorities elected by the provinces in accordance with the organic decrees dated 18th and 23d of June last."3/ On September 15, 1898, the Revolutionary Congress assembled at the town of Malolos, and elected a President of the Congress. In November, delegates to foreign lands were designated, including an envoy to the United States. On January 22, 1899, Aguinaldo assumed the title of President of the Philippine Republic and promulgated a constitution.

Prior to July 1898, Aguinaldo's army had destroyed all Spanish civil and military authority throughout most of the Island of Luzon and had begun to attack the Spanish forces at Manila. However, the siege of Manila was never completed by Aguinaldo. During July and August 1898, the siege was taken over by American troops. On August 13, 1898, Manila capitulated to the American forces, which immediately occupied the city. On the previous day, the United States and Spain had signed a protocol providing that on August 13, 1898, all hostilities between those two nations should cease.4/ With respect to the Philippines, the protocol provided:

2/ Cavite, Batangas, Mindoro, Tayabas, Laguna, Morong, Bulacan, Bataan, Pampanga, Nueva-Ecija, Tarlac, Pangasinan, Union, Infanta, and Zambales.

3/ Aguinaldo's message is reproduced in Sen. Doc. No. 62, 55th Cong., 3rd Sess., at p. 438.

4/ 30 Stat. 1742.

"Article III. The United States will occupy and hold the city, bay and harbor of Manila, pending the conclusion of a treaty of peace which shall determine the control, disposition and government of the Philippines."

Because of the difference in time and the cutting of the cable, the American military and naval commanders in the Philippines were not informed of this protocol until August 16, 1898. Thereafter, the Americans continued their occupation of Manila under the terms of the protocol, pending negotiation and promulgation of a treaty of peace with Spain.

On December 10, 1898, a treaty of peace was concluded at Paris between the United States and Spain, whereby it was provided that Spain was to cede the Philippines to the United States. This treaty was ratified by the United States on February 6, 1899, and by Spain on March 19, 1899. The ratifications were exchanged at Washington on April 11, 1899, and the treaty proclaimed on the same day.5/

Meantime, relations had grown strained between the American forces in Mainila and Aguinaldo's army, which had remained in the vicinity. In an effort to preserve peace, the American commanding general appointed a commission to confer with a similar body appointed by Aguinaldo. No substantial results were obtained, although six sessions were held, the last occurring on January 29, 1899.6/ Six days later, on February 4, 1899, the American forces occupying Manila were attacked by Aguinaldo's army.7/ This affair marked the beginning of the Philippine Insurrection, which proved to be an extensive and prolonged conflict in which the hostile Filipinos sought to destroy the American forces and to extend their power over the entire archipelago.

Upon the signing of the protocol ending hostilities between the United States and Spain, the United States Army, in accordance with existing law, began to demobilize the volunteers and to reduce its regular force to peacetime strength (about 26,000 men). As a result of the Filipino attack on the American forces, the Congress of the United States on March 2, 1899, in order "to meet the present exigencies of the military service," authorized the President again to increase the strength

---

5/ 30 Stat. 1754.

6/ In April and May the Filipinos sent emissaries to the Schurman Commission (appointed by the President in January 1899 to investigate conditions in the Philippines) seeking to end the hostilities which had begun in the interim, but these negotiations also were fruitless.

7/ There are varying accounts of the manner in which the Philippine Insurrection began. The account here set forth is taken from the official report of the Secretary of War for the year 1899 (p. 7). It is to be presumed that Congress intended that for the present purpose the official account should govern.

of the Regular Army to a maximum of 65,000 men, and to raise a force of 35,000 volunteers.8/ The Regular Army was promptly increased to a total force of 64,247, and a Volunteer Army totalling 34,574 was raised from the country at large.

The Philippine Insurrection lasted from February 4, 1899 until April 27, 1902. During the three-year period, over 120,000 American troops were engaged in the conflict. Although the Filipino government was soon put to flight and many of its chief officers captured, Aguinaldo was not captured until March 23, 1901. Thereafter, resistance was continued by several of his military subordinates. The last of these leaders, Guevara, surrendered on April 27, 1902. On July 4, 1902, the President of the United States ordered the establishment of civil government throughout the entire archipelago, except for territory inhabited by Moro tribes. On the same day, the President issued a proclamation announcing the end of the Insurrection, and declaring an amnesty for all insurrectionists and political offenders.

The Philippine Insurrection was fought in the northern and central portions of the Philippine Archipelago, but left untouched the extreme southern portions, comprising the Sulu Archipelago and the Islands of Mindanao and Palawan. The principal inhabitants of these islands at the time of the Spanish War were tribesmen of the Mohammedan religion, known as "Moros" (the Spanish equivalent of "Moors"). During their three centuries of rule, the Spaniards had not incorporated the Moro territory into the general administrative system of the colony. Under nominal Spanish sovereignty, the Moros continued to practice their own religion and to follow their own tribal customs under the rule of native "datos" or petty chiefs, many of whom ruled only about fifty men. The Sultan of Sulu made some pretense of general control, but he had no real authority. After Spanish withdrawal from the Moro territory, General John C. Bates of the United States Army was placed in charge of the territory. In August 1899, he concluded an agreement with the Sultan of Sulu (ratified by Congress on February 1, 1900) providing for the preservation of religious freedom and local customs. This arrangement was ineffective because of the Sultan's lack of control over the Moros. It was superseded by the appointment of Major-General Leonard Wood, on July 25, 1903, to command the territory and to create a semi-independent government for its local administration.

The Moros did not join in Aguinaldo's war against American sovereignty9/ and were in fact as hostile to the Christian Filipinos

---

8/ 30 Stat. 977.

9/ In his annual report of 1902, the Secretary of War stated:

> " . . . such measures of force as are necessary to control the various Moro tribes have no more relation to the recent Philippine insurrection than our trouble with the Sioux or the Apaches had to do with the suppression of the Southern rebellion." (p. 18)

as they were to Christians from other lands. Although local "datos" made occasional attacks on American forces, there was no concerted uprising against American authority. Each attack and each counter expedition was a wholly independent affair, usually involving but one "dato" unsupported by any others. Such incidents continued sporadically for many years, and were dealt with by the Regular Army and by the local constabulary.

DISCUSSION

It is the purpose of Section 3A to credit military service which interrupted compensated service to an employer in the railroad industry, and which either was commenced pursuant to legal compulsion, such as a draft act, or was voluntarily commenced during a war--that is, commenced because of patriotism during a time of national peril or need. (See subsection (c).) On the other hand, it is not the purpose of the Act to credit military service which was commenced voluntarily in peacetime, since in that case it must be presumed that the railroad service was interrupted because of a desire to assume a military occupation and not because of any emergency requiring service in the armed forces. (See the second proviso to subsection (a).)

The period of the Philippine Insurrection is one during which civilians were exhorted by the President and the War Department to enter military service for active battle duty. The Congress of that day, recognizing the seriousness of Aguinaldo's attack, promptly authorized a great expansion of our military forces. The total forces in the Regular and Volunteer Armies were increased to a strength about four times that of the peacetime strength of the army, and more than 120,000 troops saw active service during the three years of the struggle. It is obvious that railroad employees who left their civilian employment to enter military service during this period did so not merely because of a desire for a change of occupation, but rather because of patriotism, and that, accordingly, the military service thus rendered is within the spirit of the Act.

The question remains whether the military service described above falls within the literal meaning of the Act--that is, whether the period of the Philippine Insurrection is a "war period" within the meaning of the Act.

Section 3A(d) of the Act provides that a "war period" begins:

> " . . . on whichever of the following dates is the earliest: (1) the date on which the Congress of the United States declared war; or (2) the date as of which the Congress of the United States declared that a state of war has existed; or (3) the date on which war was declared by one or more foreign states against the United States; or (4) <u>the date on which any part of the United States or</u>

> any territory under its jurisdiction was invaded or attacked by any armed force of one or more foreign states; or (5) the date on which the United States engaged in armed hostilities for the purpose of preserving the Union or of maintaining in any State of the Union a republican form of government." /Underscoring supplied./

The Philippine Insurrection involved no declaration of war; nor did the United States engage in armed hostilities in the Philippines "for the purpose of preserving the Union or of maintaining in any State of the Union a republican form of government." However, it is clear that on February 4, 1899, territory under the jurisdiction of the United States was attacked by an armed force, since the city of Manila was at that time under the jurisdiction of the United States pursuant to the protocol of August 12, 1898, and the army of Aguinaldo was beyond question an armed force. Consequently, the attack by Aguinaldo's army constitutes the beginning of a "war period," under the fourth clause of Section 3A(d), if this army was an armed force of a "foreign state."

Although the term "state," when considered by itself, is ambiguous,10/ its meaning in the instant case can be deduced readily from the context of the statute. The term appears in the statute as a part of the definition of "war period." By its use of the latter phrase,

---

10/ This is pointed out in the following statement by the Supreme Court of the United States with respect to the meaning of that term:

> "The poverty of language often compels the employment of terms in quite different significations; and of this hardly any example more signal is to be found than in the use of the word we are now considering. It would serve no useful purpose to attempt an enumeration of all the various senses in which it is used. A few only need be noticed.
>
> "It describes sometimes a people or community of individuals united more or less closely in political relations, inhabiting temporarily or permanently the same country; often it denotes only the country or territorial region, inhabited by such a community; not unfrequently it is applied to the government under which the people live; at other times it represents the combined idea of people, territory, and government.
>
> "It is not difficult to see that in all these senses the primary conception is that of a people or community. The people, in whatever territory dwelling, either temporarily or permanently, and whether organized under a regular government, or united by looser and less definite relations, constitute the state." Texas v. White, 7 Wall. 700, 720 (1868).

Congress has made it clear that it intended to recognize only periods involving actual wars, and to exclude other types of hostilities. The nature of the differentiation is apparent from the following definition of the term "war":

> "War, in law, is not a mere contest of physical force, on however large a scale. It must be an armed struggle, carried on between two political bodies, each of which exercises de facto authority over persons within a determinate territory, and commands an army which is prepared to observe the ordinary laws of war."11/

Congress was thus distinguishing between attacks by forces representing political bodies exercising "de facto authority over persons within a determinate territory," and attacks by forces representing no constituted authority--such as attacks by outlaws, pirates, or bandits. It is reasonable to conclude that the term "state" was used for the purpose of reinforcing the foregoing distinction. The statute is obviously not concerned with such political considerations as recognition or non-recognition,12/ since the latter considerations have no relation to its purposes and objectives. Nor is it necessary to consider such factors in determining whether there is a state,13/ as is apparent from the following authoritative definition of the term:

11/ 9 Harv. Law Rev. 406, 407; quoted with approval in O'Neill v. Central Leather Co., 87 N.J.L. 552, 94 A. 789, 790 (1915).

12/ It should be noted that Aguinaldo's regime was never formally recognized.

13/ While recognition may be important for diplomatic purposes, it is not an element essential to the existence of a state. Rather, it is a convenient method of proof. Thus, it was held, in Yrisarri v. Clement, 2 C. & D. 223 (1825):

> "If a foreign state is recognized by this country, it is not necessary to prove that it is an existing state; but if it is not so recognized, such proof becomes necessary." (p. 225)

Accord: Consul of Spain v. The Conception, Fed. Cas. No. 3, 137, 6 Fed. Case. 359 (1819).

Our courts have often held that with respect to recognition of a foreign government, they will be bound by the action or inaction of the political department of our own government. See Lehigh Valley Railroad Co. v. State of Russia, 21 F. (2d) 296 (C.C.A. 2nd, 1927), certiorari denied, 275 U.S. 571 (1927). This doctrine, however, is nothing more than a rule of judicial self-limitation which is obviously not designed to determine the

"First there must be a people. According to Rivier, it must be sufficient in numbers to maintain and perpetuate itself. This requirement could not, he declares, be met by a casual gathering of individuals or by a chance group of bandits or by a society of pirates.

"Secondly, there must be a fixed territory which the inhabitants occupy. Nomadic tribes or peoples are thus excluded from consideration.

"Thirdly, there must be an organized government expressive of the sovereign will within the territory, and exercising in fact supremacy therein.

"Fourthly, there must be an assertion of right through governmental agencies to enter into relations with the outside world. The exercise of this right need not be free from external restraint. Independence is not essential. It is the possession and use of the right to enter into foreign relations, whether with or without restriction, which distinguishes States of international law from the larger number of political entities given that name and which are wholly lacking in such a privilege. It illustrates the difference between Ecuador and Alaska, and between Cuba and South Carolina.

"Fifthly, the inhabitants of the territory must have attained a degree of civilization such as to enable them to observe with respect to the outside world those principles of law which by common assent govern the members of the international society in their relations with each other."14/

13/ (Continued)
question of the existence of the State which a government purports to represent. In the Lehigh Valley case, the court held that since the political department of our own government had recognized the Provisional Government of Russia but had not recognized the Soviet Government, only the representatives of the former could bring suit on behalf of the State of Russia, even though the Provisional Government had been succeeded by the Soviet Government. Nevertheless, there can be no doubt that if the Soviet Government had attacked American territory, such an attack would constitute the beginning of a"war period" within the meaning of the Act.

14/ Hyde, International Law (1922) Vol. I, pp. 16-17.

Even broader is the definition offered by Cooley in his Constitutional Limitations:

On the basis of this definition and the foregoing discussion, it is clear that on February 4, 1899, the Filipinos under the leadership of Aguinaldo constituted a "state" within the meaning of Section 3A(d)(4) of the Act. It is beyond dispute that they were a "people" "sufficient in numbers to maintain and perpetuate" their existence. The army which represented that "people" at the time of the attack on Manila alone contained more than 10,000 soldiers. It is equally clear that this "people" was not nomadic, but occupied a fixed territory, including many ancient towns and cities in the Island of Luzon, and in other parts of the archipelago occupied by Aguinaldo. In addition, the evidence set forth above shows convincingly that the government established by Aguinaldo exercised supremacy throughout this territory. Indeed, the Supreme Court of the United States has held that on February 4, 1899, the Island of Cebu was under the complete control of the de facto "republican government."15/ It is also established, by Aguinaldo's message to foreign nations of August 6, 1898, as well as by the appointment of envoys to represent the government abroad, that Aguinaldo's government asserted its right to enter into relations with the outside world. With respect to the degree of civilization, while there may be some question as to the Moros, no such question exists as to Aguinaldo's people. The nature of the government set up by Aguinaldo and his followers is in itself convincing proof of the high order of their political and cultural development. In addition, the Spaniards had established various schools for the natives throughout the provinces, including a university which dated from the seventeenth century, and a training school for teachers. Many of the Filipinos had even been educated in Europe. Furthermore, many of the natives had occupied civil posts in the Spanish colonial government, and continued to hold public posts under the administration of the United States.16/

14/ (Continued)

> "A state is a body politic, or society of men, united together for the purpose of promoting their mutual safety and advantage, by the joint efforts of their combined strength." (p. 3)

See also Keith v. Clark, 97 U.S. 454, 459-60 (1878).

15/ Mac Leod v. United States, 229 U.S. 416 (1913). It was held that payment of import duties to the native "insurgent government" on February 4, 1899 (the very day of Aguinaldo's attack on Manila), was a valid payment to a de facto government, and protected the importer against further liability for import duties.

16/ In 1900, the Taft Commission established a civil service on the basis of competitive examinations with preference given to natives. Report of the Taft Commission, Sen. Doc. No. 112, 56th Cong., 2d Sess., pp. 20-21.

It follows that the army of Aguinaldo was the armed force of a "state" on February 4, 1899. It is also clear that it was at that time the army of a "foreign state." As pointed out above, the Philippine Islands were still foreign territory on February 4, 1899, since the Treaty of Paris[17] did not become effective until April 11, 1899.[18]

Although the Philippine Islands legally became American territory on April 11, 1899, the "war period" did not end until "hostilities ceased." (Section 3A(e) of the Act.) Aguinaldo was captured on March 23, 1901, but fighting continued until April 27, 1902, when the last of the Filipino leaders surrendered. On that date, hostilities ceased.

It is, therefore, concluded that the period of the Philippine Insurrection constitutes a "war period" beginning on February 4, 1899, and ending on April 27, 1902.

Conflicts with the Moro tribes must be considered separately from the conflict with the Filipinos under Aguinaldo. The former neither joined in the insurrection nor participated in it in any way. Accordingly, the question presented is whether the conflicts with Moro tribes themselves constitute a "war period."

It is clear from the facts presented above that the Moro tribes did not constitute a "state" or group of "states." The Moros were uncivilized and uncultured, and habitually resorted to barbarous practices in warfare.[19] There was no "organized government," but only primitive rule by each of a very large number of tribal "datos" or chiefs. No real effort was made by the Moros to enter into relations with the outside world as a member of the family of nations. Moreover, the Moro disturbances involved no organized attack against the sovereignty of the United

---

17/ 30 Stat. 1754.

18/ In DeLima v. Bidwell, 182 U.S. 1 (1901) it was held that since Porto Rico had been ceded to the United States under the Treaty of Paris, Porto Rico ceased to be a "foreign country" on April 11, 1899.

In view of the fact that the Treaty of Paris was not promulgated until after February 4, 1899, the date of Aguinaldo's attack, it is not necessary to determine whether the government of Aguinaldo would nevertheless have constituted the government of a foreign state within the meaning of the Act if the Philippine Islands had been under the jurisdiction of the United States at the time of the beginning of the insurrection.

19/ See Annual Report of the Secretary of War (1902), pp. 16-19.

States, but consisted merely of sporadic and minor raids by individual chieftains. It is therefore concluded that the period of hostilities with Moro tribes does not constitute a "war period."

Lester P. Schoene
General Counsel

Approved by B.O. 41-472, dated 11-14-41.