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Boulton, Bliss & Dallett Case

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Whereas the claimant further claims 48,000 bolivars for loss of time in consequence of the war, which sum is also mentioned in the above-cited certificate;

And whereas this certificate, although being evidence of the facts therein stated, which were the cause of the debits incurred by the Government, and containing the estimate by the proper authorities of the values claimant was deprived of, it is, however, not in itself a *causa*, and does not create a debit where the *causa* is wanting;

And whereas the interruption of the ordinary course of business is an invariable and inevitable result of a state of war under which all inhabitants, whether citizens or aliens, have to suffer; and whereas losses incurred by reason of such interruption are not subject to compensation by the Government within whose territory the war exists;

Whereas, therefore, loss of time in consequence of the war, is not a loss whereupon compensation can be equitably demanded; this part of the claim has to be disallowed.

In view of the foregoing an allowance is made in this claim for the sum of 94,098 bolivars, or, with interest thereon at 3 per cent per annum from March 15, 1893, the date of the presentation of the claim to the Venezuelan Government, to December 31, 1903, the anticipated date of the final award by this Commission.

And as to the second claim:

Whereas claimant claims 12,000 bolivars for 4½ tablons of growing sugar cane, confiscated and set aside for the food of the soldiers and taken and destroyed on the estate "La Fundación" during the months of November and December 1899; and whereas the Venezuelan Government produced a deed authenticated before the mercantile court of first instance of the Federal district, on the 28th of November, 1898, and recorded in the public register's office of the district of Ricaurte, on December 2 of the same year; and whereas in this instrument it is stated that on the 25th of November, 1898, the heirs of Carlos Benitz and among them Bertha Benitz, acting under the authorization of her husband E. Heny, made a sale to Mrs. Altagracia H. de Ortega Martinez, of the same estate, "La Fundación," free of all incumbrances, for the sum of 36,000 bolivars, with an agreement of resale within the term of one year.

And whereas it is proven thereby that on the 28th of November, 1898, the claimant Heny, without reserve as to any of his own rights authorized his wife, Bertha Benitz, to partake in a sale of the said estate free of all incumbrances and that this sale was effected; whereas, therefore, on that date Heny lost or abandoned whatever rights he might have had in this estate or its appurtenances and revenues;

And whereas no proof is given that the claimant acquired or recovered any right in the estate or its appurtenances and revenues later than this 28th of November, 1898; whereas, therefore, it is not proven that the claims against the Government of Venezuela for restitution for losses suffered on the estate "La Fundación" during the months of November and December 1899, is owned by the claimant, this claim ought to be disregarded.

BOULTON, BLISS & DALLETT CASE

Equitable demands may be received under the protocol as "claims."

An award will be made in favor of parties who under an implied contract have rendered services to the Government.

PAÚL, *Commissioner* (for the Commission):

The United States presents the claim of Boulton, Bliss & Dallett, against the Government of Venezuela, for the sum of 257,027.02 bolivars, for services rendered.

The claimants are the owners of the "Red D" line which runs between New York and several ports of the Republic of Venezuela.

The claim is founded on services rendered to the Government of the Republic, for carrying the mail from the Venezuelan ports to New York from April 1, 1897, to December 31, 1902, and also on the interest of the stated sums in which such services are annually estimated.

The claimants acknowledge that no express contract exists fixing a rate of compensation, but that the mail has been carried by their steamship line, at the request of employees of the Government of the Republic, and under the promise that they should be paid a just and reasonable compensation.

The agents of Boulton, Bliss & Dallet, in Caracas, have presented, from time to time, memorials, to the Government of Venezuela, indicating the weight of the bags that were carried; and in a letter dated March 9, 1899, the said agents complained that until such date negotiations have not been entered upon, with a view to arriving, at a contract.

In view of the facts, as they appear from the documents submitted with the claim, it is necessary, owing to the special nature of the same, to determine if they really constitute a proper basis for presenting a claim to be examined and decided by this Commission.

In accordance with Article I of the protocol of Washington, it is incumbent upon this Commission to examine and decide —

All claims owned by citizens of the United States of America against the Republic of Venezuela, which have not been settled by diplomatic agreement or by arbitration between the two Governments. (See p. 000).

It is not opportune to make any comments with regard to the limitations and pertinancy that enter as elements for the qualification of the claims submitted to the jurisdiction of the Commission as established by the terms of said article of the protocol; but it is necessary to fix the meaning of the word "claim" so as to be able to infer if the demand presented, in the name of Boulton, Bliss & Dallett, properly constitutes a claim.

The word "claim," in its most general meaning and in its juridic sense is equivalent to a pretension to obtain the recognition or protection of a right, or that there should be given or done that which is just and due.

In the meaning of the word "claim" there is therefore included any kind or character of demand which involves a principle of justice and equity, and this in the abstract applies to the jurisdictional faculties of this Commission and the circumstances, which in accordance with the especial terms of Article I of the protocol limits that jurisdiction. The amplitude of the phrase "all claims" makes it possible that even the demands which are unforeseen by the law, or which, by the absence of proper agreements lack juridical foundation entitling them to be examined and confirmed under the proceedings of an ordinary court, must be considered by this Tribunal of exceptional jurisdiction which has to decide them upon their merits and upon a basis of absolute equity.

In accordance with the reasoning, the claim presented by the honorable agent of the United States, in the name of Boulton, Bliss & Dallett, possesses the necessary qualification to be examined and decided by this Commission under the principles of justice and equity which should guide its judgments.

The rendering of services, is the fundamental fact of the claim in question. These services consist in the carrying of the mail by the steamships of the "Red D" line from April 1, 1897, to December 31, 1902. The special nature of this service required, in order to establish the juridical bond, which creates obligations and rights between the two parties, the existence of an agreement or mutual understanding which will establish the precise price which must

be paid. The efficacy of the convention or agreement is of primary consideration in this kind of operation. Without it the claim for services does not exist but is only a gratuitous service. This last position was the one that Boulton, Bliss & Dallett maintained before the Government of Venezuela for near half a century, from the date that the vessels, between New York and the Venezuelan ports began their running, until the 2nd of March, 1897, on which date the minister of fomento was notified to the effect that from 1 April of that year they would charge the Venezuelan Government for the carrying of mail bags, not only to the ports of Venezuela that the steamers visit, but to Curaçao, United States and Europe, the following set prices: Eight bolivars per gross kilogram of letters and cards, and 0.50 of bolivar per gross kilogram of printed matter.

The agents of the line indicated in the same letter of March 2, 1897, that the bags should be weighed, on board of the steamers, before the agents of the Government and the agents of the line in each port, advising the weights to the respective post-office for its record.

On January 15, 1898, the ministry of fomento issued, under No. 2281, a resolution ordering the La Guaira post-office master, to give to the agents of the "Red D" line a note of the weight of the bags sent by the American steamers, and on March 6, 1899, and December 10, 1900, the same ministry, on the petition of Messrs. Boulton & Co., repeated its instructions in order to give the said agents, through the corresponding post employees, the note of the weight of the bags embarked on board the steamers of the line.

Two elements tend to define the relations established between Messrs. Boulton, Bliss & Dallett and the Venezuelan Government, with reference to the transportation of the mail, as it appears from the notes exchanged between the two parties, since March 1897. The first is that Boulton, Bliss & Dallett should charge the Government, from April 1 of the same year, 8 bolivars per gross kilogram of letters and cards, and 0.50 of bolivar per kilogram of printed matter and samples; and the second, that the Government virtually accepted the said tariff from the moment that it ordered its post-office employees to take the weight of the bags and send it each time to Boulton & Co., as it was requested by them, in order to make the liquidation of the amount which the Government should have to pay for the service. These two elements are enough to deduce in justice the following conclusion: The Government of Venezuela owes to Boulton, Bliss & Dallett, for carrying the mail on the steamers of the "Red D" line, from April 1 1899, to December 31, 1902, the resulting sum of the two factors agreed by both parties, gross weight in kilograms of letters and cards, and gross weight in kilograms of printed matter and samples, and the sum of 8 bolivars per kilogram for letters and cards, and 0.50 of bolivar per kilogram of printed matter and samples.

This could be a simple arithmetical calculation which would not embarrass the Commission, but one of the factors is lacking, namely, the separate weight of the letters, and printed matter, as the bags which the post-office employees weighed contained, indiscriminately, letters, cards, printed matter, and samples, and has been taken by Messrs. Boulton & Co. to establish their account with the Government, making an arbitrary distribution of a sixth part for letters and cards and five-sixths part for printed matter and samples. There has not been presented before this Commission any proof or information which may establish that such distribution is equitable and well founded, and in consequence the real weight of letters and cards, and that of printed matter and samples, remains undetermined in the total sum which the gross weight of the bags represents in the period of five years and nine months comprised in their claim.

It is opportune to point out the difference exhibited by the first letter of Boulton & Co., date of June 14, 1898, which gives as gross weight of the bags which were carried by the steamers during a year from April 1, 1897, to March 31, 1898, the sum of 62,661.149 grams, in comparison to that of May 9, 1899, corresponding to the preceding year, which makes the weight of the bags to be 24,091.076 grams, a less weight in one year of quite the two-thirds. There must exist a grave error in the first calculation, since from April 1, 1898, to April 1, 1899, the business conditions of the country were the same as those of the preceding year, without the existence of any special motive to which such extraordinary diminution of volume and weight of the United States and Europe's mail could be attributed. This observation is conformed by the facts belonging to the following years, which have a reasonable proportion as it is proven by the following figures:

	<i>Grams</i>
From April 1, 1898, to April 1, 1899	24,091.076
From April 1, 1899, to April 1, 1900	18,398.396
(Time of war.)	
From April 1, 1900, to December 31, 1900	15,070.630
From December 31, 1900, to December 31, 1901	15,479.608
From December 31, 1901, to December 31, 1902	14,176.231
(Period of war.)	

As the Commission has no means of ascertaining the precise data which establish clearly the gross weight of the two classes in which the different kinds of mail were proposed to be divided, as accepted by the Venezuelan Government, and considering also that the figures given for the gross weight of the bags of the year 1897 to 1898 are not in proportion with the weight of the following years and the absence of any document to prove the exactness thereof; and furthermore, as this claim has to be decided only on the proofs and information presented by both parties on the basis of absolute equity; and taking also in consideration that Messrs. Boulton & Co., agents, in this city, of the "Red D" line, have several times made proposals to the Venezuelan Government to execute a contract fixing an annual sum for the carrying of the mail, it is my opinion that it is necessary to estimate the average of the accounts as made up by the agents of Boulton, Bliss & Dallett for the last five years. That average gives the sum of 29,474 bolivars, which I consider admits of a reduction to the sum of 25,000 bolivars, as the natural rebate which all debtors are entitled to, when the creditor fixes the price for services rendered, especially when they amount to a considerable sum extending over a period of years.

Having thus determined the annual price for carrying of the mail and calculating the time elapsed from April 1, 1897, to December 31, 1902, or five years and nine months, the value of the service comes to the sum of 143,750 bolivars.

With reference to the interest the circumstances set forth in this opinion makes it apparent that the claim is presented under conditions which do not justify the allowance of interest.

Therefore, an award is hereby made in favor of Boulton, Bliss & Dallett for the sum of 143,750 bolivars, equivalent in American gold, at the average rate of exchange, to \$ 27,644.23.