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Postal Claim

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POSTAL CLAIM

(By the Umpire:)

Interest will not be allowed upon a claim, if it is not demanded in the claim itself.

GOFFART, *Commissioner* (claim referred to umpire):

Article 33 of the Universal Postal Convention (signed June 15, 1897), a convention signed by almost all the nations of the world, and among others by Venezuela and by Belgium, says literally:

2. Payment of the accounts of transit expenses relating to a period of service must be effected with the least possible delay, and, at the latest, before the expiration of the first six months of the following period of service. In any case, if the office which has transmitted the account has not received during that period a correcting observation, the account is considered as duly accepted. This provision likewise applies to the uncontested observations made by one office relative to the accounts presented by another. When the term of six months has passed, the amounts due from one office to another office are subject to interest at the rate of 5 per cent per annum, dating from the day of expiration of said term.

3. The offices interested are, however, at liberty to make, by mutual agreement, arrangements other than those formulated in the present article.¹

This text gives rise to no doubt, and in No. 2 a general rule is established; by No. 3 it is permissible that it be replaced by means of special agreement.

Has the term of six months allowed, at the end of which the expense of transportation that were due for the year 1898 should have borne interest, expired? Evidently.

Does there exist a special agreement which supersedes the general rule? It is possible that it will be alleged that the acceptance on the part of Belgium in July, 1900, of an arrangement for the extinguishment of the debt by means of the series of monthly payments of 250,296 francs, since no interest has been mentioned, constitutes a tacit renunciation of interest, but the suspension of the payments in June, 1901, has annulled this tacit agreement.

If, therefore, there exists a part agreement that agreement has ceased to exist and the debt is governed by the general rule contained in article 2.

Therefore the Belgian Commissioner proposes the following award:

The Venezuelan-Belgian Commission decides that the debt for 8,249.36 francs, which the Government of Venezuela owes, is allowed.

(2) This sum shall be increased by interest at 5 per cent from June 1, 1901, until the day of payment.

GRISANTI, *Commissioner* (claim referred to umpire):

The Commissioner of Venezuela has the honor to make the following observations:

In the claim for 8,249 francs 36 centimes for expenses of transportation of correspondence, the payment of interest has not been demanded upon that sum, and since it is indispensably requisite, in order that the Commission may take jurisdiction of and decide the claim, that said claim shall have been made, it is clear in the present case that the Commission can not allow interest which has not been demanded.

In Article I of the protocol, signed at Washington on February 13, of the current year by the plenipotentiaries of Belgium and Venezuela, it says that —

All Belgian claims against the Republic of Venezuela, which have not been settled by diplomatic agreement or by arbitration between the two Governments

¹ U. S. Statutes at Large, vol. 30, p. 1691.

and which shall have been presented to the Commission hereinafter named by the Belgian Government or by the Belgian legation. * * *

Consequently, the payment of interest has not been claimed either by the Government of Belgium or by the legation of Belgium at Caracas.

Secondly, I make the following argument:

The cause which has prevented the Venezuelan Government from effecting the punctual payment of the sum named consists in civil war, which possesses the character of *force majeure* and excuses the payment of interest, in accordance with article 1191 of the civil code:

The debtor is not obliged to pay damages if these are the consequences of an accident or force majeure, which has impeded him from refraining to do, or doing, that which he was obliged to do, or that he has done that which was forbidden.

For these reasons I am of opinion that there is no reason to demand the payment of interest with which the Belgian Commissioner has increased the demand.

FILTZ, *Umpire*:

The umpire having studied and examined the documents and the record and considering:

That, the demand for interest has not been presented in the claim itself;

That, besides it is contrary to the terms of the protocol;

For these reasons declares that the demand for interest made by the Commissioner of Belgium is disallowed.

COMPAGNIE GÉNÉRALE DES EAUX DE CARACAS

DECISION ON JURISDICTION

(By the Umpire):

Under the terms of the protocol, the Commission has jurisdiction to examine and decide the claim of a Belgian corporation, even though some of its stockholders may not be Belgians.

DECISION ON MERITS

(By the Umpire):

The failure to perform a contract for the payment of certain bonds issued by the Government of Venezuela in payment for certain properties purchased of claimant gives the claimant a right to claim indemnity, even though the bonds were made payable to bearer.

Where the property conveyed was encumbered by a bond and mortgage, formal registration of a satisfaction of the mortgage can not in equity be demanded when the evidence clearly shows that all but a few of the mortgage bonds have been paid and the claimant is willing to amply secure the grantee against loss on account of the outstanding bonds. The objection to the payment founded on the above would be one of a technical nature, which is expressly barred by the protocol.

Evidence can not be introduced to show that bonds issued for the payment for property were delivered at 40 per cent of their nominal value where the contract of transfer expressly states that the bonds were issued at par.

(The allegations contained in the memorial sufficiently appear in the following opinions. This plea to the jurisdiction was the first step taken by the Venezuela Government in opposition to the claim.)