

**REPORTS OF INTERNATIONAL  
ARBITRAL AWARDS**

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**RECUEIL DES SENTENCES  
ARBITRALES**

**Topaze Case (interlocutory)**

1903

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convention establishing that Commission. Here was placed before the Government a careful list, in number and character, of the losses suffered, and the different estates on which each separate claim rested, with the dates on which the different claims arose. This gave the respondent Government an opportunity to acquaint itself with the facts and to obtain counterproofs if found available or important. Since the withdrawal of this claim from the Mixed Commission of 1869 there can be no just allegation of laches properly chargeable to either the claimant or the claimant Government. The delay has been either in the inability or the unwillingness of Venezuela to respond to this claim. The occasion of this unwillingness and the reasons why it was placed on the list of "unrecognized" claims are properly matters for proof and consideration before this Commission, but it would be evident injustice to refuse the claimant a hearing when the delay was apparently occasioned by the respondent Government.

The umpire holds, therefore, that the case is properly before this Mixed Commission to be considered on its merits, and it is returned to the Commission for that purpose.

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#### TOPAZE CASE

Award of £ 20 each for officers and £ 10 each for seamen for one day's imprisonment held not excessive

PLUMLEY, *Umpire*:

The *Topaze*, a British steamship, was at Puerto Cabello on the 9th of December, 1902, shortly after the establishment of the British Pacific blockade. At 8 p. m. the captain and crew were taken from the ship by an armed guard to the custom-house without opportunity to put on reasonable clothing or to lock up their berths, and at 10 p. m. they were taken under armed guard and imprisoned in a small and badly ventilated cell, and were compelled to sleep on the stone floor. There were 10 officers and a crew of 20. They were thus confined until 10.30 at night of the next day, and, owing to the bad smells and want of ventilation, many of the crew were ill. No food was provided, and what they had was sent in by friends. They were taken back to their ship under an armed guard, and while absent various articles belonging to the crew were stolen. These facts are taken from the memorial in this cause, and there are no contradictory facts alleged by Venezuela.

Upon these uncontested facts the umpire was requested by the honorable Commissioner for Venezuela to express his unofficial opinion upon the question whether a demand by the British Government for £ 20 each on behalf of officers of the ship and for £ 10 each for the crew in the case as made is an excessive amount.

While it did not seem to the umpire at the time of the inquiry that it was in excess of the ordinary demand in such cases, he thought it important and wise that his answer should be given after reflection and upon some basis of action resting upon similar cases before commissions and the accompanying decisions. Following out that thought, he has made some investigation, and now brings forward the result for the use of the honorable Commissioner for Venezuela.

The umpire has had recourse to Moore on International Arbitrations, and the cases to be given are taken from the different volumes of that work.

(1) H. R. Smith (p. 3310): This was an arrest during the American civil war for treason. He was held fourteen weeks, or ninety-eight days, and before the British-American Commission was unanimously allowed \$ 1,540, which is an average of a little less than \$ 16 a day.

(2) Williams (p. 3119): Mexican Commission. Imprisoned twenty-five days. Allowed \$ 600, or \$ 24 a day.

(3) In the case of Parr (p. 3302), before the British - American Commission, it was held that his original arrest and a reasonable detention were lawful, but a detention of four months was not justified. He was unanimously given \$ 4,800, or \$ 40 a day.

(4) Ashton (p. 3288): Arrested and detained ninety-three days. Discharged without trial. Allowed by the same Commission \$ 6,000, an average of about \$ 65 a day.

(5) Julius Le More (p. 3311): Arrested by General Butler, while in command at New Orleans, on charge of aiding the enemy. Held forty-three days in custom-house. No claim of bad treatment. Was allowed by the commission \$ 4,000, or a little over \$ 93 a day.

(6) Crowther (p. 3304): Arrested in Baltimore. Brought before the provost marshal on charge of using seditious language during the civil war. Was held by the provost-marshal eight hours in a hotel. He claimed before the commission to have been talked to in an insulting manner personally and concerning his Government by the provost-marshal. Allowed \$ 100.

(7) Montejo (p. 3277): Arrested and detained thirty-nine days. Allowed \$ 3,900, or \$ 100 a day.

(8) Rozas (p. 3124): Arrested and detained one hundred and forty days. Allowed by commission \$ 14,000, or \$ 100 a day.

(9) Powers (p. 3274): Arrested and detained forty days. Allowed by commission \$ 4,000, or \$ 100 a day.

(10) Edwards (p. 3268): Arrested. Detained forty-six days and discharged without hearing. Allowed \$ 5,000, or almost \$ 109 a day.

(11) McKeown (p. 3311): Arrested by commanding officer for disloyal and seditious language. Held thirteen days. Alleged improper treatment by commanding officer while in detention. Was discharged without a hearing, and was unanimously allowed by the British - American Commission \$ 1,467, or about \$ 113 a day.

(12) Cauty (p. 3309): Arrested for violating neutrality laws. Charge not sustained, and he was not tried. Held seventy days with no allegation of bad treatment. Allowed \$ 15,700, or about \$ 224 a day.

(13) Le More (p. 3311): Arrested by General Butler, while in command at New Orleans, on the charge of aiding the enemy. For eleven days he was in prison and obliged to wear a 32-pound cannon ball and 6 pounds of chain; and for thirty-two days following he was detained in the custom-house, making in all forty-three days. Was allowed by commission \$ 10,000, or \$ 232.50 a day.

(14) Montgomery (p. 3272): Arrested. Detained four days. Allowed \$ 1,000, or \$ 250 a day.

(15) Patrick (p. 3287): Arrested on false information. Held thirteen days. Allowed by commission \$ 5,160, or about \$ 397 a day.

(16) Monroe (p. 3300): Detained two days on board steamer and twelve hours in military prison. While he was in the prison his trunk on board ship was broken open, and money, wearing apparel, and other articles were stolen from it. Unanimously allowed by commission \$ 1,540 for two and one-half days, or \$ 616 a day.

(17) Sartori (p. 3120): Detained in fact four months, but it was held by the umpire that all but two days of that time was under circumstances permitting a detention. For the two days of unjustifiable detention the umpire allowed \$ 5,000, or \$ 2,500 a day.

(18) Forwood (p. 3307): Arrested in New York upon suspicions that he was aiding the enemy in the American civil war, and without any justifiable fact he was held in the office of the chief of police of New York city four hours. He was allowed by the British - American Commission \$ 25,000.

We have here eighteen cases, <sup>1</sup> in every one of which there was a claim more or less well founded that the person arrested was guilty of an offense justifying

<sup>1</sup> For additional like cases see Italian - Venezuelan Commission (Note to Giacomini Case) in Volume X of these *Reports*.

the arrest, and in each case it turned out that the cause was not sufficient in proof to require a hearing. The persons thus arrested were men of more or less substance and character, but none, exclusive of those receiving the two high sums awarded, occupied any particular official rank or position, and the awards in each case meant substantially the measure in the given case of the value set on individual liberty and the indignity to that personal liberty by an unauthorized and unlawful arrest and detention. Excluding the two large sums as not being of particular value in this inquiry and taking the sixteen cases remaining, we find that the average sum allowed is a little over \$ 161 a day. Out of the sixteen cases there are four for sums less than \$ 100 a day. There are six at \$ 100 a day, or approximately that sum, and there are five for more than \$ 200. Judged by this analysis of the opinions of other arbitral tribunals, the sum of \$ 100 seems to be the one most usually acceptable, while a sum less than \$ 100 is quite in the minority.

The purpose of the umpire has been to obtain as nearly as might be the average judgment of arbitral commissions on matters of import similar to the one in question, and aside from that criterion the cases were taken substantially in the order in which they appeared in the work cited, and hence are worthy of reliance as expressing the common finding upon this question by several different commissions.

It will be noted that in the case in hand there was no claim that the parties arrested and detained had themselves committed any offense or done any wrong against the Government of Venezuela, which is a proper feature to consider in estimating the indignity of arrest and detention to the individual and the complaining government.

The umpire believes, therefore, that he can properly advise, unofficially, the honorable Commissioner for Venezuela that a sum not exceeding \$ 100 a day is not an excessive demand, but approaches the minimum sum rather than the maximum allowed in cases for illegal arrest and detention, and is apparently the favored allowance by arbitrators.

## OPINIONS ON MERITS

### COMPAGNIE GÉNÉRALE DES ASPHALTES DE FRANCE CASE

- A Venezuelan consul resident abroad has no right to demand of the captain of a vessel that he procure passports as a condition precedent to the clearing of his ship, and no Venezuelan law on this subject can possibly affect the case, which is governed by international law.
- A Venezuelan consul who assumes to collect customs duties at Trinidad on goods to be entered at Venezuelan ports commits an act of Venezuelan sovereignty on British soil, which is an offense to the latter Government.
- The refusal of the Venezuelan consul to clear a vessel for Venezuela, on the ground that because of complaints made of him to the colonial authorities at Trinidad his Government had refused him permission to make such clearances, is unlawful, because it is an act which not even a sovereign could perform for such a cause.
- Ports in the hands of revolutionists can not be closed by governmental order or decree.<sup>1</sup>
- Blockade of such ports can only be declared to the extent that the government declaring it has the naval power to make it effective.
- Governments are alike responsible for the acts of their agents, whether such acts be directed or only ratified by silence or acquiescence.
- Expenses of translations in preparation of claim allowed.

<sup>1</sup> See Italian - Venezuelan Commission (De Caso Case and Martini Case) in Volume X of these *Reports*.