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Feuilletan Case (on merits)

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The case, therefore, in justice and equity, should be decided wholly without reference to the actions of the customs-house officer at Guanta, which action, under the circumstances disclosed in this case, could have done the claimant company no harm, and solely with reference to the relations which the claimant company bears to the situation in question.

It therefore becomes the duty of the umpire to disallow the claim, and judgment may be entered accordingly.

FEUILLETAN CASE

In the absence of positive proof of payment of wages by the Government, after admitting an employment by it, and in the face of positive testimony that wages were not paid, the Government was held liable.

Interest allowed on amount due, but expenses of claim disallowed.

PLUMLEY, *Umpire*:

The Commissioners failing to agree, this case comes to the umpire for decision, and was considered and determined in the United States under the agreement between the two Governments permitting the same.

The claimant alleges that he took service as fourth engineer on board the Venezuelan gunboat *Restaurador* on February 27, 1901; that on the 16th of May of the same year he was shipped by Venezuelan authorities on board the gunboat *General Crespo* to La Guaira, there to give evidence in the matter of an inquiry there being had concerning the second engineer of the first-named gunboat; that he arrived in due course at La Guaira on the 18th of May, and gave his statements concerning the matter named; that under instructions of Venezuelan authority he remained in La Guaira, and later he examined the gunboat *Rayo* and made report of her condition, and then acting under orders, repaired the gunboat, and on the 15th of October of that year was transferred to the *Rayo*, serving regularly as third engineer until December, 1901; that then expressing a desire to leave the service he was put under arrest and forced to remain, and did remain, until the 27th of February, 1902, when he was released; that his salary under his first engagement as fourth engineer was 65 pesos monthly; that some time subsequently, while still serving on the *Restaurador*, he was raised to third engineer, at the monthly wage of 75 pesos, but the time when this advancement of wage took place is not stated. He claims that he went to La Guaira under orders and wages, but whether his wages were at 75 pesos, 65 pesos, or some other rate, he does not state. He does not state at what wages he acted as inspector and repairer of the *Rayo*, but he claims that his engagement as engineer of the *Rayo* was at the monthly wage of 60 pesos. For all these services he claims the sum of 492 pesos, alleging that he has never been paid any salary.

Aside from his own statement he furnishes the evidence of one Manuel Flores, who states affirmatively and positively from his own knowledge that the claimant was sent to La Guaira and without having had his wages paid.

The respondent Government contends that the claimant held the position of fourth engineer only on board the *Restaurador*; that he served from the 27th of February, as alleged by the claimant; and that he remained on the *Restaurador* until the 31st of May following, when he deserted the service of the Venezuelan Government, and that nothing remained owing him for his wages.

It is further contended by the respondent Government that there was no action or inquiry had at La Guaira against or concerning the second engineer of the *Restaurador*, and that the allegation of the claimant that he was sent to

La Guaira to make testimony in such cause was "simply a fable." It is further contended by the respondent Government that he was shipped on the boat *Rayo* by the first engineer of that boat, who unofficially employed him as his assistant; that he was paid by this person personally his wages in full during the time of his service on such boat, but that the sum agreed upon was 50 pesos monthly instead of 60, as alleged by the claimant; and that finally, for incompetency and apparent revolutionary sympathy, he was dismissed from the service. The respondent Government alleges that the claimant has been fully paid for all services rendered.

It is impossible from the statement of the claimant to know how much his wages should amount to, as he states two different prices during his service on the *Restaurador* without naming the time when the advance took place, and while claiming to be sent to La Guaira on wages, he does not state at what rate, nor how long such rate of wage continued, nor whether there was a differing price for the inspection and a differing price while he served as repairer, nor does he state whether he was under wages at La Guaira before entering upon the duty of inspector and repairer on the *Rayo*. He does not positively assert that he was not paid the sum his due while waiting at La Guaira and while working upon the boat *Rayo* prior to his engagement as engineer thereon, although, as he makes no statement admitting a payment and makes a general assertion that he was not paid his salary, the fair interpretation of his several statements in this regard is that he was not paid any portion of his due and that he was under certain wages for the entire year.

The umpire finds it impossible to reconcile his statements concerning the time of his employment with the wages due as claimed by him. His wages on the *Restaurador* and up to the 18th of May, when he gave his testimony in La Guaira, as alleged by him, reckoned at 65 pesos a month, amounts to 170 pesos. His wages on the *Rayo* from October 15 to February 27, at 60 pesos monthly, as claimed by him, amounts to about 266 pesos, and the two sums united equal 436 pesos. If he be allowed 65 pesos until May 31, although there seems to be no reason for doing this unless all of his time while waiting is to be charged for, there would be an additional sum of about 26 pesos, making in all about 463 pesos. So much of this, however, is conjectural that it can only be used to show the impossibility of stating his claim in detail with any fair degree of certainty.

Taking the case upon the claim of the respondent Government that he served on the *Restaurador* from February 27 to May 31, at a monthly wage of 65 pesos, and we have substantially 197 pesos as the amount his due for such service. Since the service is admitted the burden rests upon the respondent Government to show by a fair balance of affirmative proof that recompense has been made. Unfortunately for the respondent Government, if their claim of payment is correct, they have not shown it by the statement of any person claiming to know it as a matter of his own personal knowledge nor by inspection of the vouchers or books which should show such payments, and those books and vouchers are asserted to be beyond the reach and without the control or possession of the respondent Government. There is proof that the Bank of Venezuela paid the salaries reported to be paid, but there is no proof that such report contained the name of the claimant for all or any part of his wages, but there is proof that the officers of the boat believed sincerely and so does the admiral of the navy, that such payment was made. However, against the positive assertion of the claimant and his witness, Flores, that no part of his wage was paid while on the *Restaurador*, the umpire fails to find the fact of such payment established, and therefore holds that the sum of 197 pesos and 13 centavos is due to the claimant for such services.

Without any positive claim as to his wage between the 31st of May and the

15th of October and with no supporting testimony of such service and with the impossibility of reconciling such a claim, if it is to be considered as made, with the amount claimed by him as the total sum due, the umpire does not find anything due the claimant for this intervening period.

From the 15th of October onward while engaged on the *Rayo* as engineer, the umpire feels better satisfied in his own judgment to accept the positive testimony of the engineer under whom he served, supported by the testimony of Comodoro Pedro Thodo, that the claim was fully recompensed by the engineer himself by whom the claimant was unofficially engaged, as the umpire finds the facts to be. Unlike the case of the *Restaurador*, here the testimony concerning payment is explicit, positive, and of personal knowledge, and when opposed to the somewhat vague and quite indefinite general statements of the claimant are of convincing force and evidential value.

All of the claim not included in the services on the *Restaurador* to May 31 is disallowed.

The claimant is found to be a British subject.

Interest is allowed but expenses are disallowed, and the umpire finds the claimant is entitled to receive from the Government of Venezuela in full discharge of his entire claim the sum of £ 33 13s., and award will be made accordingly.

COBHAM CASE

Claim dismissed without prejudice for want of sufficient proof, it appearing that claimant did not have the aid of skilled counsel in the framing of his evidence. Award made later for £ 100 by consent of Commissioners.

PLUMLEY, *Umpire*:

The Commissioners having failed to agree in this case it has come to the umpire for his determination.

The evidence shows two distinct instances of losses to property and injury thereto and of gross indignities toward and injuries of the person of the claimant.

Concerning the instance of October 26, 1902, resting upon the acts of Col. Guillermo Aguilera, Capt. Pedro Diaz, and their fifteen soldiers, constituting a part of the army of the revolution libertadora, it is impossible to charge responsibility upon the National Government against which these men were at war and over whose conduct it had lost all control. This part of the claim must be disallowed, in accordance with the umpire's opinion of justice and equity and in accordance with his previously expressed judgment before this tribunal. Cruel and unjust as such conduct must appear to all right-minded men, proper reparation is not to be found in mistakenly and therefore wrongfully charging it upon the Government.

Concerning the acts occurring on October 14, 1902, and testified to by H. Fischbach and Ramón Guerra and five others, if these were perpetrated by soldiers and officers forming a part of the army of the Government, it is to be regretted that such fact is not clearly in proof. The charges involved are all of too grave and compromising a character to be accepted without clear, definite, and convincing evidence. As the testimony stands it may or may not mean Government troops. The Government must not be held responsible for such a serious outrage on property and personal liberty by evidence in which upon this essential fact the language is distinctly ambiguous and indefinite. The injuries to the claimant were incurred in and because of his resolute efforts on behalf of his employer's property; and his personal bravery and his loyalty to his trust