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RECUEIL DES SENTENCES ARBITRALES

Cobham Case (on merits)

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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 Commadore 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 Díaz, 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

incite the umpire to give him all the protection within his power, and had he warrant therefor from the evidence he would be glad to award him ample indemnity. The ambiguity of the claimant's evidence in that part of it which names the troops who did the injury is such that it would not justify the umpire in making an award against the Government in his behalf. But it is undoubtedly true that this evidence was prepared without the aid of counsel skilled in such matters, and it may be that it was intended to establish the fact that Government troops did the injury, and with tender regard for the claimant's rights in this matter, the umpire will exercise his discretion in his behalf and will dismiss that portion of the claim without prejudice in any particular to the claimant, and judgment may be entered in accordance with this holding.

Caracas, November 13, 1903.

Upon further consideration of this case and upon the advice and consent of the Commissioners the umpire awards £ 100, and judgment may be entered accordingly.

DAVY CASE

Venezuela is responsible for the acts of her civil officers, whether they in fact received their commissions direct from the National Government or indirectly and mediately through means and methods previously devised by the National Government for the care and control of the State, county, or municipality to which power had been delegated by that Government to make these appointments and issue commissions; and the National Government must respond in damages for the wrongful acts of such authorities, unless they be speedily and adequately punished for their offense.

The claimant is not bound to seek redress for his wrongs by a civil action in the local courts. He may have recourse to his own Government and that Government has a right to intervene diplomatically on his behalf.

PLUMLEY, *Umpire*:

In this case there was a disagreement on the part of the honorable Commissioners and it came to the umpire to be by him decided.

This matter arose in the spring of 1898 in the State of Bolívar.

In one of the municipalities of that State the jefe civil improvised a court, constituted a pseudo judge, and the two, under assumed authority, observing some of the forms of law, but with apparent malice, without just cause, and in disregard of law, subjected the claimant to most inhuman and barbarous treatment. After which through certain forms of law, but without lawful authority, he was taken into involuntary and laborious service, compelled to depart from his home, and to suffer great hardship for many weeks and to do and suffer all this without any compensation under an unfounded claim that he was working out his bail in the aforesaid unjust cause.

The claimant is a British subject and a skilled workman in the handicraft of a mason.

These unlawful and reprehensible acts performed under the color of authority and under a claim of representing the sovereignty of Venezuela were early reported by the claimant to the British minister resident at Caracas, and by said minister were very soon brought to the attention of the Venezuelan Government. It is to the honor of the respondent Government that from the first it has recognized the gravity of the offense and has not sought to palliate, belittle, or excuse it. President Andrade personally took up the matter and assured the British Government that criminal proceedings would be instituted and the guilty