

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Davy Case (on merits)

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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 mediate 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

parties punished. In the correspondence which was had with the British minister resident at Caracas the President felt compelled to acknowledge the indifference of the local authorities to the case and in that way to explain the delay which had ensued. When the history of Venezuela for the year of 1899 is considered it will not be deemed strange that the central Government was unable to give this particular matter the attention which unquestionably it otherwise would have received. It was in the spring of 1899 that President Andrade gave ample and ready expression of his settled purpose to bring the criminals to justice, but the history of 1899 reveals the reason of his inability to carry out his purpose in that behalf. When the national record of the past four years is read, it will not seem strange that this matter has not received attention. This lack of attention may well be placed to other causes than indifference to or disregard of the rights and wrongs of the claimant.

Before this Commission the honorable Commissioner for Venezuela urged the irresponsibility of the respondent Government for such acts as are here complained of, because of the Federal character of the Venezuelan Government and the limitations which thereby attach to national action. Such was not the position taken by the chief executive of the respondent Government when the question was being pressed diplomatically, and, in the judgment of the umpire, it is not well taken here. Internationally, the National Government is solely responsible for the proper safeguarding of the rights and interest of foreigners, resident or commorant, within its territory. No diplomatic relations exist except as between the respective nations as such. The responsibility in a given case being admitted the duties attaching must be performed, or satisfactory atonement made. Great Britain can not deal with the State of Bolívar. The national integrity of the respondent Government alone would prevent it. Hence the nation itself, in its representative character and as a part of its governmental functions, must meet the complaint and satisfy it. The Federal condition of Venezuela is freed from some of the embarrassing features concerning such matters which pertain to the United States of America as a nation. The United States of America was formed of States already organized, each independent, each sovereign. These States formally yielded to the nation certain of their sovereign rights, but reserved all those not especially delegated. One of the vexed questions in the home country of the umpire has been the line of demarcation existing between the two and in that regard the power of the nation to interfere with the internal policies of the several States. But in Venezuela the States are carved out of the national domain by the national will and formed in accordance with the national wishes. Certain rights and privileges are granted to these States by the central Government, while all not in terms granted, are necessarily reserved to and retained by the nation. It is not conceivable that it, in any part, abdicated its sovereignty over these several States in matters which affect its national honor and which concern its duties as a nation toward other governments. In the opinion of the umpire there can be but one answer to this proposition, which is that there is responsibility on the part of Venezuela for the acts of its civil officers whether they in fact received their respective 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 whom power had been delegated by the National Government to make these appointments and issue commissions. The creator of these methods and means of internal administration, viz, the nation, must always be responsible to the other government for the creatures of its creation.

It is also urged by the honorable Commissioner for Venezuela that the claimant should find his adequate remedy by civil action through the courts of

Venezuela, directed against the man or men who had done him this harm. He had this right, without question, but in the judgment of the umpire he was not compelled to resort to the courts for his remedy. He had recourse to the Government of which he was a subject, there to obtain his relief through diplomatic channels. The Government of which he is a subject has a right to represent his interests diplomatically and where, as in this case, there has been an agreed submission of the claims of British subjects to a mixed commission created to consider them the tribunal thus constituted has undoubtedly jurisdiction of the parties and of the subject-matter.

It was also the opinion of the honorable Commissioner for Venezuela that the crime was fully atoned when the guilty parties had been prosecuted and punished — a fact which he confidently believed had occurred and of which he felt sure he could give satisfactory evidence before the tribunal. It appeared that preliminary steps had been taken looking to that end, and the evidence adduced at each preliminary inquiry is a part of the testimony used in this case. These preliminary steps had given the President of Venezuela knowledge of the wrong committed, the necessity of punishment commensurate to the offense, and the names of the offenders. The umpire has no question that the honorable Commissioner for Venezuela has been diligent in his efforts to obtain record evidence that there had been both prosecution and punishment of the guilty ones, but it has been without avail, and there is left to the respondent Government only one way to signify its regard for individual freedom, its abhorrence of such proceedings as are detailed in this case, and its desire to remove the stain which rests upon its department of criminal jurisprudence through the untoward and wicked practices of those who engaged in this conspiracy against the person and liberty of the claimant and the honor of their country. Too great regard can not be paid to the inviolability of the one and the sacred qualities of the other. The measure of damages placed upon such a crime must not be small. It must be of a degree adequate to the injury inflicted upon the claimant and the reproach thus unkindly brought upon the respondent Government. These invaded rights were in truth priceless, and no pecuniary compensation can atone for the indignities practiced upon the claimant; but a rightful award received in ready acquiescence is all that can be done to compensate the injuries, atone for the wrong, and remove the national stain.

If justification is sought through precedent for the umpire's conclusions, ample warrant therefor is found in Moore's *International Arbitrations*, volume 4, pages 3235-3265.

The honorable Commissioner for Venezuela will quickly differentiate between the case before the umpire and a claim based upon mistakes of law or fact or the lawful adaptation to the given person of very arbitrary and even oppressive laws. The case before the tribunal was a purely lawless proceeding under a certain color of law and legal authority and under certain forms of process, but wholly against the law of the land, and was a gross malversation in office and malfeasance by a civil officer, constituted such by the laws of Venezuela, and it is as much an affront to the honor of Venezuela as it is a deliberate indignity placed upon the claimant and an affront to the claimant Government.

The umpire finds the sum claimed in the memorial reasonable, and he adjudges that the respondent Government pay to the claimant Governments as an indemnity on behalf of the claimant the sum of £ 1,000, and award will be made for that sum.
