

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

**Grubnau Bros., Inc., and Atlantic Mutual Insurance Company (United States) v.
Austria and Hungary**

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of damages growing out of enforced military service falls outside terms of Treaty of Vienna (Budapest): reference made to Alexander Tellech award, see p. 248 *supra*.

Bibliography: Bonyngé, p. 28.

This claim is put forward by the United States on behalf of Max Fox (formerly Fuchsbalg) to recover damages alleged to have been sustained by him growing out of enforced military service in the Austro-Hungarian army.

The claimant was born in the United States May, 1, 1896, of Hungarian parents. When claimant was some three years of age he returned with his parents to Hungary, where his mother died and where he continued to live with relatives after his father (who remained an Hungarian national until 1923 at least) returned to the United States. After attending the schools he entered the employ of a bank about 1912 and continued his studies in a college. At the outbreak of the European war he was enrolled for military duty. He claims that he protested that he was an American citizen and not subject to military services in the Austro-Hungarian army, but beginning with May, 1915, was compelled to render such service. The representatives of the Government of the United States in Hungary interested themselves in claimant's application for relief from service but the application was denied. In October, 1916, as a result of a flesh wound, he was in a hospital for several months. He was promoted to the rank of lieutenant and continued in the active service until the Armistice was signed. He returned to the United States in 1920 and has since remained there.

While he took an oath of allegiance to the Emperor of Austria and King of Hungary, he claims that this was under duress. While controverted, for the purposes of this decision the truth of his statement is assumed.

The facts in this case are very similar to those in the case of Alexander Tellech, claimant, docket No. 2, this day decided. For the reasons therein set out neither Austria nor Hungary is obligated to make compensation on account of the damages alleged to have been sustained by claimant.

Wherefore the Commission decrees that under the Treaty of Vienna and the Treaty of Budapest the Government of Austria and the Government of Hungary are not obligated to pay to the Government of the United States any amount on behalf of the claimant herein.

GRUBNAU BROS., INC., AND ATLANTIC MUTUAL INSURANCE
COMPANY (UNITED STATES) *v.* AUSTRIA AND HUNGARY

(May 25, 1928. Pages 74-76.)

RESPONSIBILITY FOR ACTS OF MILITARY AUTHORITIES.—WAR: SEIZURE OF PRIVATE PROPERTY.—DAMAGES: INVOICE VALUE. Seizure on October 2, 1914, at Trieste, by Austro-Hungarian military authorities, of wool sold by Carl Grubnau & Son, to all of whose rights the first claimant succeeded, and insured by the second claimant. *Held* that Austria obligated to pay 63.6 per cent, and Hungary 36.4 per cent, of price owing on December 31, 1914, by purchaser, with interest thereon at 5 per cent per annum from December 31, 1914, less sum paid through Austrian Clearing Office since claim was filed.

From the record it appears that in 1914 Carl Grubnau & Son (a co-partnership composed at all material times of American nationals) sold 42 bales of

wool to J. Ginzkey, of Maffersdorf, Austria, for which the purchaser agreed to pay on December 31, 1914, the sum of \$4,569.60. On October 2, 1914, the wool in question while in transit was seized at Trieste by the Austro-Hungarian military authorities under circumstances rendering Austria and Hungary liable under the Treaties of Vienna and Budapest. The wool was insured by the Atlantic Mutual Insurance Company, an American corporation, which paid Carl Grünau & Son the sum of \$3,677 under circumstances operating as an assignment of this claim to the extent of the amount so paid.

Grünau Bros, Incorporated, an American corporation, has, with respect to this claim, succeeded to all of the rights of the former partnership of Carl Grünau & Son and acquired all of the interests of Carl Grünau & Son.

Since this claim was filed there has been paid through the Austrian Clearing Office to the claimant the sum of \$387.61.

The Commissioner finds that the claimant Grünau Bros., Incorporated, is entitled to an award of \$892.60 with interest thereon at the rate of 5 per cent per annum from December 31, 1914, which interest is to be credited with the aforesaid amount of \$387.61, and that the claimant Atlantic Mutual Insurance Company is entitled to an award of \$3,677 with interest thereon at the rate of 5 per cent per annum from December 31, 1914, of which awards 63.6 per cent will be borne by Austria and 36.4 per cent will be borne by Hungary (see Administrative Decision No. I, page 10.)¹

Wherefore the Commission decrees that under the Treaty of Vienna the Government of Austria is obligated to pay to the Government of the United States on behalf of Grünau Bros, Incorporated, the sum of five hundred sixty-seven dollars sixty-nine cents (\$567.69) with interest at the rate of 5 per cent per annum from September 6, 1923, and Atlantic Mutual Insurance Company the sum of two thousand three hundred thirty-eight dollars fifty-seven cents (\$2,338.57) with interest at the rate of 5 per cent per annum from December 31, 1914, and that under the Treaty of Budapest the Government of Hungary is obligated to pay to the Government of the United States on behalf of Grünau Bros., Incorporated, the sum of three hundred twenty-four dollars ninety-one cents (\$324.91) with interest at the rate of 5 per cent per annum from September 6, 1923, and Atlantic Mutual Insurance Company the sum of one thousand three hundred thirty-eight dollars forty-three cents (\$1,338.43), with interest at the rate of 5 per cent per annum from December 31, 1914.

ROSA H. KOHN (UNITED STATES) *v.* HUNGARY

(May 25, 1928. Page 76.)

PUBLIC DEBTS, TREASURY NOTES. Acquisition on August 2, 1916, of interim certificate obligating American firm to deliver Hungarian Treasury notes. Compliance with obligation on July 27, 1920. *Held* that Hungary not liable since acquisition of note not a pre-war transaction.

The Commissioner holds:

First, with respect to that part of the claim embraced in paragraph (1) of the Agreed Statement, the claimant paid to an American firm, Zimmermann & Forshay, \$187.50 and received in lieu thereof on August 2, 1916, interim certificate No. 4051 signed by Zimmermann & Forshay obligating them to

¹ This volume, p. 209 *supra*.