

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Rosa H. Kohn (United States) v. Hungary

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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*.

deliver to claimant 5% Hungarian Treasury notes due in 1918 in the principal amount of marks 1,000. From the record it appears that Zimmermann & Forshay did not comply with their obligation to claimant but on July 27, 1920, delivered to the claimant a Hungarian Treasury note for marks 1,000 dated August 29, 1918, which matured on April 1, 1921. The claim is based on this treasury note. While the transaction as between the claimant and Zimmermann & Forshay was a pre-war transaction, the acquisition by claimant of the Hungarian Treasury note from Hungary through Zimmerman & Forshay was not a pre-war transaction. On this count of the claim Hungary is not liable.

Second, with respect to that part of the claim dealt with in paragraph (2) of the Agreed Statement Hungary is liable and an interlocutory judgment B (1) will be entered against Hungary in the usual form for Kronen 30.

INDIAN MOTOCYCLE COMPANY (UNITED STATES) *v.* AUSTRIA AND HUNGARY

(May 25, 1928. Pages 77-78.)

RESPONSIBILITY FOR ACTS OF MILITARY AUTHORITIES.—WAR: SEIZURE OF PRIVATE PROPERTY.—DAMAGES: INVOICE VALUE. Seizure at Trieste, by Austro-Hungarian military authorities, of motorcycles and parts shipped by claimant. Surrender of shipment, some of the parts missing, to American Consul, followed by sale. Proceeds paid to claimant on May 25, 1915. *Held* that Austria obligated to pay 63.6 per cent and Hungary 36.4 per cent, of difference between proceeds and invoice value, with interest thereon at 5 per cent per annum from May 25, 1915.

While the evidence adduced in the above captioned case is meager and unsatisfactory, the Commissioner finds:

(1) That on July 18, 1914, the Hendee Manufacturing Company, an American corporation, forwarded a shipment of Indian motorcycles and parts by steamship *Belvedere* consigned to Odessa, Russia, via Trieste, Austria, covered by shipper's order bill of lading notify F. Zorn, Odessa, and at the same time drew on Zorn for the invoice value of the shipment, \$402.

(2) On October 26, 1923, the corporate name of the Hendee Manufacturing Company was changed to Indian Motorcycle Company.

(3) This shipment was seized by the Austro-Hungarian military authorities at Trieste. On the representations of the claimant through the American Department of State and the American Consul at Trieste, the austro-Hungarian military authorities recognized the shipment as the property of an American national and delivered it to the American Consul for account of claimant.

(4) On account of some of the parts being missing from the shipment at the time it was surrendered by the military authorities and sold, the net proceeds of the sale were only \$240.20, which amount was paid to the shipper on May 25, 1915.

(5) The Commissioner finds that the claimant has been damaged by the acts of the Austro-Hungarian military authorities in the sum of \$161.80 with interest thereon at the rate of 5 per cent per annum from May 25, 1915, of which 63.6 per cent will be borne by Austria and 36.4 per cent by Hungary.

Wherefore the Commission decrees that under the Treaty of Vienna the Government of Austria is obligated to pay to the Government of the United