

# **REPORTS OF INTERNATIONAL ARBITRAL AWARDS**

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## **RECUEIL DES SENTENCES ARBITRALES**

**Agnes Ewing Brown (United States) v. Panama**

22 May 1933

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### Decisions

#### AGNES EWING BROWN (UNITED STATES) *v.* PANAMA

(May 22, 1933. Pages 92-94.)<sup>1</sup>

CONTRACT.—EVIDENCE: PROOF OF CONTRACT, CLAIMANT'S AFFIDAVIT. PREVIOUS STATEMENT, CORRESPONDENCE.— INTERPRETATION OF MUNICIPAL LAW. Appointment as Directress of school in Panama City by Presidential Decree of May 13, 1918, accepted by claimant on June 10, 1918. Dismissal by Presidential Decree of July 30, 1918. Claim brought before Commission for breach of contract and violation of administrative law. *Held* that, in the absence of other evidence, and against denial of defendant and previous statement made by claimant (letter to editor of newspaper), her affidavit cannot prove existence of contract. *Held* also that claimant was subject to discretionary removal under Panamanian administrative law: her correspondence shows her engaged in political controversy.

*Cross-reference:* Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación de la Norteamericana Agnes Ewing Brown, Registro No. 2, (Publicación Oficial, Panamá, 1934.)

*Bibliography:*<sup>2</sup> Hunt, Report, pp. 94-96; Friede, "*Die Entscheidungen . . .*", Z.a.ö.R.u.V., Band V (1935), p. 466.

After the completion of the pleadings provided for in the rules of procedure, the Agents by consent of the Commission filed memoranda in lieu of oral arguments.

This claim is made against the Republic of Panama by the United States of America, on behalf of Agnes Ewing Brown.

Miss Brown was at all material times, and is now, an American citizen.

During the year 1912-1913 she filled the position of Directress of the Girls' Normal School in Panama City. The recollection of the services then rendered by her induced the President of the Republic of Panama in the spring of 1918, to make her, through the intermediary of the Consul General of the Republic at New York, an offer of reappointment in that position. The conditions offered were: the salary to be \$2,400 per year, with an additional allowance of \$840 per year for living expenses; the term of the contract to be for five years; claimant to be required to live in the school building; first-class passage to Panama and return fare from Panama to New York to be paid by Panama.

For different reasons the claimant hesitated to accept this offer. Meanwhile, the then Panamanian Secretary of Instruction, Señor Preciado, asked the American Minister in Panama to urge her to accept, which the Minister did by cablegram sent on May 1, 1918.

Miss Brown sailed for Panama in that month. Her passage was paid for by

<sup>1</sup> References to page numbers are to the report of Bert L. Hunt referred to on p. 295 *supra*.

<sup>2</sup> References in this section are to publications referred to on p. 299 *supra*, and to the Annual Digest.

the Panamanian Government, but no contract had been signed. She was appointed by Presidential Decree nr. 60 of May 13, 1918, signed by President Valdés, and officially accepted her appointment on June 10, 1918.

In the month of July certain correspondence took place between the Secretary of Instruction, Señor Andreve, and the directress, which led to her being dismissed by Presidential Decree nr. 116 of July 30, 1918, signed by President Urriola. The claimant alleges that this dismissal was without just cause and in violation of a contract and without any breach thereof on her part.

She claims \$5,000 for injury to reputation: \$16,200 for salary and living allowance for five years, from which sum she deducts \$540 being two months salary and living allowance received for the months [of] June and July 1918, and \$4,900 earned by her otherwise, leaving a sum of \$10,760; and \$106 for cost of transportation from Panama to New York; making a total of \$15,866.

A contract has not been produced and the defendant Government denies the alleged contractual relations.

In her affidavit of November 24, 1931, the claimant states: that she was offered a written contract; that she informed the Consul General of Panama at New York that she would accept the contract, if she found the living conditions in the school building desirable; that upon arrival in Panama she found them such; that she received her official appointment and accepted it. She further states that when she was received by President Valdés she communicated to him her satisfaction of the living conditions and her acceptance of the contract and that he expressed his pleasure thereat.

In the absence of other evidence and against the denial of the defendant Government these statements cannot prove that the alleged contract did materialize; moreover, in a letter to the editor, published in the *Panama Weekly News*, and put in evidence by the defendant Government, the claimant mentioned on August 15, 1918, that she had been offered a contract but had refused to accept it.

In the course of the pleadings the American Agent argued that at any rate a contract for one year was entered into by the claimant being appointed on an annual salary and accepting such appointment. There is however nothing to show that Miss Brown's position as Directress of the Girls' Normal School at Panama was governed by other conditions than those resulting from the appointment in the usual form, which she accepted.

It has further been contended on behalf of the claimant that anyhow her dismissal disregarded her rights under that appointment, as she was not subject to discretionary removal under art. 629 sub 18 of the Administrative Code, but was in the class of employees which can only be dismissed for the reasons given in art. 414 of that code. Miss Brown's correspondence however makes it clear, that she was engaged in a political controversy in violation of art. 423, and was subject to removal therefor under art. 424.

The claim must be disallowed.

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#### WALTER A. NOYES (UNITED STATES) *v.* PANAMA

(May 22, 1933, dissenting opinion of Panamanian Commissioner, undated.  
Pages 190-194.)

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JURISDICTION, OBJECTION TO: CLAIMS ARISEN AFTER SIGNATURE OF CLAIMS CONVENTION.—INTERPRETATION OF TREATIES: TERMS. *Held* that Commission has jurisdiction to entertain claims arisen after signature of Claims Convention, July 28, 1926: clear wording of article VII.