

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Francisco and Gregorio Castañeda and José de Leon R. (Panama) v. U.S

22 May 1933

VOLUME VI pp. 313-314



NATIONS UNIES - UNITED NATIONS
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he was released on May 14, 1921, by an executive resolution. The brevity of his actual imprisonment was due to a conditional reduction of the term for which he was sentenced by one third on account of good behavior, in conformity with the Penal Code, and to a further reduction of the original term by one-half under the provisions of a general law enacted by the National Assembly, whereby a partial remission of penalties was granted to prisoners of good conduct, on the occasion of the signing of the armistice at the close of the World War.

The United States claims that Panama is liable to Denham's widow and legitimate son, first, on the ground that Denham's murder resulted from a failure to furnish proper protection to aliens in the Province of Chiriquí; and, second, on the ground that Denham's murderer was not adequately punished.

The Commission finds that the evidence is insufficient to prove that the murder of Denham resulted from a failure on the part of the authorities to afford proper protection to aliens in the Province of Chiriquí, and therefore finds no liability on the first ground asserted by the United States.

It is the opinion of the Commission, however, that González was not adequately punished. The original sentence was not in the opinion of the Commission inadequate by international standards. Nor would the conditional reduction of the term of that sentence by one-third under the provisions of the Penal Code of Panama, have given rise to an international liability. The conclusion of the Commission rests solely upon the result brought about by the act of the National Assembly above referred to. The Commission recognizes that the reduction under that act did not arise from any inclination on the part of the Government to favor this particular prisoner or to extenuate offenses against aliens. But, liability for failure to punish adequately crimes against aliens is not based upon discrimination in favor of the individual offender or upon any breach of the local laws. The international obligation is clearly established and each country has the power of so arranging its interior jurisprudence as to give that obligation effect. The failure of an individual criminal to serve an adequate term may give rise to an international liability even where the original sentence is adequate. *Putnam v. Mexico*, 1927, *Opinions of Commissioners* under 1923 Convention, p. 222. It has been held also that a nation is not relieved from its obligation by the fact that the failure to punish results from a general amnesty. *West v. Mexico*, 1927, *Opinions of Commissioners* under 1923 Convention, p. 404. In the *West* case the amnesty prevented even the beginning of a prosecution. The Commission sees no logical distinction between that case and a case where an act of the legislature interrupts the service of a sentence before adequate punishment has been inflicted.

In arriving at the measure of the liability, the Commission has taken into account the fact that González was actually imprisoned for a period of slightly more than three years. There was not a total failure to punish.

The Commission decides that the Government of Panama is obligated to pay to the Government of the United States \$2,500 in behalf of Lettie Charlotte Denham and \$2,500 in behalf of Frank Parlin Denham, without interest.

FRANCISCO AND GREGORIO CASTAÑEDA AND JOSÉ DE LEÓN R.
(PANAMA) *v.* UNITED STATES
(May 22, 1933. Pages 676-677.)

JURISDICTION: CLAIMS ARISEN AFTER SIGNATURE OF CLAIMS CONVENTION.—
INTERPRETATION OF TREATIES. *Held* that Commission has jurisdiction to

entertain claims arisen after signature of Claims Convention, July 28, 1926: reference to Walter A. Noyes award, p. 308 *supra*.

COLLISION OF VESSELS IN GULF OF PANAMA.—APPLICABLE LAW: INTERNATIONAL RULES OF NAVIGATION.—UNLAWFUL CHANGE OF COURSE. Collision on July 10, 1931, in Gulf of Panama, between United States destroyer *Fulton* and sloop *Estrella Marina*. *Held* that collision due to change of course by *Estrella Marina* unlawful under International Rules of Navigation.

Cross-references: Annual Digest, 1933-1934, pp. 480-481; Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación de la República de Panamá en su propio nombre y en representación de Francisco y Gregorio Castañeda y José de León R., Registro No. 20. (Publicación Oficial, Panamá, 1934.)

Bibliography: Hunt, Report, p. 677, and "The United States-Panama General Claims Commission", Am. J. Int. Law, vol. 28 (1934), pp. 71-72; Friede, "Die Entscheidungen . . .", Z.a.ö.R.u.V., Band V (1935), pp. 453, 465; Annual Digest, 1933-1934, p. 481.

This is a claim by the owners of the sloop *Estrella Marina* for the damages which they suffered in a collision between that vessel and the U.S. destroyer *Fulton*. The collision occurred in the Gulf of Panama near Pacheca Island before daylight in the early morning of July 10th, 1931. On the grounds stated in the case of Walter E. Noyes (Registry No. 5) the Commission holds that it has jurisdiction to decide upon this claim. The evidence shows that the *Fulton* was keeping an adequate look-out and that 13 minutes before the collision she sighted a yellow light carried by the sloop. This light as seen from the *Fulton* seemed to be passing to starboard. The *Fulton* changed her course somewhat to port to give a wider clearance when the approaching light suddenly changed direction and a collision occurred. Testimony from the crew of the sloop shows that she changed course sharply to starboard just before the collision, that she was keeping no regular watch and that she did not make out the sailing lights of the destroyer. The testimony of the sloop's captain also indicates that the port light of the sloop was not burning. It is the opinion of the Commission that the collision was due not to any negligence on the part of the *Fulton*, but to an *unlawful* change of course by the *Estrella Marina* just before the collision (International Rules of Navigation, arts. 20, 21).

Decision

The Commission decides that the claim must be dismissed.

JUAN MANZO (PANAMA) *v.* UNITED STATES

(May 26, 1933. Pages 693-694.)

LABOUR ACCIDENT, NEGLIGENCE OF EMPLOYER.—APPLICABLE LAW: CLAIMS CONVENTION.—COMPENSATION: FACTORS. Labour accident in 1905 to youthful water carrier allowed by United States agent to oil heavy machinery in motion. *Held* that allowing him to do so was equivalent to employing him therefore, and that employing him to that end was negligence *per se*. *Held* also that case governed neither by Panamanian, nor by United States law, but by Claims Convention, July 28, 1926, under article I of which United States responsible. Amount of damages: seriousness of injury, delay of compensation taken into account.