

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Guillermo Colunje (Panama) v. U.S

27 June 1933

VOLUME VI pp. 342-344



NATIONS UNIES - UNITED NATIONS
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The Panaman nationality of the claimant is established.

The facts on which this claim is based happened between the signing and the exchange of ratifications of the convention of July 28, 1926. On the grounds stated in the case of Walter E. Noyes (Registry No. 5) the Commission holds that it has jurisdiction to decide the claim.

In the month of February, 1931, several American naval units were holding maneuvers in the Archipelago of Las Perlas. A number of sailors from the fleet landed on one of the islands of the archipelago, called Casaya, and trespassed upon the property called "El Cocal de la Punta de Casaya" which, as its name indicates, was made up largely of a cocoanut grove, that is, a plantation of coconut palms. The sailors took the coconuts, both old and new, and drank the milk they contained, causing Velásquez, who had leased the property for the purpose of harvesting and marketing the fruit, a pecuniary loss estimated in the sum for which claim is brought. The loss and damage sustained is established by the testimony of three competent witnesses, rendered before the Judge of the District of Balboa, Republic of Panama.

From investigation made by the Government of the United States through the Secretary of the Navy, it is observed that it was impossible to fix the ensuing responsibility upon the perpetrators, inasmuch as it was not shown to which war vessel or vessels anchored in the archipelago the contingent of sailors who went ashore belonged.

While this point would have shed light upon the situation, the Commission considers that the offense was committed, that as a consequence of the acts of the sailors the claimant suffered loss and damage to his property, and that as a result the Government of the United States is liable under international law.

Decision

The United States of America is obligated to pay to the Republic of Panama, on behalf of José María Vázquez Díaz, assignee of Pablo Elías Velásquez, the sum of one hundred dollars (\$100.00) without interest.

GUILLERMO COLUNJE (PANAMA) *v.* UNITED STATES

(*June 27, 1933. Pages 746-749.*)

ARREST, DETENTION OF ALIEN.—CRIMINAL PROCEEDINGS AGAINST ALIEN.—

DAMAGES: FACTORS. Induction of claimant by false pretenses, on September 1, 1917, by Canal Zone detective to come to Zone, where claimant subsequently arrested, brought before District Judge, detained, and released on bond which was returned after hearing on September 15, 1917. *Held* that United States liable for undue exercise of police authority within jurisdiction of Republic of Panama. Amount of damages: short duration of detention, criminal proceedings without delay, and claimant's imprudence taken into account.

Cross-references: Annual Digest, 1933-1934, pp. 250-251; Comisión General de Reclamaciones entre Panamá y Estados Unidos de América, Reclamación de la República de Panama en su propio nombre y en representación de Guillermo Colunje, Registro No. 24. (Publicación Oficial, Panamá, 1934.)

Bibliography: Hunt, Report, p. 749, and "The United States-Panama General Claims Commission", Am. J. Int. Law, vol. 28 (1934), p. 73; Borchard, "The

United States-Panama Claims Arbitration", Am. J. Int. Law, vol. 29 (1935), p. 101; Friede, "*Die Entscheidungen . . .*", Z.a.ö.R.u.V., Band V (1935), pp. 459-460; Annual Digest, 1933-1934, p. 251.

The Republic of Panama has presented this claim on behalf of Guillermo Colunje in the sum of \$36,000.00 for loss and damage which the claimant alleges he sustained because of his illegal arrest by a police agent of the Canal Zone and of subsequent acts of the authorities of the United States in the Zone.

The Panaman citizenship by naturalization of the claimant has been accepted.

In the month of August, 1917, Guillermo Colunje was the editor in chief of the *Diario de Panamá*, a newspaper published in the Capital of the Republic. He published daily therein a column headed "*Charla Cotidiana*" (Daily Chat) under the *nom de plume* of Lino Tipo. For several days during that month there appeared in the *Panama Morning Journal* an advertisement announcing the arrival of Prof. Omer Elling, who, for the sum of \$2.00 gold, would remit to the sender a certain famous talisman. Both the *Diario de Panamá* and the *Panama Morning Journal* belonged to the same publishing concern and were registered at the Ancón Post Office as second-class mail matter for circulation in the Canal Zone.

The advertisement attracted the attention of the postal authorities of the Canal Zone. Inspector Stacey C. Russell investigated the matter and ascertained that the supposed professor was Guillermo Colunje. The former had one Mortimer Scale purchase a postal order for \$2.00 in favor of Prof. Omer Elling and forward it for the purpose of obtaining the talisman to which the published advertisement referred.

On August 30, 1917, Julio Paz Rodríguez, of the Panama Morning Journal, went to the Ancón Post Office to pay the newspapers' registration fee for circulation in the Canal Zone as second-class mail matter. As a part of the payment of \$5.00 he delivered postal order no. 158595 issued by the Post Office at Balboa in favor of Prof. Omer Elling and indorsed by him, and when the former was interrogated by the postal authorities he informed them that he had received that money order from Colunje in payment of the insertion of the aforesaid advertisement in that newspaper.

After some investigation criminal charges against Guillermo Colunje alias Prof. Omer Elling were preferred in the tribunals of the Zone that same day, for violation of section 1707 of the Postal Code of the United States and its regulations, consisting in the use of the United States mail for fraudulent purposes. The judge issued a warrant for the arrest of Guillermo Colunje, which was delivered by Police Captain Jack Phillips to Canal Zone Detective Temistocles Rivera for execution.

It is established that on September 1, 1917, Rivera went to the offices of the *Diario de Panamá* where he found Colunje engaged in his labors and by false pretenses induced the latter to accompany him to the Canal Zone, and upon arrival there he informed Colunje that he was under arrest, thereupon taking him to the Ancón police station. He was thereafter brought before the District Judge who directed that he be held. Colunje was detained for several hours and released on a bond of \$200.00.

In a hearing held on September 15, 1917, before the District Court of the Canal Zone, the District Attorney made a motion that the proceedings be *nolle-prossed*, to which the judge who presided over the hearing acceded. Colunje was released and the bond he had furnished was returned to him.

It is evident that the police agent of the Zone by inducing Colunje by false pretenses to come with him to the Zone with the intent of arresting him there unduly exercised authority within the jurisdiction of the Republic of Panama

to the prejudice of a Panaman citizen, who, as a result thereof, suffered the humiliation incident to a criminal proceeding. For this act of a police agent in the performance of his functions, the United States of America should be held liable.

The Commission considers, on the other hand, that Colunje's confinement was of short duration and that the judicial authorities of the Zone proceeded without delay in handling Colunje's case. It likewise considers that the latter should have known that he acted imprudently in publishing the advertisement in question and incorrectly in making use of the postal order which brought about his identification.

Decision

The Commission decides that the United States of America is obliged to pay to the Republic of Panama on behalf of Guillermo Colunje the sum of \$500.00 without interest.

JUAN AÑORBES (PANAMA) *v.* UNITED STATES

(*June 27, 1933. Pages 762-764.*)

LABOUR ACCIDENT, NEGLIGENCE OF EMPLOYER.—APPLICABLE LAW: CLAIMS CONVENTION.—COMPENSATION. Labour accident on October 23, 1911, to claimant while cleaning engine negligently allowed to be put into motion by superiors. Special Act of Congress of June 30, 1930, extending to him, from that date, benefits of 1916 Compensation Act. *Held* that United States responsible: reference made to Juan Manzo award, p. 314 *supra*; but that claim should be disallowed since claimant between 1911 and 1930 sufficiently employed.

Cross-reference: 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 Juan Añorbes, Registro No. 25. (Publicación Oficial. Panamá, 1934.)

Bibliography: Hunt, Report, p. 764; Borchard, "The United States-Panama Claims Arbitration", *Am. J. Int. Law*, vol. 29 (1935), p. 101.

This is a claim on behalf of Juan Añorbes for 25,000 balboas. The claimant is a Panamanian by birth.

On October 23, 1911, Añorbes, then a winchman employed by the Division of Dredges of the Panama Canal at a salary of \$50 per month, sustained a severe fracture of the right arm while cleaning an engine. This resulted in permanent partial disability. Under the compensation law then in force, he was given free hospital and medical treatment and a year's salary as compensation for his injury. Except for a few very brief interims he was employed by the United States Government from December, 1912, to April, 1915, and from January, 1924, to June, 1933, at rates of salary averaging substantially over \$50 per month. By special Act of Congress of June 30, 1930, there were extended to him, from that date, the benefits of the 1916 Compensation Act. He is thereby assured that if his earnings in future drop below \$50 per month the deficiency will be made good under the statute.

The Commission holds that the United States is responsible for the injury to the claimant. He was ordered by his superiors to clean an engine, and those superiors allowed the engine to be put in motion while he was cleaning it.