REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Leslie H. Crabtree (United States) v. Germany

14 January 1927

VOLUME VIII pp. 32-35

NATIONS UNIES - UNITED NATIONS

principles announced by this Commission in the Hungerford case, Docket No. 5950, and in the Damson case, Docket No. 4259.[1] But the application of these principles to the facts in the case presented by this record does not produce the result contended for by the German Agent.

The deceased had applied at New York on April 30, 1918, for enlistment in the United States Marine Corps and had passed a preliminary examination. He was on the *City of Athens* en route from New York to the marine barracks at Parris Island, South Carolina, for further examination, after which if accepted he might have completed his enlistment by taking the prescribed oath. But he was subject to rejection by the military authorities and he remained free to enlist or not at his election. He was not engaged in the direct furtherance of the military effort against Germany but continued to belong to the civilian population of the United States.

Wherefore the Commission holds that at the time he came to his death Harry Rosenfield was a " civilian " as that term is used in Article 232 and in paragraph (1) of Annex I to Section I of Part VIII of the Treaty of Versailles, carried into the Treaty of Berlin.

Done at Washington January 5, 1927.

Edwin B. PARKER
Umpire

LESLIE H. CRABTREE
(UNITED STATES) *v.* GERMANY

(January 14, 1927, pp. 863-866.)

DAMAGES: PERSONAL INJURIES, PERSONAL PROPERTY TAKEN AND NOT RETURNED. — WAR: TREATMENT OF PRISONERS OF WAR, RESPONSIBILITY UNDER LAW OF WAR, TREATY OF BERLIN; MEANING OF " MALTREATMENT ": CIRCUMSTANCES, CONDITIONS, SITUATION. — DAMAGE: RULE OF PROXIMATE CAUSE, REASONABLY FORESEEABLE RESULT. Claim for personal injuries (permanent partial disability) suffered by American private from July 15, 1918, when taken prisoner, until December 7, 1918, when repatriated, and for loss of personal property. *Held* that under Treaty of Berlin (Part VIII, Section I, Annex I, para. 4, Treaty of Versailles, as carried into Treaty of Berlin) " maltreatment " dependent on circumstances, conditions, situation of parties: (1) privations resulting from exhaustion of warfare and borne alike by captured and captors do not constitute maltreatment; (2) neither do hardships of war on battlefield; (3) but heavy manual labour under working command fell short of treatment to which claimant, weakened by gas absorption in combat, was entitled by law of war even under prevailing conditions: permanent impairment of health reasonably foreseeable. Damages allowed for personal injuries, personal property.

PARKER, *Umpire*, rendered the decision of the Commission.

This case is before the Umpire for decision on a certificate of disagreement of the National Commissioners.

Leslie H. Crabtree, an American national, was inducted into the military service of the United States on April 2, 1918, and on May 3, 1918, as a private

---

[1] Decisions and Opinions, pages 766 and 258 respectively. (*Note by the Secretariat*, Vol. VII, pp. 368 and 184.)

in Company M, 109th Infantry, sailed for service with the American Expeditionary Force in France. In action at Doromore in the Marne sector on July 15, 1918, he and several other members of his company were taken prisoners by the German forces, and he was held a prisoner of war until December 7, 1918, when he was repatriated. At the time of his induction into the United States military service he was almost 22 years of age, unmarried, physically sound, but slight of stature, weighing only 130 pounds. He was been engaged in the mica-manufacturing business in Philadelphia and not accustomed to heavy or continuous physical labor. He alleges that while held by Germany as a prisoner of war he was subjected to maltreatment resulting in pecuniary damage to him.

The claim is based on that provision of the Treaty of Berlin which obligates Germany to make compensation for " Damage caused by any kind of maltreatment of prisoners of war." [1] In order to bring this claim within that provision of the Treaty the burden is upon the claimant to prove (*a*) that while held as a prisoner of war he suffered maltreatment for which Germany was responsible; (*b*) that as a result of such maltreatment he sustained pecuniary damage; and (*c*) the extent of such damage measured by pecuniary standards.

The circumstances and conditions existing at the time and place and the situation of the parties concerned must be taken into account in determining the quality of the acts or omissions alleged to constitute maltreatment. The supplies and accommodations available to the captor nation must be considered in determining whether or not it has discharged its duty in caring for a prisoner of war. While the standard for the measurement of that duty does not vary, the application of that standard to varying circumstances and conditions necessarily produces varying results. Acts or omissions which would clearly constitute maltreatment in normal times, with foodstuffs relatively plentiful and housing accommodations relatively accessible, would take on an entirely different color in a country impoverished through the exhaustion of long-continued military and economic warfare. At the time claimant was held a prisoner of war both the civilian population and the military forces of Germany were compelled to endure great hardships and suffering due to the inability of Germany to procure nutritious foodstuffs and other necessaries of life. Privations resulting from conditions existing in Germany at that time, which were borne alike by the captured and the captors, do not constitute " maltreatment " as that term is used in the Treaty.

The claimant complains of maltreatment on the battlefield at the time of his capture. After carefully weighing the evidence on this issue the Umpire finds that this treatment and the great hardships to which the claimant was then subjected were hardships of the war in which the claimant was engaged as a combatant and for which Germany cannot be held liable under the Treaty.

The claimant also contends that he was subjected to maltreatment while a prisoner in the citadel of Laon, immediately back of the actual firing front, then temporarily used for the concentration of both troops and prisoners; that he was also subjected to maltreatment in the prison camps of Langensalza and Rastatt, and also while under working commands at Waghaeusel near Karlsruhe, Baden, where for a considerable period he was required to perform heavy manual labor in a sugar mill.

The evidence on these issues is voluminous and in hopeless conflict. It will not here be profitable to analyze it in detail or to state the respective contentions put forward by the claimant and by Germany. Suffice it to say that the

---

[1] Paragraph 4 of Annex I to Section I of Part VIII of the Treaty of Versailles, carried by reference into the Treaty of Berlin.

general and sweeping charges of maltreatment of the claimant at Laon, Langensalza, and Rastatt are not sustained by the preponderance of the evidence in this case.

But the Umpire finds that the treatment for which Germany was responsible accorded claimant while under working commands at Waghaeusel fell short of that to which he was entitled by the law of war even under the conditions existing at that time and place.

It appears from the record that prior to and at the time of his capture the claimant inhaled and absorbed phosgene gas resulting in at least temporary partial disability. The German Agent earnestly contends that claimant's tubercular condition and diseased heart, resulting in a present rating by the United States Veterans Bureau for compensation purposes as permanent partial disability of 63 per cent, is attributable to his inhalation and absorption of gas in combat, for which Germany is not liable. There is evidence in the record supporting this contention. But there is also evidence supporting the view that the treatment accorded claimant while under working commands at the sugar mill at Waghaeusel aggravated the effects of gas absorption and resulted, to some extent at least, in the further impairment of his health. Notwithstanding claimant's weakened condition he was required to perform heavy manual labor for 12 out of 24 hours in unloading sugar beets from railroad cars and work of a similar character. On Sunday, October 27, 1918, the claimant and a number of his fellow prisoners, after working 12 hours per day for six days, were called upon to continue shoveling sugar beets over the high sides of captured Russian freight cars for a further period of 24 hours with an intermission of four hours, the alleged reason for this unusual demand being that the beets would spoil if not promptly handled. The claimant, who because of his ability to speak German acted as interpreter for the American and English prisoners, protested that they were not physically able to go on with the work, whereupon the German sergeant-major in charge of the guards struck claimant with his sword and required him and his fellow prisoners to comply with the demand of the sugar-mill authorities to proceed with the work. The happening of this incident as here recited is established by the record, although the testimony is conflicting with respect to the force of the blow, its effect upon the claimant, and the alleged necessity for the use of force to suppress threatened mutiny.

The housing accommodations at this sugar factory available to claimant and his fellow prisoners were crude and the food with respect both to quantity and quality afforded little nourishment. In these circumstances claimant was compelled, under protest, to perform heavy manual labor while in a weakened condition as a result of gas absorption, and it is fairly inferable from the record that it could reasonably have been foreseen that this treatment would result, and that it did in fact result, in reducing his already impaired vitality and contributed to the permanent impairment of his health. To the extent that this improper treatment resulted in pecuniary damage to claimant Germany, under the Treaty, is obligated to make compensation.

From the testimony submitted it appears that personal property belonging to the claimant of the value of $323.00 was taken from and not returned to him by the German authorities.

Applying the rules and principles heretofore announced in the decisions of this Commission to the facts as disclosed by the record herein, the Commission decrees that under the Treaty of Berlin of August 25, 1921, and in accordance with its terms the Government of Germany is obligated to pay to the Government of the United States on behalf of Leslie H. Crabtree the sum of five thousand dollars ($5.000.000) with interest thereon from November 1, 1923, and

three hundred twenty-three dollars ($323.00) with interest thereon from November 11, 1918, both at the rate of five per cent per annum.

Done at Washington January 14, 1927.

Edwin B. PARKER
Umpire

F. E. ATTEAUX & CO., INC. (UNITED STATES) *v.* GERMANY

(February 2, 1927, pp. 866-869.)

INTERPRETATION OF CONTRACTS: PRICE OWING WHEN SALES CONTRACT SILENT, MARKET-VALUE. — JURISDICTION: DEBT. — INTEREST. — EVIDENCE: AFFIDAVIT, CORRESPONDENCE BETWEEN PARTIES. Purchase by claimant from German firm, before United States' entry into war, of prepaid dyestuffs, not delivered. Delivery at various times from April 19 to August 12, 1921, on basis of new agreement. *Held* that price not agreed upon between parties and that seller, therefore, entitled to market-value at time and place of deliveries. *Held* also that any remainder of prepaid moneys constitutes " debt " of German firm to claimant as term is used in Treaty of Berlin, and shall bear 5 per cent interest per annum from date of last delivery. Evidence: see *supra*.

PARKER, *Umpire*, rendered the decision of the Commission.

This case is before the Umpire for decision on a certificate of disagreement of the National Commissioners.

It is put forward on behalf of F. E. Atteaux & Co., Inc., an American corporation, to recover a pre-war indebtedness, less certain credits hereinafter referred to, owing to the claimant by a German debtor.

From the record it appears that toward the end of 1915 and in the early part of 1916 claimant contracted to purchase from the Chemikalienwerk Griesheim G.m.b.H., of Frankfurt, Germany, hereinafter referred to as German debtor, certain specified dyestuffs for which claimant paid to the German debtor in Germany as follows:

September 10, 1915, M. 126,300.
November 12, 1915, M. 107,550.
April 4, 1916, $141,394.85.
June 15, 1916, $7,671.52.

The dyestuffs so purchased were invoiced to the claimant in the currency in which these remittances were made, the invoices reciting " We keep at your disposal and shall ship according to your instructions — as soon as the embargo is lifted ". No shipments were made when, in August, 1919, the claimant cabled to the German debtor inquiring whether or not the dyestuffs purchased were then available for shipment, and on August 15 received a reply reading: " Your colors are not ready for shipment as they had to be used up but we will replace same soonest possible *unless you prefer to have money refunded* ".

In the affidavit of Hermann C. A. Seebohm, director of the German debtor, dated May 8, 1923, it is stated that " In April 1921 we accordingly made arrangements with F. E. Atteaux & Co., Inc., to apply the money which they had already paid us toward the purchase of such colours as they might then designate."