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Burelli Case (questions of procedure)

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or by indirection, to extend the time for the presentation of claims has been exhausted.

The second question must therefore be answered in the negative.

BURELLI CASE

(By the Umpire:)

Claim not having been presented within the time limited by orders of the umpire, and this delay having been occasioned by default of telegraphic officials of respondent Government, claim must be dismissed, but without prejudice to diplomatic action or judicial remedies.

AGNOLI, *Commissioner* (claim referred to umpire):

The royal Italian legation on December 23 last has presented to the Mixed Commission the unannounced claim of Giuseppe Antonio Burelli, residing at La Puerta, District of Valera, whereby, because of requisitions of merchandise and other supplies, an indemnity of 15,500 bolivars is demanded.

The writer, because of the reasons which he has the honor to mention in the course of this statement, was of opinion that the claim ought to be examined, but the honorable Venezuelan Commissioner at the session of the Commission on the 9th of the present month, declared that he could not accept it, because it was presented too late. In consequence of this difference of opinion the decision of the honorable umpire is asked.

From the documents contained in the record of the claim it is shown:

1. That Giuseppe Antonio Burelli, on August 3 last, caused to be delivered to the Venezuelan telegraphic agent of Escuque a telegram addressed to the royal Italian legation at Caracas, which ought to have received it at the latest on the following day, on account of which he would have announced the existence of his claim, the proofs of which were at that time being made before the competent judicial authority.

2. That said telegram did not reach the royal legation, through no fault of the claimant, either on August 4 or afterwards, wherefore the existence of the claim could not be announced to the Commission prior to the 9th of said month, the final date fixed for that purpose by the award of the honorable umpire of June 18.

3. That the complete documents supporting the claim for indemnity reached the royal legation on the 20th of October last past; that is to say, in due time, according to the above-mentioned award of the honorable umpire, for their transmission to the arbitral tribunal, to which in fact they were not presented prior to the 1st of November, because the announcement of the existence of the claim being wanting at the proper time the presentation of the documents in relation thereto for that reason alone was delayed.

The mere statement of these circumstances is sufficient, in the opinion of the Italian Commissioner, to justify the request of the royal legation that the Burelli claim be admitted.

There has been no negligence whatever on the part of the claimant, and it would be entirely contrary to equity that he should suffer the consequences of the irregularity of the telegraphic agent of Escuque; that is to say, of a governmental act of Venezuela, which is solely responsible for the nonarrival of the announcement and of the delayed presentation of the claim. It is true that this does not operate in every way as a bar, but the delay in its liquidation would prejudice the claimant; and our duty is to do him prompt justice, protecting him against the injurious consequences of the fault of another.

For these reasons, the writer asks the honorable umpire to decide that the claim for indemnity in question should be submitted to the examination and to the judgment of the Italian-Venezuelan Arbitral Commission now sitting at Caracas.

ZULOAGA, Commissioner :

The Venezuelan Commissioner refuses to admit to the examination of this Commission the claim of G. Antonio Burelli, and he takes this position for the following reasons:

1. The term, until the 9th of August, fixed for the legation to present its notice of these claims was a term which could not be extended, and in order to fix it all the possible eventualities were taken into account, such as the failure of the mail, of the telegraph, distance, etc.

2. The irregularities of the telegraph services ought to have been especially foreseen, since when the date was fixed there was not even a telegraph to distant places, such as Valera and Escuque, because the lines had been destroyed by the revolution.

3. Foreseeing all these irregularities, the claimant ought not to have allowed his notice to go until the last minute.

4. If the Commission should admit this claim of Burelli it would open anew the term for the presentation of claims of all of those who might allege motives more or less justified for not having presented them in time.

5. The Commission has no right to admit claims.

RALSTON, Umpire :

The above-entitled case comes before the umpire upon difference of opinion between the honorable Commissioners for Italy and Venezuela.

It appears that the claimant, who lives at Valera, sent to the telegraphic office at Escuque on August 3, 1903, a telegram signed by him, directed to his excellency, the Italian chargé d'affaires in Caracas, notifying him of the existence of a reclamation which he expected to prove before the tribunals of the State of Trujillo, the purpose evidently being to have his name certified by the royal Italian legation to the Commission on or before August 9, 1903.

The reception of this telegram is admitted by the chief of the telegraph office at Escuque.

It so happened that the telegram was not sent, or at least never reached the legation, whose first knowledge of the existence of the claim appears to have been gained October 20, 1903, by the reception of an expediente designed to sustain it.

This expediente was not presented before the Commission prior to November 1, 1903, the legation apparently not knowing the facts with relation to the attempted telegraphing on the part of the claimant, and considering that as the claim had not been called to the attention of the Commission within the time originally specified it was too late to present the claim.

By the order of the umpire, made June 18, 1903, official knowledge of the existence of the claim should have been brought to the Commission on or before August 9 and the claim itself presented before November 1. In this case neither step was taken, through no fault, however, either of the legation or of the claimant, who did all that it was incumbent upon him to do, and if his claim is not now regularly before the Commission it is because of the failure of the officials of the Venezuelan Government to fully perform their duty.

The suggestion is made that the umpire, in the extension given for the presentation of claims, took into account the condition of the country and the necessary

delays in transmission of letters and telegrams, and that he should not now be asked to virtually reopen the time limit already set.

To the umpire this argument seems in part correct and in part erroneous. He feels that the time having absolutely passed within which claims should have been presented he has no power of setting aside this limitation. On the other hand he would regard it as highly inequitable if the claimant were to absolutely lose his rights because of the failure of Venezuelan officials to perform their official duty, and in this connection he may remark that when the chief of the telegraphic station at Escuque accepted the dispatch tendered him he impliedly promised that it should be forwarded with all due promptness, and, accepting such dispatch without reservation, Venezuela (his principal) is not at liberty thereafter to say that communication was broken or the wires down, as is suggested by the honorable Commissioner for Venezuela may have been the case. Had the station agent informed the claimant promptly on August 3 that it was impossible to transmit the telegram the claimant could readily have procured transmission by other means of the desired knowledge within the time fixed by the order of the umpire.

In view of the foregoing considerations it seems to the umpire that, pending the objection raised by the honorable Commissioner for Venezuela, he can not consider the claim. Nevertheless, any order of dismissal which he might feel obliged to sign should leave the case open for such other remedies, either diplomatic or judicial, as the claimant may select. In other words, finding himself unable to grant the relief asked by the claimant in this Commission, while the jurisdictional question is raised by the honorable Commissioner for Venezuela, he is unwilling that the claimant should lose his rights because of clear negligence of other Venezuelan officials.

There are other views of the case which might be discussed, but as their consideration would bring us to substantially the same conclusions their development is omitted.

OPINIONS OF A GENERAL NATURE

CERVETTI CASE

(By the Umpire:)

Interest on claims can only be allowed from date of presentation to the Government or to the Commission in the absence of direct contractual relations with the Government.

Unless otherwise agreed by contract, interest will be allowed at 3 per cent per annum from such presentation to December 31, 1903.¹

Under the protocols no interest can be allowed on awards.²

AGNOLI, *Commissioner* (claim referred to umpire):

The above-mentioned claim having been submitted to the umpire in consequence of a divergence of views and appraisalment between the Commissioners in regard to the proofs of the acts which gave rise to the claim proper and the amount of the damages as well as to the question of the interest which may be awarded the claimant, the undersigned reserves the right to indicate the amount to be paid in principal to Cervetti as an equitable compensation for

¹ A like rule was adopted by the German-Venezuelan Commission (*supra*, p. 423), but in the British-Venezuelan Commission interest was only allowed to the date of the awards, nothing more being asked by the English agent.

² See to like effect Vol. IX of these Reports, p. 470.