

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Di Caro Case (of a general nature)

1903

VOLUME X pp. 597-598



NATIONS UNIES - UNITED NATIONS
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The proof is not as complete as it should be, in that it fails to show the number of cattle, burros, or horses taken by each particular leader, either of the Government or of the revolution. We are only favored with the aggregate number. The letter of the claimant designating which chiefs were of the Government or of the revolution, undertakes to attribute to the governmental chiefs the taking of more than four-fifths of the property lost by him. As but four of the eleven chiefs were of this side, the umpire is disposed to think that while his statement may be true, it is not probable, and no details are furnished which would tend to establish its probability. In view of this fact, and bearing in mind the proportion existing between the two contending forces, he is disposed to think that approximate justice will be rendered by charging the Government with the taking of property to the extent of 6,000 bolivars, upon which amount interest may be calculated to the 31st day of December, A.D. 1903.

The umpire accepts as evidence, though, naturally, of the lightest character, the letter written by the claimant; it being his duty under the protocols to receive and carefully examine everything presented to him.

DI CARO CASE

In estimating damages for unlawful killing, age and station in life, deprivation of comforts and companionship, and shock to surviving members of the family may be taken into consideration among other elements.

An award will not be made in favor of Italian subjects who have served in revolutionary forces.

Claim for money said to have been taken rejected because of deficient proof.

RALSTON, *Umpire* :

The claim of Beatrice Di Caro, widow of Giovanni Cammarano, has been submitted to the umpire upon difference of opinion between the honorable Commissioners for Italy and Venezuela, upon the question of the amount of damages.

The admitted facts seem to be that on May 4, 1902, two government soldiers went to the store or "pulperia" of Giovanni Cammarano in Duaca, when he was absent, and, after demanding various articles with which they were supplied, attempted to assault the claimant, Beatrice Di Caro and her daughter-in-law. The two sons of Giovanni Cammarano struggled with the soldiers and one son, getting possession of the gun of a soldier, shot and killed him. The remaining soldier escaped. The sons thereupon fled.

A detachment of soldiers in charge of an officer shortly after went to the house and, finding Giovanni Cammarano, who had meanwhile returned, demanded the whereabouts of his sons. This he was unable or unwilling to give. They seized him and, conducting him about a square and a half, cut him with a machete and shot and killed him in the street. Thereafter the soldiers sacked the store and again, on January 27, 1903, the store having been somewhat replenished, it was plundered by the government forces.

The claimant fixes the value of property taken at 16,468 bolivars and of cash money at 13,554, or at another place at 14,072 bolivars.

The sons of the claimant, shortly after the occurrences first mentioned (and possibly before), joined the revolutionary army, but there is no sufficient reason to believe that claimant's deceased husband took any part in the domestic difficulties of Venezuela.

The first question presenting itself is as to the damages to be awarded claimant for the unwarranted killing of her husband. The honorable Italian

Commissioner would fix this award at a considerable amount. The honorable Commissioner for Venezuela, arguing that the deceased, had he been a young man, could not have earned more than 3 bolivars a day and that, being 64 years of age, his expectancy of life could not exceed six more years, would award damages for his death at not to exceed 6,510 bolivars.

The argument in favor of the sum last named is based exclusively, as appears, upon the theory that the deceased was but a laborer, and that his death only deprived his family of his value as such laborer. But the evidence tends to show that he was a shopkeeper and bought and sold coffee and other productions in considerable quantities, besides apparently cultivating a small piece of land, the extent of which is not given. We may fairly consider, therefore, that his earning power would be much more than 3 bolivars a day.

But while in establishing the extent of the loss to a wife resultant upon the death of a husband it is fair and proper to estimate his earning power, his expectation of life, and, as suggested, also to bear in mind his station in life with a view of determining the extent of comforts and amenities of which the wife has been the loser, we would, in the umpire's opinion, seriously err if we ignored the deprivation of personal companionship and cherished associations consequent upon the loss of a husband or wife unexpectedly taken away. Nor can we overlook the strain and shock incident to such violent severing of old relations. For all this no human standard of measurement exists, since affection, devotion, and companionship may not be translated into any certain or ascertainable number of bolivars or pounds sterling. Bearing in mind, however, the elements admitted by the honorable Commissioners as entering into the calculation and the additional elements adverted to, considering the distressing experiences immediately preceding this tragedy, and not ignoring the precedents of other tribunals and of international settlements for violent deaths, it seems to the umpire that an award of 50,000 bolivars would be just.

The next question of difference is as to the award for property taken. The umpire is not disposed to accept the claim for cash money said to have been taken. This, it is alleged, was sent to the decedent by a bank a short time previous to his death, and the sons, for whose benefit the umpire does not feel he can make an allowance because of their revolutionary career, were apparently interested in it. Besides, its existence is not clearly shown; and if it had been received from a bank, this fact was susceptible of definite and disinterested proof, which is lacking. In addition, the amount, considering the claimed value of the deceased's other property, is so unreasonably large that excessive exaggeration may be presumed. The umpire is further satisfied, taking the evidence as a whole, that the value of the contents of the "pulperia" has been grossly overestimated, and that if he allows 1,000 bolivars as the value of the widow's interest in all of the personal property, he will be doing full justice.

BIAJO CESARINO CASE

Governments are liable for the wanton acts of their officials¹

RALSTON, *Umpire*:

The foregoing cause was duly referred to the umpire, on difference of opinion between the honorable Commissioners for Italy and Venezuela.

The claim arises because of the killing of Gaetano Cesarino, father of the

¹ Cf. Poggioli case, *infra*, p. 669 and notes.