

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Franqui Case

1903

VOLUME X pp. 751-753



NATIONS UNIES - UNITED NATIONS
Copyright (c) 2006

of equity, but these considerations which fix the necessity of deciding this claim upon its merits in no way prejudices the facts nor entail an opinion concerning the nature of those facts which have been the subject of the proof produced.

It is for this reason that the umpire in declaring that the rules invoked in an absolute sense with respect to damages caused by the revolution or by acts of war do not govern the case proposed, necessitating its disallowance decides expressly and exclusively:

That this record is to be returned to the commissioners in order that they may decide the claim presented on behalf of the Spanish subject Gonzalez Mena, bearing in mind that it is not subjected in this respect to any other criterion than that of absolute equity.

FRANQUI CASE

In the absence of an express provision to the contrary, the Commission has the right to adopt whatever means it determines upon to obtain evidence. A witness can not discredit by subsequent retraction statements made by him as a governmental authority, especially where his statements have been corroborated at the time they were first made.

GUTIERREZ-OTERO, *Umpire*:

In record No. 70 relative to the claim made on behalf of the Spanish subject Alonzo Franqui a difference of opinion has arisen, and it is submitted to the umpire for his decision because upon the Venezuelan Commissioner's demand that Gen. Maurice Aguilar, whose testimony has been presented in support of said claim, should be heard by the whole Commission, the Spanish Commissioner was of opinion that the protocol, in its second article, expressly limits the persons whom said Commission ought to hear, and therefore the declaration of Gen. Maurice Aguilar is not to be admitted; and the undersigned takes into consideration and decides this point in the following manner:

First. That the protocol, signed in Washington on April 2 of this year by the representatives of Spain and Venezuela for the establishment of this Mixed Commission, does not limit the means of proof which may be made use of before it, and only demands in the first part of the second article that the proof shall be rendered by the respective Government or in their name; and in the second part of the same article that the Commission shall receive and consider all documents or written statements which may be presented by the Governments in support of or in answer to any claim.

Second. That in the absence of an express prohibition concerning the admissibility of determining means of proof, it is the unanimous conviction of the most conspicuous writers upon international law, which Mérignhac expresses in these terms:

* * * Alors le tribunal arbitral demeurera libre d'employer, pour s'éclairer, tous les genres de preuves qu'il croira nécessaires; et il ne sera lié, à cet égard, par aucune des restrictions qu'on rencontre dans les lois positives, spécialement quant à l'administration de la preuve testimoniale. (Mérignhac, *Traité de l'Arbitrage International*, No. 272, p. 269.)

The Institute of International Law, in article 15 of the Rules for Arbitration between Nations, proposes substantially the same thing.¹

¹ *Revue de Droit International*, 1875, vol. 7, p. 280. (See *supra*, p. 744.)

Third. That although supposing that the text of the protocol of Washington was doubtful, and demanded to be interpreted for want of clearness, the interpretation ought to be made in a broad sense because the general principles of legislation and jurisprudence provide a broad scope in this matter of proof; and because it is clearly a general rule that the oppressive [in the protocol] ought to be restricted and what allows freedom of action extended in interpreting it; and finally because this broadness of interpretation should be more binding when there is question, as with this Commission, exclusively of a tribunal of equity.

Fourth. That the duty imposed by said protocol in the second part of Article II to hear oral or written arguments which the agent of each nation may make concerning each claim does not mean more than that they shall not be prevented from being heard, and the acknowledgment that it is incumbent upon the agents to argue for their respective Governments; but by no means does it include, according to the concept of the umpire, the other prohibition to receive specific proofs, and much less to hear those who naturally are to take part in them.

Fifth. That considering the broadness of the powers of the Commission and its character as a tribunal of absolute equity, there is no reason for not considering included in them the right to accede to the request of one of the arbitrators, who spontaneously for his own information and that of his colleagues believes it opportune and proper that there be heard by all, and examined if it please them, a person who in his public, civil, and military character has already given testimony in the matter under consideration; and this proposition, which is not *ex parte*, since it is not the request of any agent in the name of his Government and merits attention because of the impartiality of its origin and the benefit of its purpose, is to be counted in order to be accepted, with the reasons heretofore set forth, and perhaps even with other superior ones.

Therefore the umpire decides:

That Gen. Maurice Aguilar is to be heard by this Commission in accordance with the request of the Commissioner of Venezuela for the purposes which have already been expressed.

After this opinion was delivered, General Aguilar was called as a witness before the Commission, and testified that in the official letter given by him to the claimant, setting forth the latter's loss, he had overestimated the value of the property.

The Commissioners for Spain and Venezuela, being then unable to agree as to the decision of the case, it was passed to the umpire for his judgment, and after reciting in detail the facts and evidence of the case, he decided in the following manner with respect to the weight of the oral testimony of General Aguilar:

The umpire considers:

* * * * *

Fourth. That with respect to the valuation of 250,000 bolivars, the umpire is of opinion that it ought to be accepted, because if it is true that General Aguilar in fact has retracted his statement concerning it, and testified before this Commission as to his want of knowledge, and the extraordinary inaccuracy with which said valuation was conducted, he can not succeed in discrediting with his later statement, given now, the official act of that time, when exercising the duties of public authority, namely, as civil and military superior of that locality, he estimated the loss caused during a battle in which he took part as one of the officers engaged.

His statement of that time is corroborated by the testimony of the bookkeeper, who testified relative to the character of the losses suffered; and by the declaration of Franqui, who, although the person injured, and the interested party, enjoyed the

reputation of unblemished integrity according to the declaration of witnesses, who affirm that the conditions of the houses of said Franqui could have suffered damages to the amount indicated, and in general by the nature of the event capable, no doubt, of producing the loss of whatever was situated in the place where such a dreadful disaster occurred; besides, it is to be remembered that, not only before this Commission, General Aguilar expressly said that before answering he had at various times thought what he was asked; but six months after having given his answer in writing and made the valuation aforesaid, he corroborated them judicially under oath, stating that their contents were true. He has also testified before this Commission that the reputation for honesty and integrity of Franqui was unassailable and generally known. Thus it is that a latent sense of justice indicates that the first testimony of General Aguilar is entirely credible.

After making various deductions on other grounds, the umpire awards the sum of 191,000 bolivars.

CORCUERA CASE

Where the Government of Venezuela has admitted and agreed to pay a debt due a Spanish subject for services, such debt becomes a portion of the national debt of Venezuela, and the obligation will not be extinguished by a clause of a treaty between Spain and Venezuela of a later date canceling all pending Spanish claims.

GUTIERREZ-OTERO, *Umpire*:

In record No. 120, which contains the claim of the Spanish subject Gen. Leonardo Corcuera, in favor of whom the payment of 2,201.96 bolivars is demanded, in accordance with an order recognizing and ordering him paid this debt by the minister of war, issued on February 18, 1898, a disagreement between the commissioners has arisen, and the case has been referred to the decision of the umpire.

The claimant presents the order referred to, and, moreover, a confidential note of the minister of foreign relations dated May 24, 1898, in which it is announced to the Spanish minister that the President of the Republic, lamenting that immediate payment of the order can not be made, has decided to do it in monthly installments of 500 bolivars, which would begin to be paid in the following June. Payment, however, has not been made in any way, and for that reason Corcuera has made a claim before this Commission.

The Commissioner of Venezuela is of opinion that the claim can not be admitted, and that no jurisdiction over it can be taken, because the claim is prior in date to February 25, 1898, when, in accordance with the convention of June 21 following, all Spanish claims then pending were canceled.

The Spanish Commissioner holds that Corcuera has a right to enforce his credit.

The umpire considers:

1. That with respect to the existence and legitimacy of the amount of the debt there is no doubt, because the claimant possesses an official document of the minister of war which acknowledges and orders this debt of the Government of Venezuela to be paid, the origin of which, moreover, is explained in detail, which shows that it arose because of military service furnished, which Corcuera performed by order of the minister of that department.

2. That this recognition and order were of February 18, 1898, and consequently constituted the debt from then on as a portion of the public debt of Venezuela and an asset which had become the property of Corcuera; it is not comprised among the credits canceled according to agreement of June 21 of the same year, because said credits were only the pending claimants, which