

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Lina Balderas de Díaz (United Mexican States) v. United States of America

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fire against naked and defenseless Mexicans who were in the river thereby causing the death of Falcón.

4. In view of the results of the investigation made by American civilian authorities it seems to the Commission to be somewhat odd that the soldiers should not have been brought to trial. Apart from this point, however, the Commission is of the opinion that the killing of Falcón was a wrongful act for which damages may be assessed in the amount of \$7,000.00 without interest.

Decision

5. The Commission therefore decides that the Government of the United States of America must pay to the Government of the United Mexican States the sum of \$7,000.00 (seven thousand dollars) without interest, on behalf of Dolores Guerrero, widow of Gregorio Falcón and Bartolo, Apolonio, Domingo and Mónica Falcón, children of the deceased Falcón.

LINA BALDERAS DE DÍAZ (UNITED MEXICAN STATES) *v.*
UNITED STATES OF AMERICA.

(November 16, 1926. Pages 143-146.)

DENIAL OF JUSTICE.—FAILURE TO APPREHEND OR PUNISH. When the evidence failed to show that the American authorities were guilty of gross negligence in failing to apprehend those guilty of murder of a Mexican subject, claim *disallowed*.

1. Claim is made by the United Mexican States in this case for damages in the sum of 50,000 Mexican gold pesos or the equivalent thereof in currency of the United States, suffered by Catalina Balderas de Díaz, mother of Mauricio Díaz, a Mexican citizen, who was killed on February 8, 1920, in the city of San Antonio, Texas. It is alleged in the Memorial that the "lenity of the American authorities in regard to the institution of due legal process, to the discovery of the guilty party and to his punishment, constitutes a true denial of justice, which is a justification of the right of Catalina Balderas de Díaz, the mother of the man slain, and injured by the loss of her son, to demand compensation, as she was dependent on him for a living and such injury has not been made good to her." The sum claimed is estimated as having been suffered by the mother of the deceased taking into account his probable life expectancy.

2. The evidence accompanying the Memorial, in addition to that bearing on questions of nationality, consists of:

(1) The record of the inquest conducted with respect to the killing of Díaz which recites that the deceased came to his death on the eighth day of February, 1920, from a wound caused by a bullet from the firearm in the hands of some person whose name is unknown: and

(2) Copies of certain correspondence consisting of a communication sent by the Mexican Consul at San Antonio to the Mexican Ambassador at Washington, in which the Ambassador was informed that Díaz had been killed and that the Consul had written concerning the matter to the Sheriff

of Bexar County, Texas: the communication addressed by the Consul to the Sheriff requesting such information as the latter might have regarding the case; and the reply of the Sheriff to the Consul in which the latter was informed that Díaz was murdered by parties unknown to the police; that several persons suspected of the crime had been arrested; that the guilty persons had not been apprehended; and that the investigation would be continued.

3. The allegation in the Memorial with respect to a denial of justice resulting from a failure of American authorities to take proper steps looking to the apprehension and punishment of the person who killed Díaz raises for determination the question whether there is before the Commission convincing evidence of clearly wrongful conduct on the part of the authorities in neglecting their duty to bring to justice the person who killed the Mexican citizen Díaz. Since the Memorial is accompanied by no evidence whatever of such wrongful action on the part of the authorities, the Commission must look to the evidence filed by the United States to ascertain if the charge of a denial of justice is substantiated in the light of that evidence.

4. Accompanying the Answer of the United States is an affidavit made by F. N. Flores, Deputy Sheriff of Bexar County, who states that an investigation of the killing of Díaz showed that the deceased, who was a chauffeur, was engaged by two soldiers to drive them in an automobile; that two or three days after Díaz had been so employed two soldiers were arrested and brought to the police station at San Antonio; that two or three chauffeurs who operated cars from the same location as that from which Díaz operated were brought to the station to identify the soldiers; that no one was able to identify the two soldiers, who were later released; that every effort was made to find the guilty persons, but such efforts were not successful; and that no complaint was filed and no indictment returned in connection with the murder, as the guilty persons could never be located. The Answer is further accompanied by an affidavit made by O. W. Kilday, a detective in the employ of the City of San Antonio, Texas. Kilday states in this affidavit that he knows that the city and county officers made prompt efforts to apprehend the guilty persons, and that all of the city detectives were called to work on the case. He describes the difficulty in making investigations of the crime, due to the fact that the persons who hired Díaz had not been identified and that there were no clues which could be followed. He states that, two soldiers having been suspected, an investigation was also made by military authorities who worked in conjunction with civil authorities at San Antonio; that many soldiers were arrested and brought to the police station, and efforts were made to identify them as men who had hired the car driven by Díaz. It is pointed out in the affidavit that at the time of the commission of the crime there were probably forty thousand American soldiers stationed at the military posts in and around San Antonio.

5. Subsequent to the filing of the Answer, the American Agent filed some newspaper accounts with respect to the killing of Díaz; another affidavit of O. W. Kilday describing the activities of the police to apprehend the slayer of Díaz; an affidavit of similar purport made by Sam Street, a detective in the employ of the San Antonio police department; and an affidavit made by S. J. Maloukis, an investigator in the service of the military authorities.

6. The evidence presented by the United States does not show that there was gross negligence on the part of the American authorities in the matter of apprehending the person who killed Díaz, but does show the contrary. Even if all of the testimony furnished by the American Agency should be

regarded as unreliable—and it may be observed that no attempt was made to discredit it as such—there would still be no evidence showing negligence on the part of the authorities.

Decision

7. The charge of a denial of justice made in the Memorial is therefore not sustained, and the Commission accordingly decides that the claim must be disallowed.

MACEDONIO J. GARCÍA (U.S.A.) *v.* UNITED MEXICAN STATES.

(November 23, 1926. Pages 146-149.)

JURISDICTION. Claim for loan to Adolfo de la Huerta, Governor of Sonora, for assisting in revolutionary movement, *held not per se* outside jurisdiction of tribunal. Loan being payable after period covered by *compromis held* outside jurisdiction of tribunal.

LOAN TO OFFICIAL. Evidence *held* insufficient to establish responsibility of respondent Government for loan to official.

1. This claim is made by the United States of America against the United Mexican States in behalf of Macedonio J. García, an American citizen, to obtain the payment of \$161,000.00 with interest from May 31, 1920, in settlement of loans said to have been made by the claimant, the amount of \$150,000.00 being delivered on or about March 30, 1920, to Adolfo de la Huerta, Governor of Sonora, and the sum of \$11,000.00 being delivered in two parts, one of \$5,000.00 and the other \$6,000.00 United States currency during the month of May, 1920, to certain military officers. It is stated in the Memorial that García took a receipt for the amount of \$150,000.00 from de la Huerta "in the name of and for the United Mexican States"; that the latter agreed to repay this sum "on behalf of the United Mexican States"; that for the delivery of the other sums García also received a receipt signed by de la Huerta "acting for and on behalf of the Mexican Government"; and that de la Huerta likewise agreed to repay these sums. It is further alleged that on or about May 31, 1920, the three receipts were delivered to de la Huerta, who "for and on behalf of the Mexican Government" gave to García in exchange for the three receipts one receipt for the total sum of \$161,000.00 in which de la Huerta "on behalf of the Mexican Government promised and agreed to repay to claimant the said sum of \$161,000.00". It was argued in behalf of the claimant Government that the Government of Mexico is liable under the principles of international law to pay the sum of \$161,000.00 loaned to de la Huerta, who, in accordance with the so-called "Plan of Agua Prieta," was the "Supreme Chief of the Sonora Revolution," which occurred in Mexico in the spring of 1920; that the revolution was successful and resulted in the election of de la Huerta as Provisional President of Mexico and in the subsequent election of General Obregón as President, the latter assuming office on December 1, 1920; and that the receipt given by de la Huerta to García after his election as Provisional President is conclusive proof that the loans were made, and that the Government of