

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

United Dredging Company (U.S.A.) v. United Mexican States

15 July 1927

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Decision

On the above grounds the Commission decides that the Government of the United Mexican States must pay to the Government of the United States of America, on behalf of Russell Strother, the sum of \$8,000.00 (eight thousand dollars), without interest.

UNITED DREDGING COMPANY (U.S.A.) *v.* UNITED MEXICAN STATES.

(July 15, 1927. Pages 394-396.)

CONTRACT CLAIMS.—CLAIM *quantum meruit*. Claimant performed dredging services for Carranza Government without written contract. Claim for services rendered measured on basis of compensation claimant had previously been receiving in vicinity *allowed*.

Cross-reference: Am. J. Int. Law, Vol. 22, 1928, p. 452.

Nielsen, Commissioner:

1. Claim is made in this case by the United States of America in behalf of the United Dredging Company, an American corporation, to recover compensation in the sum of \$33,625.76, currency of the United States, for services performed in an attempt to salvage the Mexican gunboat *Veracruz*, in the Pánuco River near Tampico, Tamaulipas, Mexico, where the vessel was sunk in 1914. Interest is claimed on the amount of \$33,625.76 from July 6, 1914, until the date of payment of any pecuniary award rendered by the Commission. The facts underlying the claim may be briefly summarized as follows:

2. On or about June 18, 1914, Sr. M. Urquidi, at that time Captain of the port of Tampico, which was then under the control of forces of General Carranza, came to the office of the claimant in the city of Tampico, together with Sr. José Certucha, who had formerly been Captain of the port, and as the representative of the Chief of the Constitutionalist Army Sr. Urquidi requested the Vice President of the claimant company to undertake the work of pumping out the sunken gunboat with a view to salvaging it. It is alleged that it was stipulated that the work should be done under the orders and directions of engineers who in turn were acting under orders of General Carranza; and further alleged that the claimant undertook the work and proceeded to perform it under specific orders and directions of the engineers, and that the claimant company itself advanced funds necessary to meet daily expenses. It appears that the claimant operated a dredge called the *Galveston* for a period of sixteen days from about the twentieth of June, 1914, to about the sixth of July, 1914, and that the claimant company was thereupon informed by General Carranza that because of a lack of funds, the work of salvage must be suspended. No written contract with respect to the work in question was made, but the allegations of the Memorial are supported by affidavits of Benjamin T. Davis, Vice President of the claimant company; Benjamin Anderson, employed by the company as a superintendent; Oscar Sternberg, Captain

of the *Galveston*, the claimant company's dredge; and W. A. H. Connor, employed as auditor and accountant for the company. The Reply is accompanied by other affidavits and daily reports of the work performed with the dredge for the period during which the salvage operations were carried on.

3. The amount of the claim is computed on the basis of a charge for the services performed at the rate of \$2,101.61 a day, that being the sum which the dredge *Galveston* and its crew were earning in and about the port of Tampico shortly before the services for which compensation is sought were undertaken.

4. It is contended in behalf of the United States that Mexico is responsible for obligations of the so-called "Constitutionalists" headed by General Carranza who as successful revolutionists established themselves in power in Mexico.

5. It is admitted in the Mexican brief that the dredge *Galveston* rendered to the Carranza Government the services described in the Memorial, and it is stated that there is no doubt that the *Galveston* was the property of the United Dredging Company. However, a question is raised whether the services were rendered by the claimant company or by Edwin R. Davis, with whom the claimant had certain contractual relations. In the Mexican Answer there is a discussion of provisions of a written contract made on May 30, 1913, under which E. R. Davis undertook to perform extensive dredging and construction work in the port of Tampico. It is clear, however, that the work of salvaging the gunboat *Veracruz* at the request of General Carranza's representative was a matter entirely distinct from the contract of May 30, 1913, which therefore is of no concern in relation to the instant case. There is nothing in the record to indicate that E. R. Davis had any connection with the arrangement made between the claimant company and General Carranza. No question being raised as to responsibility for obligations incurred by General Carranza, or as to the performance of the services for which compensation is sought, or as to the propriety of the amount claimed for those services, an award should be rendered in favor of the claimant in that amount.

6. Questions in relation to the nationality of the claimant raised in the Mexican Answer have been clarified in the American Reply, and there is no doubt as to the right of the United States to maintain the claim in behalf of the claimant company.

7. Interest should be allowed on the sum due for services rendered by the plaintiff. Perhaps it might be considered that this sum became due when the work was interrupted, and that therefore interest should be computed from that time, but the evidence with regard to the arrangement under which the services were rendered is too vague to reach a positive conclusion on that point. I am of the opinion that interest may properly be computed from the date on which a memorandum of this claim was filed, namely, August 13, 1925.

Van Vollenhoven, Presiding Commissioner :

I concur in Commissioner Nielsen's opinion.

Fernández MacGregor, Commissioner :

I concur in Commissioner Nielsen's opinion.

Decision

The Commission decides that the Government of the United Mexican States shall pay to the Government of the United States of America on behalf of the United Dredging Company, the sum of \$33,625.76 (thirty three thousand six hundred and twenty-five dollars and seventy six cents) with interest at the rate of six per centum per annum from August 13, 1925, to the date on which the last award is rendered by the Commission.

CHARLES S. STEPHENS AND BOWMAN STEPHENS (U.S.A.) *v.*
UNITED MEXICAN STATES.

(*July 15, 1927, concurring opinion by American Commissioner, July 15, 1927.*
Pages 397-401.)

RESPONSIBILITY FOR ACTS OF AUXILIARY MILITARY FORCES.—RECKLESS USE OF ARMS.—DIRECT RESPONSIBILITY. American subject was killed by shot recklessly fired by member of auxiliary military forces in executing order of sergeant to stop car in which decedent was travelling. *Held*, direct responsibility established.

DENIAL OF JUSTICE.—FAILURE TO APPREHEND OR PUNISH. Killer of American subject was allowed to escape from military arrest, was never apprehended, and officer responsible for his escape was never punished therefor. *Held*, indirect responsibility established.

NECESSITY OF PECUNIARY LOSS AS BASIS FOR CLAIM.—COLLATERAL RELATIVES AS PARTIES CLAIMANT. Brothers of deceased American subject held entitled to claim for indignity and grief suffered in his death, even though no pecuniary damage could be shown.

EVIDENCE BEFORE INTERNATIONAL TRIBUNALS.—ADMISSIBILITY OF PROOF OF FACTS OCCURRING AFTER FILING OF MEMORIAL. Tribunal considered, but did not finally rule on, admissibility of evidence of pertinent facts occurring after filing of memorial.

Cross-references: Am. J. Int. Law. Vol. 22, 1928, p. 448; Annual Digest, 1927-1928, pp. 233, 266; British Yearbook, Vol. 9, 1928, p. 159.

Van Vollenhoven, Presiding Commissioner :

1. This claim is put forward by the United States of America on behalf of Charles S. Stephens and Bowman Stephens, American nationals. Their brother, the American national Edward C. Stephens, a bachelor, was killed about 10 p. m., on March 9, 1924, by a shot fired by a member of some Mexican guards or auxiliary forces between Parral (Hidalgo del Parral), Chihuahua, and his residence, Veta Grande. Stephens was making the return trip from Parral, where he had passed the afternoon, travelling in a motor car in the company of two friends, a gentleman and a lady. At a point quite near the township of Villa Escobedo a shot was fired at the car, which killed Stephens instantly. The very young and very ignorant guard or soldier who caused his death, one Lorenzo Valenzuela, was