REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Edgar A. Hatton (U.S.A.) v. United Mexican States

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Interest should be allowed at the rate of six per centum per annum from October 16, 1914, the date of the termination of the transactions in question.

2. The second item claimed is for the nonpayment of sixteen postal money orders for an aggregate sum of 386.65 Pesos, Mexican currency, purchased by the claimant at the post office of the Mexican government at Cordoba, Vera Cruz, on August 19, 1914, and payable at sight to the claimant at Mexico City. The said postal money orders were presented for payment at various times during the period between August 19, 1914, and November 10, 1914, but were not paid.

With regard to this item, the only question raised is with respect to the rate of exchange to which the amount claimed should be transferred into U. S. currency. The Commission applies the principles laid down in the case of *George W. Cook*, Docket No. 663.

Interest should be allowed at the rate of six per centum per annum from November 10, 1914.

Decision

The United Mexican States shall pay to the United States of America on behalf of the National Paper and Type Company $26,613.35 (twenty-six thousand six hundred and thirteen dollars and thirty-five cents) with interest thereon at the rate of six per centum per annum from October 16, 1914, to the date when the last award is rendered by the Commission, and $192.74 (one hundred ninety-two dollars and seventy-four cents) with interest thereon at the same rate from November 10, 1914, to the date when the last award is rendered by the Commission.

EDGAR A. HATTON (U.S.A.) *v.* UNITED MEXICAN STATES

(September 26, 1928. Pages 6-10.)

NATIONALITY, PROOF OF. Evidence of nationality of a somewhat inconclusive character *held* sufficient when respondent Government had produced nothing to throw doubt upon claimant's nationality.

EVIDENCE BEFORE INTERNATIONAL TRIBUNALS.—PRESUMPTIONS AND BURDEN OF PROOF.—EFFECT OF ADMISSION IN ANSWER OF JURISDICTIONAL FACT. An admission of nationality made in answer of respondent Government cannot take the place of adequate proof of nationality, which is a jurisdictional fact. Circumstance that respondent Government admitted nationality does not relieve claimant Government of proving such fact.

ADEQUACY OF RECEIPT AS EVIDENCE.—AUTHENTICATION OF EVIDENCE. Authentication according to Mexican law of receipt given by commander of armed forces for animals taken *held* not necessary. Signature of officer proved genuine. Fact that claimant's name not shown on receipt *held* not fatal to his claim.

MILITARY REQUISITION. Claim for military requisition *allowed.*

Cross-reference: Annual Digest, 1927-1928, p. 485.

Commissioner Nielsen, for the Commission:

Claim is made in this case by the United States of America in behalf of Edgar A. Hatton in the sum of $575.00, said to be the value of two mules and five saddle horses alleged to have been requisitioned by General Horacio Lucero, commander of Mexican Federal troops, in the month of March, 1924, at a ranch called San Gregorio, located at Villa Acauña, Coahuila, Mexico. Interest is claimed from March 2, 1924, until the date of payment of any award rendered.

The case involves a small amount, but during the course of written and oral arguments there was raised a number of somewhat vexatious and important questions of evidence which require careful consideration.

In oral argument counsel for Mexico contended that the American citizenship of the claimant was not adequately proved. The proof of nationality accompanying the Memorial of the United States consists of, first, an affidavit by two persons in which they state that "they have known Edgar A. Hatton all of his life, and know him to be an American citizen"; and, second, an affidavit by the claimant in which he asserts that he is a citizen of the United States by birth.

Although the contention respecting nationality was raised in oral argument, the American citizenship of the claimant was expressly admitted in the Answer of the Mexican Government. And in the Mexican brief reference is made to this admission, and it is stated that "in view of the fact of the leniency with which the Honorable Claims Commission has solved the question of adequate proof of the nationality of the claimant, the Mexican Agent does not think himself justified to deny that the American citizenship of the claimant has been proved". After some argument to the effect that proof of nationality is very meagre, it is further stated in the brief that the Mexican Agent "can only call the attention of the Honorable Commission to this fact inasmuch as his absolute right of denial cannot be adduced in this occasion for the considerations aforesaid".

It is not altogether clear what is meant by the statement in the Mexican brief that the Commission has solved questions of adequate proof of nationality with "leniency". Nations of course do not make a practice of pressing diplomatic reclamations of persons other than their own nationals. The Commission has in the past accepted evidence of facts from which it could, in its judgment, draw sound conclusions with respect to the applicable law. But in any case in which there is an absence of such evidence or any evidence throwing doubts upon the nationality of the claimant, it need scarcely be said that the importance of the question of citizenship has not, and will not be, overlooked. The Commission does not minimize the importance of this subject. It realizes, of course, that the nationality of claimants is the justification in international law for the intervention of a government of one country to protect persons and property in another country, and, further, that by the jurisdictional articles of the Convention of September 8, 1923, namely, Articles I and VII, each Government is restricted to the presentation of claims in behalf of its own nationals.

The proof of nationality submitted with the American Memorial is assuredly very meagre, and adverse criticism of it made by counsel for Mexico appears to be well founded. As has been observed, there appears besides the claimant's own statement, only an affidavit sworn to by two persons in which they state that they know the claimant "to be an American citizen". That is a conclusion of law. The affidavit would have been of a different character had it furnished information with regard to the birth or the naturalization of the claimant. From proven facts of that kind the Commission could reach a positive conclusion with regard to claimant's nationality under the Constitution or under statutory provisions of the United States.

It was stated in oral argument by counsel for the United States that, had the nationality of the claimant been challenged in the Mexican Answer instead of being admitted, the claimant Government would have been put on guard and could have amplified its proof. Doubtless that is true. However, it is proper to observe with reference to this point that, as has already been pointed out, convincing proof of nationality is requisite not only from the standpoint of international law, but as a jurisdictional requirement. And the Commission, in refusing, as it does, to sustain the contention made in oral argument that the claim should be rejected, should not be understood to concede that admissions of the respondent Government of the nationality of claimants could in all cases take the place of adequate proof of nationality. Such admissions do not appear to be analogous to a waiver before a domestic court of a question of personal jurisdiction. The jurisdictional provisions of the Convention of September 8, 1923, are concerned with certain specified claims. Having in mind that the admission in the Mexican Answer relates to the nationality of a person resident in Mexico and owning property in that country; that under the arbitral agreement the Commission must take cognizance of all documents placed before it; and that nothing has been adduced to throw any doubt on the assertions of the claimant who swears that he was born in the United States, or on the sworn statement of persons who, in addition to their statement respecting the claimant's citizenship, state that they have known the claimant all their lives, it is believed that the claim should not be rejected on the ground of unsatisfactory proof of nationality.

The United States presented as evidence a copy of a receipt said to have been given to the claimant by General Lucero which reads as follows:

"Vale a la Hda de San Gregorio por 7 siete caballos para la tropa que es a mi mando.
San Gregorio 2 de Marzo—924 El Gral de B.
H. LUCERO."

The Government of Mexico presented a statement from Francisco Ibarra, who it is said acted as guide for General Lucero. This man asserts that a horse and a mule were taken from the San Gregorio Ranch, but that the horse was returned. As against such testimony it is proper to take account of the fact that the claimant has been allowed to remain in possession of a receipt, evidencing that a larger number of animals was taken and that none was returned. The Commission cannot properly disregard the evidential value of that receipt. And it may be particular y pertinent to note with respect to this point that receipts for military

requisitions have been given important standing and recognition in international law and practice. The convention of The Hague of 1907 respecting the law and customs of war on land contains provisions with regard to receipts for military requisitions and contributions.

It was stated in behalf of Mexico that the receipt had not been "authenticated" as required by Mexican law. And furthermore it was urged that the receipt may either have been altered or indeed may have been a fraud, since on the one hand, it refers to "siete caballos" whereas the claimant asked compensation for two mules and five saddle horses, and on the other hand, the body of the receipt was written in pencil and the signature in ink.

It is unnecessary to cite legal authority in support of the statement that an alien in the situation of the claimant is entitled under international law to compensation for requisitioned property. No formalities required by domestic law as to the form of authentication of a receipt for requisitioned property, or the failure of a military commander to comply with those formalities could render such a receipt nugatory as a record of evidential value before this Commission. The important point with respect to the authenticity of the receipt is that the signature thereto by General Lucero is admitted by the Mexican Government. The claimant having received a receipt which recites the taking of seven horses might have presented his claim in the terms of the receipt. However, he accepted, as doubtless he was obliged to do, the form of receipt given to him, and he explains the precise nature of the property taken. The Commission can properly accept his explanation rather than assume that for some reason the claimant chose to alter the receipt. No evidence has been adduced to prompt a supposition that such a fraud was committed, and there is good reason to suppose that it was not. As to the suggestion or contention of counsel that the receipt may be a fraud in view of the fact that the body of the document produced in evidence was in pencil and the signature in ink, it may be observed that such a fraudulent manufacture of the body of the receipt apparently could only have been committed in case the claimant had obtained possession of a piece of paper bearing General Lucero's signature, and some one had, for purposes of fraud, inserted the body of the receipt above the signature. In the absence of any proof suggesting such a crude fraud, the suggestion must be rejected.

There remains to be considered one further point. The receipt accompanying the Memorial does not mention the claimant as the person from whom the animals were requisitioned. It is true that the claimant is in possession of that receipt, but it would be possible for him to be so even if he were not the owner of the ranch and animals found there. It would have been desirable that the United States furnish evidence on this point. To be sure, if Hatton was not the owner of the ranch, Mexico could undoubtedly have been able to show that fact. There should be little difficulty in obtaining information respecting this question of title. And while it is not the function of the respondent government to make a case for a claimant government, it is believed that, in view of the fact that the claimant is in possession of the receipt, and in view of the further fact that Mexico has adduced nothing to show that the claimant was not the owner of the ranch at the time of the requisition, the Commission should accept without question the claimant's allegation that the property requisitioned from the ranch belonged to him. The justification for drawing

inferences from the nonproduction of available evidence has often been discussed by domestic courts. See for examples, *Kirby* v. *Tallmadge*, 160 U. S. 379; *Bilokumski* v. *Tod*, 263 U. S. 149.

The proof of the value of the animals taken is meagre, but since it has not been contested, the claimant should have an award for the amount asked with interest from March 2, 1924.

Decision.

The United Mexican States shall pay to the United States of America in behalf of Edgar A. Hatton, the sum of $575.00 (five hundred and seventy-five dollars) with interest at the rate of six per centum per annum from March 2, 1924, to the date on which the last award is rendered by the Commission.

WILLIAM HOLLIS (U.S.A.) *v.* UNITED MEXICAN STATES

(September 26, 1928. Pages 11-14.)

CRUEL AND INHUMANE IMPRISONMENT.—MISTREATMENT DURING IMPRISONMENT. Evidence *held* insufficient to establish claim for cruel and inhumane conditions of imprisonment and mistreatment by authorities during imprisonment.

The Presiding Commissioner, Dr. Sindballe, for the Commission:

Claim is made in this case against The United Mexican States by The United States of America on behalf of William Hollis, an American citizen, for indemnity in the sum of $15,000 for inhuman treatment alleged to have been accorded him in connection with his detention under arrest at Valles, San Luis Potosí, Mexico, during the days from Friday, September 22, to Sunday, September 24, 1911.

In 1911 the claimant was residing in Mexico, employed by the Mexican Petroleum Company at Ebano, San Luis Potosí. On Friday, September 22, he was arrested at his home at Ebano upon a charge of fraud preferred by Señor Rafael Rodriguez of San Luis Potosí. It appears from the record that he had passed a worthless check for 500 pesos which Señor Rodriguez had cashed, and that he had obtained other smaller amounts from other persons. The order of arrest was issued by the Political Chief at Valles according to letters requisitorial from the Criminal Court of San Luis Potosí, and the order was executed by Camerino Enriques, the Chief of the Police at Valles. The claimant was told that he would have to walk to Valles. He protested, saying that he was suffering from acute rheumatism in his right leg and from a severe rupture (hernia). Thereupon he was allowed to go by train on his payment of the travelling expenses for himself and the guard. He arrived at Valles in the evening of the same day, and was detained there until Sunday evening, when he was sent by train to San Luis Potosí, accompanied by Camerino Enriques.

With regard to the way in which he was treated by the authorities at Valles during his detention there, the claimant alleges the following: