# REPORTS OF INTERNATIONAL ARBITRAL AWARDS

# RECUEIL DES SENTENCES ARBITRALES

**Daniel Dillon (U.S.A.) v. United Mexican States**

3 October 1928

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wrongful action. It is believed that the claimant may properly be awarded the sum of $1,000.00 for the injury inflicted upon him.

*Decision*

The United Mexican States shall pay to the United States of America in behalf of Bond Coleman the sum of $1,000.00 (one thousand dollars.)

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## DANIEL DILLON (U.S.A.) *v.* UNITED MEXICAN STATES

*(October 3, 1928, concurring opinion by American Commissioner, October 3, 1928. Pages 61-65.)*

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DETENTION FOR UNREASONABLE PERIOD.—DETENTION "INCOMUNICADO".—RIGHT OF ACCUSED TO BE INFORMED OF CHARGE AGAINST HIM.—EXPULSION OF ALIENS.—Claimant was imprisoned for at least fifteen days without being allowed to communicate with anyone in connection with his arrest for purposes of expulsion from Mexico. It was also asserted that he was not informed of the charge against him. Claim *allowed.*

CRUEL AND INHUMANE IMPRISONMENT.—INTERNATIONAL STANDARD. Evidence *held* insufficient to establish that conditions of imprisonment were below international standards.

*Cross-references:* Annual Digest, 1927-1928, p. 236; British Yearbook, Vol. 11, 1930, p. 225.

*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 Daniel Dillon, an American citizen, to obtain damages in the sum of $15,000, U. S. currency, for alleged unlawful detention for a period of about fifteen days in June, 1916, and for alleged maltreatment during that time.

The claimant had in the summer of 1915 directed the press publicity of the Carranza government in Washington, D. C., and late in 1915 he went first to Vera Cruz and afterwards to Mexico City as an employee of the Mexican government. During several months he acted as press cable censor in Mexico City. In the spring of 1916, however, his connection with the Mexican government came to an end. At that time he accepted a position as representative of the International News Service in Mexico City.

During the early part of June, 1916, the claimant was arrested by two Mexican Federal officers. He was brought to the Federal Department of Gobernación, and placed in a small outhouse bordering the patio in the rear of the main building. After about three days detention there, he was taken to the penitentiary on the outskirts of Mexico City, and he alleges that there he was placed in a small cell with scant light and

bad ventilation, in which the floor was filthy and the sanitary installations long since out of order. After about twelve days of imprisonment in that cell he was taken to a small room on the top floor of the Municipal Palace, and the next day he was turned over to Mr. John L. Rodgers who was acting as Special Representative of the United States of America. Immediately afterwards the claimant left Mexico.

According to the affidavit of the claimant, and no evidence to the contrary having been produced, it is to be assumed that during all the time of his detention the claimant was kept *incomunicado*, i. e. without being allowed to communicate with anybody, and that no information was given him concerning the purpose of his arrest and detention. He alleges that he had no bed nor bed clothing, and that the food served him was insufficient and bad.

From the record it seems that the purpose for which the claimant was arrested was that the Mexican government intended to expel him from Mexico.

In the pleadings submitted by counsel of the United States of America, the right of the United Mexican States to expel the claimant, without informing his government or himself about the reasons why he was to be expelled, has been challenged. During the oral hearing, however, this part of the pleadings has not been touched upon by said Counsel, and the Commission takes it that the claim is now predicated on alleged mistreatment of the claimant in connection with his arrest and detention only.

With regard to the question of mistreatment the Commission holds that there is not sufficient evidence to show that the rooms in which the claimant was detained were below such a minimum standard as is required by international law. Also the evidence regarding the food served him and the lack of bed and bed clothing is scanty. The long period of detention, however, and the keeping of the claimant *incomunicado* and uninformed about the purpose of his detention, constitute in the opinion of the Commission a maltreatment and a hardship unwarranted by the purpose of the arrest and amounting to such a degree as to make the United Mexican States responsible under international law. And it is found that the sum in which an award should be made, can be properly fixed at $2500, U. S. currency, without interest.

*Nielsen, Commissioner:*

I concur in the Presiding Commissioner's opinion, but I desire to make a few explanatory remarks.

The sovereign right of expulsion is not denied by the United States. Complaint is made against the methods used in connection with expulsion. In any event that seems to be the burden of the oral argument in behalf of the United States. Evidently counsel for both sides proceeded on the theory tnat expulsion may have been in the minds of the Mexican Authorities, although the claimant was detained in Mexico about 15 or 20 days and then appears to have left without being forcibly sent from the country.

The sovereign right of the harsh measure of expulsion being conceded, it might be considered, on the one hand, that in reality a complaint against harsh treatment in a given case is a matter entirely distinct from

expulsion. If this view be taken in the instant case we would have a case of imprisonment in connection with which no charges were made known to the claimant, and no opportunity was given to the claimant to defend himself, and sworn allegations not disproved, of mistreatment during a considerable period of incarceration are in the record. On the other hand, it would seem that in a case involving a complaint of arbitrary and harsh treatment in connection with expulsion, the fact that the measure of expulsion is invoked by a government is something of which account may be taken in appraising the nature of the harsh treatment. There may be no rule of international law or practice with regard to precise, proper methods of expelling an alien, such as those that have been suggested by writers, by conducting a man to an international border or by delivering him to a representative of his government. But when resort is had to a use of unnecessary force or other improper treatment there may be ground for a charge such as is made in the instant case, account being taken of the manner in which expulsion might have been effected.

Having in mind the difficulties frequently confronting the Commission in dealing with evidence, the present case may be said to be an interesting and particularly illustrative one. In the Mexican brief it is attempted to destroy the evidential value of the claimant's affidavit, first, because he was said to have made exaggerated and untruthful statements, and secondly, because his evidence is an unsupported statement in that it is not corroborated by the statements of others. The first charge was withdrawn in oral argument as based on an inaccurate copy of a communication accompanying the Mexican Answer, and it was shown by authentic documents that the claimant did not overstate but indeed underestimated the term of his imprisonment. On the other hand, counsel for the United States referred to the statement in the Mexican brief that "Arbitral commissions with obvious prudence refuse to hear the claimant when he alone speaks or to take his statements literally". (P. 14.) And he argued that, whatever might be said with respect to the unsatisfactory character of the record, nothing could be furnished in support of contentions but an affidavit of the claimant in the instant case, since all information regarding the treatment of Dillon was in the possession of the Mexican Government, and the claimant having been prevented from communication with other persons during his imprisonment, it had become impossible for the United States to submit further evidence. However, it may be observed with reference to this argument, to which there undoubtedly is considerable force, that the United States could have furnished with the Memorial or with the Reply convincing evidence with regard to the extremely important point of length of detention of claimant. Copies of telegrams produced at the hearing furnish not only proof confirming the statement of the claimant made in his affidavit, but proof that instead of over-stating he underestimated the period of his detention.

An arbitral tribunal can not, in my opinion, refuse to consider sworn statements of a claimant, even when contentions are supported solely by his own testimony. It must give such testimony its proper value for or against such contentions. Unimpeached testimony of a person who may be the best informed person regarding transactions and occurrences under consideration can not properly be disregarded because such a

person is interested in a case. No principle of domestic or international law would sanction such an arbitrary disregard of evidence.

It seems to me that whatever may be said with regard to the desirability or necessity of having testimony to corroborate the testimony of a claimant, a statement need not be regarded in the legal sense as unsupported even though it is unaccompanied by other statements. Statements of claimants may be impeached by information showing them to be incorrect, and they may be corroborated by statements showing them to be correct. Evidence produced by one party in a litigation may be supported by legal presumptions which arise from the non-production of information exclusively in the possession of another party, and this well-known principle of domestic law is one to which it seems to me an international tribunal is justified in giving application in a proper case. But few concise rules of adjective law have been developed in international practice, but it is proper for an international tribunal to give effect to certain elementary principles applied by domestic courts.

*Decision*

The United Mexican States shall pay the United States of America on behalf of Daniel Dillon $2,500. (two thousand five hundred dollars) without interest.

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## A. L. HARKRADER (U.S.A.) *v.* UNITED MEXICAN STATES

*(October 3, 1928. Pages 66-68.)*

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DENIAL OF JUSTICE.—FAILURE TO APPREHEND OR PUNISH.—INTERNATIONAL STANDARD. Evidence *held* not to show that measures taken to apprehend or punish persons guilty of murder of an American subject and wounding of another fell below international standard from a broad and general point of view.

*Cross-reference:* Annual Digest, 1927-1928, p. 226.

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

On Sunday, November 19, 1922, two Americans, Wert D. Harkrader and Dan McKinnon, who were visiting Calexico, California, for the purpose of obtaining employment at this place, went across the boundary between the United States and Mexico to Mexicali, Lower California. They arrived in this town between noon and one p. m. Having taken lunch and some drinks at various places, they started back in the direction of Calexico about two o'clock. They passed a Mexican cabaret where some dancing and music were going on, and Harkrader went into the cabaret, McKinnon waiting for him on the outside. At that time a Mexican addressed McKinnon suggesting that he and his friend take a drive to see the sights of Mexicali in his Ford car that was standing close by with a chauffeur sitting in it. When Harkrader came out of the cabaret, McKinnon told him of the proposal of the Mexican, and they agreed to accept it. Thereupon the four men started, the Mexican chauffeur