

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

F. M. Smith (U.S.A.) v. United Mexican States

10 April 1929

VOLUME IV pp. 468-470



NATIONS UNIES - UNITED NATIONS
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An alternative claim which seems to have been presented in behalf of the claimant was based on a *quantum meruit* for services rendered, but such a claim was predicated only on an assumption that the Commission might find that the contract invoked in this case was a personal contract of Burrowes made with the Railways.

An item of the claim grows out of delays in making repairs and in furnishing supplies. Delays doubtless occurred, but it seems to be impossible to determine or to prescribe standards of efficiency by which negligence may be measured in the numerous instances asserted, and damages may be awarded for such negligence according to such standards. This item, therefore, in my opinion, presents too much uncertainty to be the basis of a pecuniary award.

The claim is well supported by convincing evidence which clarifies the facts and it was very forcefully presented in oral argument, but the language of the contract between the company and the Railways reveals uncertainties. These uncertainties, I think it may be said, are accentuated by the business relations of the parties which the Commission can not now reconstruct.

Decision

The claim of the United States of America on behalf of W. C. Greenstreet, Receiver of the Burrowes Rapid Transit Company, is disallowed.

F. M. SMITH (U.S.A.) *v.* UNITED MEXICAN STATES

(April 10, 1929. Pages 208-210.)

FAILURE TO PROTECT. Although disorders had previously taken place at mine where two American subjects were murdered, since no request for protection was made and authorities took prompt measures of protection after the murders, *held*, responsibility of respondent Government not established.

DENIAL OF JUSTICE.—FAILURE TO APPREHEND OR PUNISH.—DUTY TO PROTECT IN REMOTE TERRITORY. Delays in efforts to apprehend murderer of American subject, murder having taken place in a sparsely settled territory *held* not sufficient to establish a denial of justice.

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

At about five o'clock in the afternoon of September 24, 1921, George D. Kislingbury, who was employed as master mechanic at the Dolores mine, Chihuahua, Mexico, and Harry G. Smith, who was employed as superintendent of the milling plant at the mine, were working on some filters at the mine, together with two assistants. They were approached by a laborer, Eulalio Quezada, who asked Kislingbury for an increase in wages. Kislingbury refused his request. Quezada then drew his pistol and shot first Kislingbury, and then Smith. Both of them died instantly.

Claim in the sum of \$25,000, United States currency, is now made against the United Mexican States by the United States of America on behalf of F. M. Smith, an American citizen, the father of the deceased Harry G. Smith, for failure of the Mexican authorities (1) to afford protection to the people working at the Dolores mine, and (2) to apprehend and punish Quezada.

With regard to the question of lack of protection it is alleged by Counsel for the United States that the double murder was the climax of a series of disorders at the Dolores mine due in part to labor agitators, one of whom was an alderman of the municipality, and that in the course of these disorders an American employee at the mine on two occasions had been assaulted and beaten by Mexicans. There is, however, no evidence to show that any request for protection had been made to the Mexican authorities prior to the killing of Kislingbury and Smith. And it appears from the record that after the murders a special detachment of *rurales* was formed for the purpose of affording protection at Dolores, that certain agitators including the alderman were expelled, and that the General Manager of the mining corporation expressed himself as being fairly well satisfied with the measures thus taken. In view hereof, the Commission is of the opinion that no responsibility for lack of affording proper protection can be placed upon Mexico in the present case.

As to what was done in order to apprehend Quezada the evidence submitted is vague. The murder was immediately reported to the Municipal President at Dolores, and within half an hour he was on the scene. He took the testimony of four witnesses, each of whom testified that Quezada was the murderer. The mining company itself sent out armed men to capture Quezada. But it seems that several days elapsed—about six or eight days, it is alleged—before a detachment of *rurales* was formed and undertook the pursuit of the murderer. Once formed, it searched the district surrounding the place where the murder had been committed, and having done so, it returned, reporting that the criminal had fled to Sonora. The Governor of Chihuahua then sent descriptions of the murderer to the Sonora authorities, and it appears that later search was made at various points in Sonora. In a dispatch of August 31, 1922, the American Consul at Chihuahua states that while at the time of the murder he was informed that the local authorities at Dolores did not take the proper steps to apprehend the criminal, it is his belief that since then the officials have used all of the limited means at their command to locate Quezada. In view hereof, and taking into consideration the sparsely settled character of the region where the murder was committed, the Commission is of the opinion that the evidence submitted is insufficient to establish an international delinquency on the part of Mexico in the present case. That a record of some proceedings had at the Court of First Instance at Chihuahua submitted by Counsel for Mexico shows long delays in taking the testimony of witnesses to the murder and in issuing a court warrant for the arrest of Quezada as well as in other particulars, to a great extent in contravention of Mexican law, is in the opinion of the Commission not conclusive with regard to the international responsibility of Mexico, as it was perfectly well known who the murderer was, so that the question of the responsibility of Mexico in the present case must depend upon what was actually done in order to apprehend Quezada.

Nielsen, Commissioner:

I agree with the conclusion stated in the Presiding Commissioner's opinion with respect to the non-liability of Mexico, but do not concur entirely in

the reasoning on which the conclusion is based. In my opinion the fact that a request for protection is not revealed in the record of a case involving a complaint of lack of protection can have no important bearing on the merits of such a complaint under international law. The fact that a request for protection has not been made does not relieve the authorities of a government from protecting inhabitants. Protection is a function of a State, and the discharge of that function should not be contingent on requests of the members of a community. On the other hand, in determining whether adequate protection has been afforded in a given case, evidence of a request for protection may be very pertinent in showing on the one hand that there was necessity for protection and on the other hand that warning of possible injury was given to the authorities. Of course such warning may also come in other ways as through information with respect to illegal acts.

Decision

The claim of the United States of America on behalf of F. M. Smith is disallowed.

HAZEL M. CORCORAN (U.S.A.) *v.* UNITED MEXICAN STATES

(April 13, 1929, concurring opinion by American Commissioner, April 13, 1929. Pages 211-213.)

JURISDICTION. CONFLICTING JURISDICTION OF SPECIAL CLAIMS COMMISSION.

Fact that murderer of American subject escaped from jail at a time when revolutionary forces were approaching did not render claim based on failure to apprehend or punish him one within jurisdiction of Special Claims Commission, United States and Mexico.

DENIAL OF JUSTICE.—FAILURE TO APPREHEND OR PUNISH.—ESCAPE OF GUILTY PARTY FROM JAIL. Murderer of American subject escaped from jail on May 7, 1920, an order to arrest him was not made until on or about May 20, 1920, information as to his whereabouts was not acted on for a month, and he was never reapprehended. Claim *allowed*.

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

In this case claim in the sum of \$50,000.00, United States currency, is made against the United Mexican States by the United States of America on behalf of Hazel M. Corcoran, an American citizen, for alleged failure of the Mexican authorities duly to prosecute one Alfredo Ibarra, who on February 28, 1920, shot and killed the husband of the claimant, Raymond A. Corcoran.

The murder took place at the Santa Gertrudis Mine in the State of Hidalgo, Mexico. The deceased was the superintendent of the Santa Gertrudis Mining Company, and the murderer was an employee of that company. Immediately after the murder Ibarra was seized by the guards of the company and delivered to the appropriate Mexican authorities. He was committed to jail at Pachuca, Hidalgo, Mexico, and criminal proceedings were instituted against him. In the morning of May 7, 1920, however, all