

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Lottie Sevey (U.S.A.) v. United Mexican States

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Commission, the claimants, in computing their losses, deducted the overhead expenses from the amount of their claim.

With reference to the remaining goods covered by the orders, that is, the white duck and dyed duck, it appears that the claimants made no delivery of any merchandise of this character. Neither did they inquire of the Mexican Government whether it would accept delivery of merchandise of this character. The Commission is of the opinion that consequently the claimants are not entitled to be reimbursed on account of any loss sustained by them on this class of merchandise.

Decision

The United Mexican States shall pay to the United States of America on behalf of Adolph Deutz and Charles Deutz the sum of \$81,667.17 (eighty-one thousand six hundred sixty-seven dollars and seventeen cents) United States currency, with interest at the rate of six per centum per annum on the specifically stated loss of \$7,875.96 (seven thousand eight hundred seventy-five dollars and ninety-six cents) from May 1, 1920, to the date on which the last award is rendered by the Commission.

LOTTIE SEVEY (U.S.A.) *v.* UNITED MEXICAN STATES

(April 17, 1929. Pages 216-218.)

NATIONALITY, PROOF OF.—EFFECT OF CLAIMANT'S STATEMENTS CONCERNING HIS NATIONALITY. Fact that decedent testified he was born in Mexico *held* not sufficient to overcome other proof of American nationality.

FAILURE TO PROTECT. Fact that local authorities showed partiality to labourers in mine, of which decedent was superintendent, *held* not sufficient to establish a failure to protect against murder of decedent for which claim is made.

DENIAL OF JUSTICE.—FAILURE TO APPREHEND OR PUNISH.—UNDUE DELAY IN INVESTIGATION. Fact that authorities did not arrive on the scene of murder of American subject for approximately four hours *held* not to involve undue delay. Claim *disallowed*.

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

In this case claim in the sum of \$25,000, United States currency, is made against the United Mexican States by the United States of America on behalf of Lottie Sevey, an American citizen, for alleged failure to give adequate protection to Mose T. Sevey, the husband of the claimant, who on October 20, 1920, was shot and killed by one Ramon Navarro, and for alleged failure to take appropriate steps to apprehend and punish the murderer.

During oral argument Counsel for Mexico called attention to the fact that the American nationality of the deceased is not clearly established by the evidence before the Commission. He was registered as a voter in Arizona in 1916, and according to the entry on the register his place of birth was Utah. Before his death, however, he testified that he was born at Colonia

Juárez, Chihuahua, Mexico, and it appears that he had informed the company in the service of which he was at the time of his death to the same effect. In view hereof, some information regarding the nationality of his father ought to have been presented. Nevertheless, as there was submitted with the Memorial affidavits of four persons asserting that they knew that the deceased was an American citizen, and as his American nationality was expressly admitted in the Answer, the Commission is of the opinion that the present claim should not be rejected because of lack of proof with regard to the question here under consideration.

At the time of the murder Mose T. Sevey was superintendent of the Cananea-Duluth mine of the Cananea Consolidated Copper Company, State of Sonora, Mexico. The murderer had been an employee of the company until the day before the murder, when he applied to Sevey in order to obtain a new place to work, and, on being told that he could not have that immediately, declared that he would quit the work. There appears to have been troubles between the company and its laborers during the time preceding the murder, and the charge that the Mexican authorities failed to give proper protection to Sevey is based upon the contention that the Municipal President at Cananea was a weak character who in an improper manner took sides with the laborers, thereby causing the belief to arise among them that they did not need to fear the authorities, even if they behaved improperly. In this respect it is especially alleged that on October 6, 1920, representatives of the company were haled to the city hall, and in the presence of some 200 laborers were forced to sign an agreement for shorter hours of night work, the Municipal President and members of the town council taking part in the coercion. However, even if it be assumed that the officials of the town in an improper manner took sides with the laborers in questions regarding wages and working hours and the like, that would not justify the Commission in holding that the Mexican authorities were deficient in giving protection to the deceased so as to make them responsible for his death.

With regard to the failure to apprehend the murderer the following appears from the record:

The murder took place about 7.15 A. M. The local authorities were notified within a short time after the crime had been committed. The police arrived at the scene at 11 A. M. Judicial proceedings were instituted at Cananea, and in the course of these a suspected person was arrested, but he proved not to be the murderer. The Governor of Sonora was notified by the company shortly after the murder, and he immediately instructed the appropriate authorities of the State to try to apprehend the murderer. He further instructed the Municipal President at Cananea to send out descriptions of the murderer. Later, when the company heard that the murderer was in Chihuahua, President Obregón was requested to have the suspected person arrested. President Obregón also took action, and the suspected person was arrested, but he proved not to be Navarro.

No charge for failure to apprehend the murderer is made against the higher Mexican authorities. But it is contended that the local authorities were dilatory, and special attention is called to the fact that no police officer arrived at the scene of the crime until 11 A. M. on the day when the murder took place, although the police were notified immediately. The Commission, however, is of the opinion that no international delinquency on the part of the Mexican authorities can be established on the facts as above set forth.

Decision

The claim of the United States of America on behalf of Lottie Sevey is disallowed.

VICTOR A. ERMERINS (U.S.A.) *v.* UNITED MEXICAN STATES

(*April 18, 1929. Pages 219-220.*)

DENIAL OF JUSTICE.—FAILURE TO PROTECT.—DUTY TO PROTECT CONSULAR OFFICERS.—DIRECT RESPONSIBILITY.—RESPONSIBILITY FOR ACTS OF MINOR OFFICIALS. Claimant was American consular agent as well as customs inspector at Puerto Mexico, State of Vera Cruz, Mexico. At time of occupation of Vera Cruz by American naval forces, he was by cablegram instructed by the Department of State to proceed home with his family. A Mexican censor refused to permit delivery of cablegram but claimant was otherwise informed of its contents and he left. The next day his house was found looted of property for which claim was made. The claimant's house was situated just across the street from police headquarters and the Alcalde. Some evidence placed responsibility for the looting with the Alcalde and members of the police force but the grounds upon which such assertions were made were not stated. Claim *allowed* without interest.

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

In April, 1914, when the city of Veracruz was occupied by American naval forces, Victor A. Ermerins, an American citizen, was acting American Consular Agent as well as United States Customs Inspector at Puerto Mexico, State of Veracruz, Mexico. A hostile attitude on the part of the Mexicans towards Americans arose in the town and on April 23 the Department of State of the United States sent Ermerins a cablegram instructing him to proceed home with his family at his discretion. This cablegram was not delivered to Ermerins, because a censor who had been placed in the offices of the telegraph company of the town by the Mexican Government would not let it pass. In the afternoon of April 23, however, a friend of Ermerins, who had learned of the cablegram, urged him to leave the town, with his family, by one of the American vessels that were in the port about to depart, and Ermerins acted accordingly. The next day his house was found looted of property of the alleged value of \$1,464.05, United States currency.

In this case claim in the said sum, with interest thereon, is made against the United Mexican States by the United States of America on behalf of Victor A. Ermerins. The claim is predicated on the contention that not only did the Mexican authorities entirely fail to afford proper protection to the interests of Ermerins and to take appropriate steps to apprehend and punish the perpetrators of the robbery, but that the Alcalde and members of the police force of the town were themselves the robbers.

The contention that the Alcalde and members of the police force perpetrated the crime is based upon letters to Ermerins from the British Vice-Consul and the Agent of the Hamburg-America line at Puerto