

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
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The Home Insurance Co. (U.S.A.) v. United Mexican States

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THE HOME INSURANCE COMPANY (U.S.A.) *v.* UNITED
MEXICAN STATES.

(*March 31, 1926. Pages 51-59.*)

INSURER AS CLAIMANT. No issue as to jurisdiction raised by tribunal in claim by insurer.

RESPONSIBILITY FOR LOSSES INCURRED IN GOVERNMENT OCCUPATION OF RAILWAYS. Respondent Government *held* not responsible in its capacity as operator of railways for shipment lost due to acts of revolutionary forces; *held* obliged, nevertheless, to refund excess transportation charges.

RESPONSIBILITY FOR ACTS OF FORCES.—ACTS OF REVOLUTIONARY FORCES.—FAILURE TO PROTECT. No responsibility *held* to exist when reasonable measures were taken in suppression of revolution.

Cross-references: Am. J. Int. Law, Vol. 21, 1927, p. 157; Annual Digest, 1925-1926, p. 211.

1. This claim is asserted by the United States of America on behalf of the Home Insurance Company, an American corporation, against the United Mexican States to recover the sum of \$23,050.00 with interest thereon from May 28, 1924, on which date it is alleged the claimant paid under two policies of insurance the principal sum mentioned to Westfeldt Brothers, of New Orleans, Louisiana, an American mercantile partnership, composed wholly of American nationals, to indemnify them for losses in transit of two cars of coffee, one originating at Huixtla, Chiapas (Mexico), the other originating at Tapachula, Chiapas (Mexico), both destined to New Orleans via Puerto México, Veracruz (Mexico).

2. The record as submitted is in some respects meager and incomplete and in other respects contradictory and confusing, but, giving due weight to the facts proven and their necessary implications, the Commission finds the facts as follows:

3. On November 23, 1923, Westfeldt Brothers of New Orleans placed an order with El Emporio del Café, S. A., of Mexico City, Mexico, a Mexican corporation, for one car of coffee of the kind and grade and at the prices stipulated, to be paid for by the sight draft of El Emporio del Café, S. A., on Westfeldt Brothers at New Orleans, "insurance cared for by Westfeldt Brothers".

4. On November 27, 1923, Westfeldt Brothers placed another order with El Emporio del Café, S. A., for another car of coffee of different grades and prices, to be insured and paid for by the sight draft of El Emporio del Café, S. A. on Westfeldt Brothers at New Orleans, "insurance cared for by Westfeldt Brothers".

5. On November 30, 1923, in pursuance of the order of November 23, 1923, a car of coffee was shipped from the station of Huixtla, with ultimate destination New Orleans, covered by a through bill of lading issued by the National Railways of Mexico, consigned to shipper's order notify Westfeldt Brothers, New Orleans, and routed by the National Railways of Mexico via Puerto México and the Munson Steamship Line.

6. On December 4, 1923, in pursuance of the order of November 27, 1923, another car of coffee was shipped from the station of Tapachula, likewise

covered by a through bill of lading with ultimate destination New Orleans, consigned and routed in the same way as the shipment mentioned in the preceding paragraph.

7. Both of these cars arrived at Puerto México on December 5, 1923, and on the following day the coffee was removed from the cars and placed in the railroad warehouse to await the arrival of a steamer of the Munson Line for transshipment to New Orleans.

8. The rail lines over which these shipments moved and the warehouse into which the coffee was removed and stored at Puerto México were operated by the Government of Mexico, which at that time had taken over and was operating all or practically all of the rail lines in the Republic of Mexico, most of which were owned by private corporations.

9. At the request of Westfeldt Brothers the claimant herein as of December 1, 1923, issued at Mexico City, through its manager for Mexico, a policy of insurance covering the first shipment, and on December 5, 1923, issued a like policy of insurance covering the second shipment, both in the usual form for the indemnification of Westfeldt Brothers against loss in transit, with the usual limitations not necessary to notice here. Attached to each of said insurance policies in the form of a rider was a "War and Riot Clause" extending to Westfeldt Brothers, in consideration of an additional premium, indemnity against loss caused by "Rioters, Civil Commotion, Rebellion, Insurrection, Military Invaders, Military or Usurped Power or Martial Law, Intervention by Foreign Power or Powers, Robbery by Persons or Bands who take property by Force", but excluding from such coverage "any Acts or Proceedings of the Civil and/or Military Representatives of the Constituted Authorities for the time being".

10. Thereafter, on January 15, 1924, in consideration of an additional premium, the insurance under both of these policies was extended effective as and from January 12, 1924, to cover "loss of and/or damage to the property insured directly caused by Confiscation, Detention or Sequestration by the Constituted Authorities for the time being, whether local or Federal."

11. On or about December 5, 1923, a program was decided upon under the leadership of Adolfo de la Huerta having for its object the overthrow of the administration of President Obregón of Mexico. On December 6 de la Huerta publicly warned Obregón that he would meet the same fate as his predecessor (Carranza) if he continued in his present course, and soon thereafter it was reported that the military forces in several Mexican States, notably Chihuahua, Tamaulipas, Veracruz, Puebla, Jalisco, Michoacan, Guerrero, Oaxaca, Tabasco, Campeche, and Yucatan were in revolt against the Obregón administration and that the Federal officeholders in those States had been replaced by the adherents to the revolutionary movement. Adolfo de la Huerta was a man of influence and had a large following in Mexico. He had taken a prominent part with Carranza when the latter was First Chief of the Constitutionalist Army in launching and prosecuting an ultimately successful revolution against the Huerta administration in 1913 and 1914; later he, with General Calles and others, led a successful revolution resulting in the overthrow of the Carranza administration, after which de la Huerta became Provisional President; after the election of Obregón as President, de la Huerta became his Finance Minister in a cabinet in which General Plutarco Elias Calles held the portfolio of Minister of the Interior. In the fall of 1923 acute friction developed between de la Huerta and Calles, the latter an active and the former a passive candidate for the presidency. This developed into friction between de la Huerta and Obregón. On Sep-

tember 14, 1923, de la Huerta tendered his resignation as Finance Minister, which was immediately accepted. On October 18, 1923, he publicly announced his candidacy for the presidency, which was followed by charges by his political enemies of extravagance and misconduct in office as Finance Minister, which charges were publicly supported by President Obregón. The heat of political contest resulted in riots and bloodshed. A convention of the Cooperative Party was attended by more than 2,500 delegates from every State and territory except Lower California, including a majority of the Chamber of Deputies. On November 23, 1923, this convention repudiated Calles and Obregón, two of the founders of the party, by choosing de la Huerta as its candidate for the presidency. He also had the support of several other political parties. With this strong political following de la Huerta took the field to forcibly overthrow the Obregón administration, which he claimed had been and was disregarding the legislative and judicial departments of the government and had armed political agitators to do its bidding without respect for life, liberty, or property. General Calles withdrew as a candidate for the presidency and took the field against de la Huerta and his followers in defense of the Obregón administration. By the middle of December the opposing armies were reported to be lined up on a 65-mile front in the State of Puebla. On December 15, 1923, the city of Puebla, the third largest in Mexico in point of population, was evacuated by the government troops and entered the next day by the followers of de la Huerta. The cities of Mérida and Progreso, both in Yucatan, were also reported to have fallen into the hands of the revolutionists. By the end of December, 1923, the revolutionists had advanced practically two-thirds of the way from Veracruz to Mexico City. About this time General Obregón took supreme command of his army and prepared to advance to Veracruz. The Government of the United States placed an embargo on all arms, ammunitions, and supplies destined to the rebel forces. At that time de la Huerta had set up at Veracruz an organization which he proclaimed as the provisional government of Mexico. Apparently from this time on de la Huerta experienced difficulty in raising funds with which to prosecute his campaign, and his organization began to crumble. His forces were defeated at Esperanza in January and on February 11, 1924, the Federal forces recaptured Veracruz. So vigorously were the operations against the insurgents prosecuted that by April, 1924, the revolution was practically suppressed. It appeared from the final message of President Obregón, delivered September 1, 1924, that the armed rebels had numbered approximately 56,000 including 25,000 deserters from the army, and that the suppression of the revolution had cost the Federal Government more than 60,000,000 pesos.

12. Among those who had deserted the Federal forces in December, 1923, to become followers of de la Huerta was Brigadier General Benito Torruco, who from time to time, between February 1 and March 10, 1924, seized at Puerto México the two carloads of coffee above-mentioned which were stored in the railroad warehouse at that port. He gave receipts therefor to the Terminal and Customs Agent of the railway there signed by him as "The General of Division, Chief of the Military Operations on the Isthmus".

13. While it does not appear that the rebel forces at and contiguous to Puerto México were numerically strong, it does appear that they were sufficiently strong to cut off all communication from Puerto México from December 6, 1923, to April 2, 1924. It further appears that prior to these

seizures the Terminal and Customs Agent of the railroad at Puerto México made an unsuccessful effort to forward this coffee to New Orleans by the steamship *Sveland*, as no steamer from the Munson Line was available for its transportation.

14. Based on the foregoing findings of fact, the conclusions reached by the Commission follow:

15. The contention that this Commission is without jurisdiction to hear and decide this case because it is predicated on the nonperformance of a contract obligation, and that claims of this nature are not embraced within the Treaty in pursuance of which this Commission is constituted, is rejected for the reasons set forth in the Illinois Central Railroad Company case, docket No. 432, this day decided by this Commission.

16. It is for each nation to decide for itself whether or not it will engage in owning and/or operating railroads or other transportation facilities. In this case it appears that at the time of the losses here complained of the Government of Mexico had taken possession of and was operating the railroads located in the territory under its jurisdiction. As such it was performing a governmental function, but it by no means follows that its liability as a carrier of freight and passengers for hire was in any respect greater than or different from that of a private corporation operating the same railroads. In its capacity as carrier Mexico, as between it and the owner of the goods carried, was subject to the laws of the Republic applicable to other public carriers. Under those laws it received and promptly and safely transported to Puerto México the shipments of coffee the loss of which gave rise to this claim. It was prepared to deliver these shipments to the Munson Line in accordance with the terms of the through bill of lading, but the Munson Line had no ship available to receive them at that port. The railroad's agent made an unsuccessful attempt to forward the coffee by another ship. Because of the cutting off of Puerto México from all mail and transportation communication with the outside world from December 6, 1923, to April 2, 1924, it was not possible for the carrier to move the coffee to a place of greater safety or to communicate with either the shipper or the purchaser. That Westfeldt Brothers as well as the claimant herein knew of the actual or threatened disturbed conditions in the territory through which those shipments must move in transit is evidenced by the fact that Westfeldt Brothers paid an additional premium in the first instance for war-risk insurance excluding acts of the constituted authorities and some five weeks later, but prior to the seizure of the coffee, they paid an additional premium to the claimant for insurance against loss caused by "confiscation, detention, or sequestration by the constituted authorities for the time being, whether local or federal". The de la Huerta revolution had been launched. General Torruco was in command of its military forces at Puerto México and contiguous territory when Westfeldt Brothers procured this extension of insurance coverage from the claimant. Thereafter the coffee was seized and confiscated by General Torruco in his capacity as "Chief of the military operations on the Isthmus". Under the laws of Mexico a public carrier for hire is not liable for the loss or damage to shipments in its possession resulting from "*casos fortuitos*", which includes acts of revolutionary forces, without negligence on its part. In these circumstances the Commission decides that the Government of Mexico is not liable in its capacity as carrier for the loss of the shipments of coffee here involved.

17. But the Government of Mexico in its sovereign capacity owed the duty to protect the persons and property within its jurisdiction by such means as were reasonably necessary to accomplish that end. A failure to discharge that duty resulting in loss or damage to an American national would render it liable here, and the claim against it of such American national, if espoused and presented by the Government of the United States of America, would fall within the jurisdiction of this Commission. The question then arises in this case, Did the Government of Mexico fail in the discharge of its duty as sovereign to take all reasonable measures to protect the coffee in question. The Commission decides that the record as presented discloses no such failure. The de la Huerta revolt against the established administration of the Government of Mexico—call it conflict of personal politics or a rebellion or a revolution, what you will—assumed such proportions that at one time it seemed more than probable that it would succeed in its attempt to overthrow the Obregón administration. The sudden launching of this revolt against the constituted powers, the defection of a large proportion of the officers and men of the Federal Army, and the great personal and political following of the leader of the revolt, made of it a formidable uprising. President Obregón himself assumed supreme command. Through the vigorous and effective measures taken by the Obregón administration what threatened at one time to be a successful revolution was effectually suppressed within a period of five months from its initiation. General Torruco, who seized and personally receipted for the coffee in question was the military commander of the de la Huerta forces on the Isthmus, including Puerto México and the country contiguous thereto. He succeeded in holding this territory on behalf of the revolutionists under de la Huerta and against the established authorities of the Obregón administration. Communication between Puerto México and the outside world was cut off during a period of nearly five months. In these circumstances the Commission finds that on the record submitted the Government of Mexico, then under the administration of President Obregón, did not fail in the duty which in its sovereign capacity it owed to Westfeldt Brothers to protect their property.

18. From the record it appears that Westfeldt Brothers paid the Government of Mexico the through-freight charges on the shipments of coffee in question from the points of origin to New Orleans and that the claimant has reimbursed Westfeldt Brothers for such payment. The Government of Mexico in its capacity as carrier has performed the service which it contracted to perform up to Puerto México but not further. It is therefore obligated to pay to the claimant the division of the through-freight charges from Puerto México to New Orleans, for which payment has been made but no service rendered. Upon the Government of the United States filing with this Commission on or before May 1, 1926, evidence satisfactory to the Commission of the amount due claimant under this decision an award will be entered for such amount in favor of the United States of America on behalf of the claimant against Mexico. Further than this, the Commission finds, the Government of the United Mexican States is not obligated to pay any amount to the Government of the United States of America on account of the claim herein presented.

19. Had the loss herein complained of occurred within the period from November 20, 1910, to May 31, 1920, inclusive, it would seem that the claim would have fallen within the jurisdiction of the Special Claims.

Commission constituted in pursuance of the Special Claims Convention between the United States and Mexico signed September 10, 1923, and effective through exchange of ratifications February 19, 1924. Articles II and III of that convention have no counterpart in the convention under which this Commission is constituted. It is not for this Commission to express any opinion with respect to the liability of Mexico under the evidence as presented by this record if the terms of the Special Claims Convention were applied thereto. It is proper, however, to call attention to the radical difference in the terms of the two conventions and to expressly state, for the guidance of the respective Governments, that what is said in this decision and opinion can have no application to cases falling within the terms of the Special Claims Convention.

FABIAN RIOS (UNITED MEXICAN STATES) *v.* UNITED STATES
OF AMERICA.

(*March 31, 1926. Pages 59-61.*)

PROCEDURE, MOTION TO DISMISS.—RESPONSIBILITY FOR ACTS OF FORCES.—

MILITARY ACTS. While respondent Government would not be responsible for losses resulting from shell fire in taking possession of Veracruz, decision on motion to dismiss for lack of jurisdiction *suspended* in order that allegations of other circumstances of loss may be developed and supported.

Comments: Edwin M. Borchard, "Decisions of the Claims Commissions, United States and Mexico," *Am. J. Int. Law*, Vol. 20, 1926, p. 536 at 542.

This case is before this Commission on the American Agent's motion to dismiss.

1. The claim is put forward by the United Mexican States on behalf of Fabian Rios, who was born and has ever remained a Mexican national, to recover damages in the sum of 6,000 pesos. The pertinent allegation in the Memorial follows:

"That during the battles of the 21st and 22nd of the month and year above stated, fought with the invading forces of the American Government, he was compelled to abandon his residence, because several shells shot by the ships of war of the said Government, fell near his residence. That after having abandoned his home, three of those shells struck his very house, totally destroying his furniture and personal belongings, and what was left of his household and personal articles was stolen by the soldiers and by the populace."

2. The motion to dismiss challenges the jurisdiction of the Commission to hear and decide this case because the losses complained of resulted from the acts of the armed forces of the United States in taking military possession of Veracruz in April, 1914, and not from the administrative acts of the American authorities after the occupation had been accomplished. If it were clear that the Memorial did not allege any damage resulting from the administrative acts of the American authorities, then the motion would be sustained under the previous decisions of this Commission in *El Emporio del Café* case (Docket No. 281), the *Gonzales*