

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

John B. Okie (U.S.A.) v. United Mexican States

31 March 1926

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case (Docket No. 290), and the Lopez case (Docket No. 903), and for the reasons therein stated.

3. But while the allegations in the Memorial are inconsistent and confusing, they must be taken as confessed for the purposes of this motion, and the Commission can not say with certainty that there is no claim for loss or damage suffered by claimant after the military possession of Veracruz had been accomplished. While the Memorial does allege that the American shells which struck claimant's house when the Americans were in the act of taking possession of Veracruz totally destroyed "his furniture and personal belongings" and while it is difficult to understand how after such total destruction there was anything "left of his household and personal articles" to be "stolen by the soldiers and by the populace" due to the lax administration by the American authorities after possession had been accomplished, nevertheless, in view of these ambiguous allegations the Commission is not justified in sustaining the motion to dismiss.

4. The Mexican Agent is given leave to file an amended memorial, with full evidence in support thereof, within thirty days from this date, setting out the facts with greater particularity and reconciling these inconsistencies. A failure to take full advantage of this leave will result in the dismissal of the case.

JOHN B. OKIE (U.S.A.) *v.* UNITED MEXICAN STATES.

(*March 31, 1926. Pages 61-64.*)

IMPROPER COLLECTION OF GOVERNMENTAL CHARGES. Claim for collection of fees arising in connexion with imports, which authorities had agreed to waive, *allowed.*

1. This claim is put forward by the United States of America on behalf of John B. Okie, who was born and has ever remained an American national. From the record it appears that on January 17, 1920, Okie, who was engaged as a sheep breeder in Texas, applied to the Mexican Government through its Department of Finance and Public Credit, for authority to import Merino sheep into Mexico. Unfortunately neither this original letter nor a copy thereof has been produced. It was answered, however, on January 29, 1920, by the Department of Finance and Public Credit of the Mexican Government, a copy of which answer follows:

[Translation]

(To be sent under registered mail)

Federal Executive Power, Mexico, Dept. of Finance & Public Credit, Dept. of Customs Service, Sec. 1, Group 1, No.

Subject: Fixing conditions for temporary importation of ewes through Villa Acuña.

To J. B. OKIE,

670 So. Orange Grove Ave.,

Pasadena, Cal., U. S. A.

Your communication of the 17th inst. at hand, requesting authorization to import 24,000 Merino ewes, of high grade, coming from the State of Texas,

with the idea of having them permanently in Mexico and having the shearing done here, selling the wool in the country; and in reply would state that this Department grants your request under the following conditions:

First: The number of head to be 20,000 and up.

Second: The total importation of same should be made prior to the 30th day of June of this year, and without the collection of any charges.

Third: If for causes of force major you should have to export the stock in question prior to June 30, 1921, you are authorized to do so, the Government collecting the amount of 50 cents per head, as fee for pasturage.

Fourth: After the lapse of one year from July 1st next, the sheep will be considered as definitely nationalized and will be subject to the export duties involved, and you will be governed by the laws now in force on this subjects

The foregoing has been communicated to the Customs House at Villa Acuña for compliance in so far as it may apply.

Constitution and reforms,
Mexico, Jan. 29, 1920.
By order of the Secretary,

CHIEF CLERK.

2. On February 21, 1920, Okie made his first importation into Mexico of something over 13,000 head of sheep on which he was required to pay consular fees and inspection and sanitary fees which he paid under protest.

3. On March 15, 1920, Okie addressed both the Secretary of Finance and Public Credit and the Secretary of Foreign Relations calling their attention to the contract which he claimed to have with the Government of Mexico for the importation into Mexico of 20,000 and upward head of sheep without the imposition of any charges, advising the amount of consular fees and inspection and sanitary fees which were paid by him under protest and respectfully requesting a refund thereof. He added "as I am to make by the 20th of May another importation of 15,000 head of sheep through this same customs house, I would ask that you order that the charges made on this first lot be omitted on all others for which I would thank you in advance".

4. Okie received a reply to these communications from the Department of Foreign Relations of the Mexican Government dated March 30, 1920, reading:

[Translation]

Federal Executive Power, Mexico, Dept. of Accountancy and "Glosa"

Number 1267. Volume 63, Page 5

Matter: I acknowledge receipt of your letter of the 15th inst.
Department of Foreign Relations.

To Mr. V. G. Okie, Acuña, Coahuila.

I acknowledge receipt of your letter to the Secretary of the Treasury and Public Credit, and beg to inform you that as soon as the said Department issues the proper instruction this Department of Foreign Relations will give orders in connection with the case to our Consul at Del Rio with regard to the reimbursement of the duties to which you refer.

I assure you of my sincere consideration.

Constitution and reforms.
Mexico, March 30, 1920.

Alberto C. FRANCO,
Acting Chief Clerk.

5. When on March 29, 1920, Okie imported into Mexico the second herd, consisting of 11,500 sheep, like charges for consular fees and sanitary fees were imposed and paid by him under protest. The total fees paid by him on both herds aggregated 5,890.38 pesos.

6. The claimant asks an award for this amount with interest thereon. As far as the Commission can infer from the incomplete evidence submitted, Okie and the Mexican authorities placed a different interpretation on the contract evidenced by the correspondence above referred to. As Mexico had at that time imposed no import duties on sheep and as a permit to import sheep was not required by its laws, Okie seems to have interpreted the words found in the letter to him of the Mexican Department of Finance and Public Credit, dated January 29, 1920, "without the collection of any charges" as applying to all government taxes, fees, or charges of any nature. The Mexican Government on the other hand contends that under its constitution and laws its officers are without the power to remit any taxes or fees imposed by law and that the words quoted in effect was a mere statement that import duties did not exist.

7. In considering which party was responsible for this misunderstanding, the Commission finds that the entire fault lay with the Mexican officials. When the Mexican Treasury Department on January 29, 1920, with full knowledge of the nonexistence of import duties on sheep, wrote to Okie, the sheep breeder, granting authority to import sheep without paying any "derechos", they certainly did not convey to him the understanding that the Government meant "derechos de importación" only. Okie's letter of March 15, 1920, asked for refund under his contract of consular fees and inspection and sanitary fees and that the border customs-house authorities be instructed not to impose such fees on the second shipment which he intended to make in May. When, with this letter before it, the Mexican foreign office wrote Okie on March 30, 1920, that as soon as the Treasury Department "issues the proper instruction this Department of Foreign Relations will give orders * * * with regard to the reimbursement of the duties to which you refer", Okie could not possibly have understood from this letter that the particular fees mentioned in his letter could not under the law be refunded to him. He was justified in assuming that no such fees would be demanded on the second shipment which he notified the Mexican authorities he intended to make and which he notified the Mexican authorities he intended to make and which he actually made during the month of May. Therefore, the misunderstanding between the parties and the resultant damage sustained by Okie was due entirely to the fault of the government officials resulting in injustice to Okie. Under the express terms of the Treaty under which this Commission is constituted the Mexican Government must therefore indemnify him.

8. Okie, however, was not justified in understanding that the Mexican Government would do more than waive any charges collected by or for the account of the Government itself and which would ordinarily find their way into the Mexican treasury. From the 5,890.38 pesos paid by Okie should be deducted such fees as were paid to the veterinary expert who was not an official of the Mexican Government for his service in inspecting the sheep. An award will be made against Mexico for the balance with interest thereon. The Agencies are requested to submit to the Commission on or before July 1, 1926, a statement, if practicable, in the form of a stipulation of the facts signed by both Agents, disclosing the amount for which an award will be made under this decision.

9. As the claim was liquidated as to amount on May 29, 1920, the date of the last payment, the award will bear interest at the rate of 6% per annum from that date.

Interlocutory decision

10. For the reasons stated the Commission decrees that the Government of the United Mexican States is obligated to pay to the United States of America on behalf of John B. Okie an amount to be ascertained in accordance with the foregoing opinion with interest on such amount at the rate of 6% per annum from May 29, 1920. Upon the filing by the Agents of the report requested a final award will be entered.

NICK CIBICH (U.S.A.) *v.* UNITED MEXICAN STATES.

(March 31, 1926. Pages 65-67.)

RESPONSIBILITY FOR ACTS OF MINOR OFFICIALS.—DIRECT RESPONSIBILITY.

Claim for money of which police took possession when claimant was arrested but which was never returned, *disallowed* in absence of proof of lack of reasonable care on part of authorities.

Cross-reference: Annual Digest, 1925-1926, p. 220.

1. This claim is asserted by the United States of America on behalf of Nick Cibich, a young naturalized American citizen, who on the evening of May 23, 1923, being drunk in the streets of Pánuco, Veracruz (near the very center of the oil district of Tampico), was locked up in a cell by the police until the next morning, to sleep himself sober. His money, either to the amount of \$460 or \$475, was taken from him by the chief of police for safe-keeping; but was stolen during the night by a gang of liberated prisoners and faithless policemen, and therefore could not be returned to him the next morning. The United States claims an amount of \$475 (which seems to have been inferred from the amount of about 950 pesos, mentioned in the first Mexican police report, and was never mentioned by Cibich, himself, before his affidavit of October 17, 1924), with interest.

2. It is significant that the United States does not make and apparently could not make any claim for false imprisonment, but seeks only to recover the amount of money alleged to have been stolen with interest thereon. The references to the failure to try the claimant for any offense and the failure to impose on him any fine for drunkenness and the negligence of the local authorities in failing to apprehend and prosecute the offenders and the fact that among the gang of thieves were faithless policemen are all mentioned merely in an effort to impute to Mexico some sort of responsibility for the crime committed within its borders.

3. It is unnecessary here to inquire under what particular provisions of the Mexican law the Pánuco police authorities were entitled to take into custody a drunken man found upon its streets. Such authority by express statute or well-established custom exists in every civilized country of which the Commission has knowledge.

4. If Cibich had not been put in jail and his money had not been taken into custody by the police, would Mexico have been held responsible