

**REPORTS OF INTERNATIONAL  
ARBITRAL AWARDS**

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**RECUEIL DES SENTENCES  
ARBITRALES**

**The Home Insurance Company (U.S.A.) v. United Mexican States**

7 October 1926

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if in his drunken condition he had been set upon and robbed by a gang of thieves? There seems no reason to believe it. Or, under the same conditions would Mexico have been held responsible because of the presence, among the thieves, of two defecting policemen? There seems no reason to believe it. If he had been imprisoned, and his money withdrawn from him and locked up in a safe place, even if this place had been invaded by the thieves after having overpowered the custodian, would Mexico have been held responsible? This too must be answered in the negative. Therefore, the claimant's case must rest on the fact that the police authorities, having taken Cibich's money in custody, did not put it in a safe and well-locked place, but placed it in the drawer of a table. This fact, it is true, appears in the first police report presented immediately after the occurrence (that of May 24, 1923), and it is repeated in the testimony of January 21, 1925 (or 1924); but a report of December 24, 1924, speaks of "deposited in the safe (*en la caja*) of the police station", and mentions the keys of this safe, and Cibich's own report of May 29, 1923, before the American Consul states upon his inquiries that it had been "deposited in the safe, and locked up," and that "the keys of the safe were delivered, in his presence, to a man in charge of guarding the jail". The allegation that the police failed to use reasonable care in safeguarding the money taken into custody by them is not confirmed by any further evidence than that above-mentioned, which does not support the claim that it was placed in an open drawer (the reports say just: "*en el cajón de la mesa*" and "*en el cajón de una mesa*"), and does not entitle the Commission to build upon it the far-reaching conclusion of official malfeasance. This is particularly true as the Memorial itself, which was never amended, alleges that the money was "placed in the safe of said jail and the keys of said safe given to one of the public guards or police in charge of said jail in the presence of the said (drunken) claimant".

5. As on the record submitted the claimant was legally taken into custody and as the money he had on his person was properly taken by the police for safe keeping, and as the weight of the evidence fails to disclose any want of reasonable care on the part of the Mexican authorities in connexion with the loss of such money, it is unnecessary for the Commission to inquire into the right to assert this claim before this Commission based on the acts or omissions of the municipal officers of Pánuco.

#### *Decision*

6. The Commission decrees that the Government of the United Mexican States is not obligated to pay to the Government of the United States of America any amount on behalf of Nick Cibich on account of the claim asserted herein.

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

(October 7, 1926. Page 68.)

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RESPONSIBILITY FOR LOSSES INCURRED IN GOVERNMENT OPERATION OF  
RAILWAYS. Claim for excess freight charges *allowed*.

1. The Commission, in its opinion rendered in this case on March 31, 1926, stated that the Government of Mexico was obliged to pay to the claimant the division of the through freight charges from Puerto México to New Orleans. The Commission added that, upon the Government of the United States filing on or before May 1, 1926, evidence satisfactory to the Commission of the amount due claimant under this decision, an award would be entered for such amount.

2. The American Agent, on April 30, 1926, filed testimony, satisfactory to the Commission, stating the division of the through freight charges from Puerto México to New Orleans to have been \$594.14 (five hundred and ninety-four dollars fourteen cents, United States currency).

3. Therefore, award is hereby given that, on account of the claim herein presented, the Government of the United Mexican States is obligated to pay \$594.14 to the Government of the United States of America.

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DAVID GONZALEZ (UNITED MEXICAN STATES) *v.* UNITED STATES OF AMERICA.

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UNLAWFUL COLLECTION OF CUSTOMS DUTIES BY OCCUPYING MILITARY FORCES. Claim for double payment of export duties to Mexican authorities and occupying American military authorities *dismissed* for lack of jurisdiction.

1. The Commission, by its decision in this case rendered March 2, 1926, gave the Mexican Agent leave to file an amended Memorial within thirty (30) days from that date, "setting out facts, if any exist, constituting a wrong by the American authorities in the administration of the customs by them", and bringing the case within the principles and rules announced in the interlocutory decision in the El Emporio del Café case on the same day. The Commission stated that, in the absence of such allegations, the case would be dismissed.

2. As the amendment to the Memorial, filed March 27, 1926, does not contain any such allegation with respect to wrongful action on the part of the American authorities in the administration of the customs by them, but raises a controversy which the Commission in its interlocutory decision in the El Emporio del Café case explicitly declared to be outside its jurisdiction, the case is hereby dismissed.

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

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PROCEDURE, MOTION TO DISMISS. When decision on motion to dismiss was postponed in order to permit of the further investigation of facts