

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Martha Ann Austin (U.S.A.) v. United Mexican States

24 October 1930

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Decision

The United Mexican States shall pay to the United States of America on behalf of Harry H. Hughes, the sum of \$119.64 (one hundred nineteen dollars and sixty-four cents) United States currency, with interest at six per centum per annum, from June 13, 1908 until the date on which this Commission shall render its final decision.

MARTHA ANN AUSTIN (U.S.A.) *v.* UNITED MEXICAN STATES

(October 24, 1930. Pages 108-112.)

NATIONALITY, PRESUMPTION OF. When evidence in support of claimant's nationality establishes a strong presumption of American nationality and respondent Government filed no evidence to the contrary, *held*, American nationality sufficiently proven.

DENIAL OF JUSTICE.—FAILURE TO APPREHEND OR PUNISH.—BURDEN OF PROOF.—EFFECT OF NON-PRODUCTION OF EVIDENCE AVAILABLE TO RESPONDENT GOVERNMENT. Claimant's husband was murdered in Mexico and murderer was reported to have escaped to the mountains in rebel territory. An American consular report made over a year later noted thirteen murders of American citizens, including instant case, in which no judicial proceedings had been instituted. No evidence to justify or explain such inaction of the authorities was produced by respondent Government. Claim *allowed*.

Cross-reference: British Yearbook, Vol. 12, 1931, p. 167.

Comments: Edwin M. Borchard, "Recent Opinions of the General Claims Commission, United States and Mexico", Am. J. Int. Law, Vol. 25, 1931, p. 735 at 739.

The Presiding Commissioner, Dr. H. F. Alfaro, for the Commission:

This claim is presented by the Government of the United States of America on behalf of Mrs. H. W. Austin, against the United Mexican States for the purpose of obtaining an indemnity for losses and damages arising from the murder of Samuel Alfred Austin, son of the claimant, at the hands of a Mexican national and from the failure of the Mexican authorities to take adequate measures for the apprehension and punishment of the person responsible for the death of Austin.

The claimant Government maintains that this omission constitutes a denial of justice which merits an indemnity of \$25,000.00 United States currency, or its equivalent, with interest.

Simultaneously with the filing of the Memorial a motion praying for the substitution of the name of Martha Ann Austin as the claimant in place of the name of Mrs. H. W. Austin, was filed. The Commission, following the practice already established in analogous cases, granted the motion by Order No. 116.

The facts upon which the claim is grounded occurred as follows: In the late afternoon of August 31, 1918, at the "Alamo" Camp of the Penn Mex

Fuel Company, near Tuxpan, State of Vera Cruz, Austin was accosted by a Mexican whom he did not know, and who, for no cause or reason known to him, cursed and insulted him. Austin immediately left the place where he had been so accosted and after walking a short distance heard someone call "look out". As he turned, the Mexican who had cursed and insulted him, struck him with a machete. As a result of the wound, Austin died almost instantly. Immediately after the commission of the crime the murderer fled, and the local authorities, who could easily have identified him, failed to apprehend and punish the murderer and no measures to this end have ever been taken.

In order to establish these facts there was filed with the Memorial only an affidavit of the claimant herself (Annex 6). Later, the American Agency filed with its reply further evidence consisting of several despatches from the American Vice Consul in charge at Tampico, addressed to the Department of State at Washington, and certified copies of letters exchanged between the American Consul at Tampico and the American Consular Agent at Tuxpan.

Attached to despatch number 538, dated October 1, 1918, appears the consular report of the death of Samuel Arthur Austin, an American citizen by birth, which occurred at the oil Camp "Alamo", Alamo, Vera Cruz, Mexico, on August 31, 1918, at 6.40 p.m., as the result of a fatal wound inflicted by a Mexican. According to the same report the body was embalmed and sent to the home of the deceased in Waco, Texas, aboard the oil tanker *H. H. Rogers* on the 1st of September. This report was rendered in Tampico by Willis A. Ward, American Vice Consul (in charge).

By virtue of a stipulation between the Agencies of Mexico and the United States, the Commission received certain additional evidence consisting of two letters and a certificate of George H. Clayton and a letter from W. E. Livingston and one from Russell F. Scott, respectively, subscribed to before a Notary Public and certified to by the latter.

The Mexican Agency has denied that for the purpose of international law and particularly for that of the Convention of September 8, 1923, the standing and the American nationality of the claimant and her relationship to Samuel Arthur Austin, have been duly established. The Commission is of the opinion that the evidence submitted with that end in view creates at least a strong presumption in favor of the claimant, and as the respondent Government has not filed any evidence to the contrary, it is held, in accordance with precedents already established in relation to this point, that those facts are sufficiently proven.

The affidavit of the claimant filed with the Memorial, as well as evidence submitted later by the American Agency, leaves no doubt as to the violent death of Austin caused by the fatal wound inflicted by a Mexican national in an oil camp belonging to the Company where the former was employed.

On the other hand, the evidence adduced by the claimant to determine the negligence of the Mexican authorities in the pursuit of the murderer in order to effect his apprehension and punishment, is quite deficient and even contradictory.

In the letter of Chas. R. Alder, of the Penn Mex Fuel Company to the American Consul at Tampico, of September 5, 1918, it appears that "After proper examination before the local authorities, the body was released and shipped to the United States in one of the oil boats, accompanied by R. T. Scott." Alder adds that as soon as he received the official report from the

Company he would transmit it to the Consul, but there is no record of his ever having done so.

In a letter dated September 2, 1918, addressed to the same American Consul at Tampico by the American Consular Agent at Tuxpan, this official states, after reporting the death of Austin, the following: "The Mexican escaped in the mountains and as it is in rebel territory nothing can be done to apprehend him. The body was embalmed and shipped to the United States on the tanker *H. H. Rogers*."

As may be seen, nothing is said about the authorities having been notified of the occurrence, to the contrary, the expression "nothing can be done to apprehend him" (the criminal), seems to indicate that from the first moment the American Consular Agent at Tuxpan, as well as the American Consul at Tampico, considered any effort in that direction to be useless, and hence abstained from making the necessary reports to the authorities. This supposition is confirmed by despatch number 178, dated February 9, 1927, of the American Consul at Tampico to the Secretary of State at Washington, wherein, after relating the facts as appearing in the records of the Consulate, he adds: "As hereinbefore stated, it was the opinion of the Consular Agent at Tuxpan at the time that, since the murderer had escaped to rebel territory, nothing could be done to effect his apprehension, and there is nothing in the records of this Consulate to show that any further action was taken in the matter."

In despatch number 868 dated December 19, 1919, the same American Consul at Tampico, in a report to the Secretary of State at Washington, relative to the murder of American citizens committed in the District since February of 1917, states that in thirteen cases, including that of Austin, no judicial proceedings had been instituted.

The additional evidence submitted by the American Agency is not sufficiently accurate and is lacking in corroboration. Nevertheless, it appears impossible that the Mexican authorities in the oil fields or in Alamo should have had no knowledge of the event, due to its serious character as well as to its having occurred in a public place. The Mexican Agency has not submitted any evidence to justify or even to explain this omission of the authorities, which constitutes a form of denial of justice.

The responsibility of the Mexican Government, although not a little attenuated by the deficiencies noted, is evident, for which reason an indemnity in favor of the claimant is justified.

The Commission having in mind the established precedents, is of the opinion that the amount of the award should be \$6,000.00 United States currency, without interest.

Decision

The United Mexican States shall pay to the United States of America, on behalf of Martha Ann Austin, the sum of \$6,000.00 (six thousand dollars), United States currency, without interest.
