

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Sophie B. Sturtevant (U.S.A.) v. United Mexican States

5 November 1930

VOLUME IV pp. 665-669



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GEORGE W. COOK (U.S.A.) *v.* UNITED MEXICAN STATES

(November 5, 1930. Pages 167-168.)

CONTRACT CLAIMS.—COMPUTATION OF AWARD.—AWARD CALCULATED AS OF TIME WHEN CONTRACT DEBTS WERE PAYABLE.—RATES OF EXCHANGE. Claim arising under circumstances similar to those set forth in *George W. Cook* claim *supra* allowed and reasoning of that case followed.

INTEREST. Interest awarded from date of latest invoice in the record to the date on which the last award is rendered by the tribunal.

(Text of decision omitted.)

SOPHIE B. STURTEVANT (U.S.A.) *v.* UNITED MEXICAN STATES

(November 5, 1930, Pages 169-174.)

FAILURE TO PROTECT. An American mine superintendent informed the Mexican authorities that his life had been threatened by a discharged employee. Said employee was arrested, but a few days later it was reported he was at liberty in Palmarito, where the mines in question were located. The superintendent protested to the authorities and stated that in the circumstances he was afraid to continue his work. The authorities advised that the former employee had been fined but refused to take further action. Two days later the superintendent was found dead in the mine, apparently having been shot from ambush. *Held*, in absence of evidence that discharged employee was guilty of attack, lack of protection by respondent Government not established.

DENIAL OF JUSTICE.—FAILURE TO APPREHEND OR PUNISH.—SUBSTITUTION OF TREASURY OFFICIAL FOR PROSECUTING ATTORNEY. Where investigation of crime was promptly begun and proceeded with reasonable diligence, *held*, denial of justice not established. Intervention of a Collector of Revenue as the representative of the Prosecuting Attorney *held* not an irregularity. Fact that only person arrested for crime was not the discharged employee suspected to be guilty and such person was thereafter released *held*, in the circumstances, not a denial of justice.

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 United States of America on behalf of Sophie B. Sturtevant against the United Mexican States to obtain indemnification in the sum of \$100,000.00 (one hundred thousand dollars) United States currency, for losses and damages suffered as the result of the murder of her husband, Charles Ferris Sturtevant, an American citizen, which occurred on June 4, 1924, in Mocorito, State of Sinaloa, Mexico.

The facts which gave rise to this claim are related by the claimant in the following manner:

"From February 1, 1923, until his death on June 4, 1924, Charles Ferris Sturtevant was the Mine Superintendent of the Palmarito at Mocorito, Sinaloa, Mexico, operated by the Compania Minera de Palmarito, a subsidiary of the Barnsdall Corporation, an American corporation.

"On May 27, 1924, Sturtevant dismissed two machine men for sleeping while on duty and for bad work. On the following day, May 28, shortly after four o'clock, Ramón Cuadras, one of the dismissed machine men, met Sturtevant on the tramway between the mine and the mill at a point where he was free from observation from either the mill or the mine. He demanded to be put back to work, and pulling out a large knife attacked, abused, and threatened to kill Sturtevant. After some discussion, Sturtevant, being unarmed and in imminent danger of being instantly killed, told Cuadras to come out in the morning at his old job. Cuadras threatened to kill Sturtevant if he spoke of this meeting.

"Sturtevant promptly told Superintendent Cadagon about the attack, and that evening he had Cuadras arrested and placed in jail at Mocorito. The following morning Sturtevant and Cadagon informed Mabor Sanchez, Presidente Municipal of Mocorito, of the facts and circumstances of the attack made by Cuadras upon Sturtevant.

"On Monday, June 2, 1924, Sturtevant was informed by an American representative of another company operating in the same neighborhood that Cuadras was at liberty, and was at that moment in Palmarito, where the mines, of which Sturtevant was the superintendent, were located. Sturtevant, accompanied by W. D. Blackmer, Vice President and Manager of the Compania Minera de Palmarito, immediately went to Mocorito, and protested to the Presidente Municipal that Cuadras had not been sufficiently punished, and informed him that Sturtevant was afraid to continue his work with this man at large under the conditions then existing in that territory. The Presidente Municipal informed them that he had fined Cuadras 25 pesos, and gave them his assurance that he would immediately leave Palmarito, but refused to prosecute Cuadras further or to take any further or other action for the protection of Sturtevant, or to prevent injury of the employees or damage to the property of the Company.

"On Wednesday afternoon, June 4, 1924, at about 4 o'clock, Sturtevant left the office of the company and went to the mine in the discharge of his customary duties. At about 4.30 p.m. a workman notified W. D. Blackmer, the Manager of the Company, that Sturtevant had been killed at the mine.

"Manager Blackmer and Superintendent Cadagon went at once to the mine and found the dead body of Sturtevant lying in a pool of blood in one of the tunnels leading to the mine, and were informed that the body had been discovered by the shift boss, Miguel Arredondo.

"The local Mexican official was notified, and under his orders the body was left undisturbed until the arrival at about 8 p.m. of the *Ministro Publico* from Mocorito, who after making an official investigation turned the body over to the representatives of the Company.

"An examination of the body disclosed three (3) bullet holes, and the lead marks in the tunnel indicated that the shots were fired from ambush from the drift off the tunnel.

"The facts and circumstances hereinabove recited were promptly reported not only to the local Mexican authorities, but also to the Governor of the State of Sinaloa, and a detailed report was sent to the American Consul at Mazatlán, Sinaloa.

"Although the Mexican authorities were fully informed of the circumstances connected with the murder of Sturtevant, they neglected to take the necessary prompt measures to apprehend the person or persons responsible therefor. On account of this delay, the Government of the United States, through the American Embassy in Mexico City, and the American Consul at Mazatlán,

officially called the matter to the attention of the Mexican authorities, and requested the apprehension and punishment of the persons responsible for the crime. Finally, after these representations from the Government of the United States, on June 26, more than three weeks after the murder, one Andrés López, a former employee of the Compañía Minera de Palmarito, was arrested and charged with having murdered Sturtevant.

"In January, 1925, however, the Mexican authorities released the said Andrés López, and he returned to the camp of the Compañía Minera de Palmarito, where he has threatened and menaced the employees of that Company.

"The Mexican authorities have made no further efforts to apprehend and adequately punish the murderer of Sturtevant, and the person or persons responsible therefor remain at large, untried and unconvicted, and the Government of the United States, although making frequent and urgent representations, has never been able to obtain any proper or adequate action on the part of the Mexican authorities for the punishment of said murderer, or to the end that justice may be done on account thereof."

The Agency of the claimant Government alleges that the Government of Mexico has incurred international responsibility on three grounds, to wit:

First: Failure to give adequate protection to Charles Ferris Sturtevant when the Mexican authorities had notice that his life was in danger, and lenity in permitting one Ramón Cuadras, who, with intent to kill, assaulted Sturtevant, to go free on payment of an insignificant fine;

Second: Inadequacy of the criminal proceedings instituted against Andrés López; and

Third: Failure of the Mexican authorities to take reasonable, timely and adequate steps to apprehend and punish the persons responsible for the murder of Charles F. Sturtevant.

With respect to the first point the Commission is of the opinion that to establish the responsibility of the Government of Mexico there is lacking an essential element, that is, the evidence that Ramón Cuadras was guilty of the crime perpetrated on the person of Charles Ferris Sturtevant. If it had been possible to clear up this point, it is obvious that the respective authorities could have been properly accused of culpable negligence for not having taken preventive measures on behalf of Sturtevant after having been advised of the threats made against him by Cuadras.

As to the penalty imposed upon the latter by the Municipal President of Mocorito, it may be said that in the opinion of the Commission, the said official acted legally in assuming jurisdiction of the case, and that the penalty imposed upon Cuadras can not be deemed inadequate, although this point is really lacking in importance in view of what has been expressed in the preceding paragraph.

With regard to the second charge, the Commission finds in the instant record no conclusive evidence to justify it. On the contrary, a reading of the decision rendered by the Auxiliary Judge acting for the Judge of the Court of First Instance of the Municipality of Mocorito, a copy of which, duly authenticated, was attached to the Answer of the Mexican Agency, reveals that the authorities proceeded with reasonable diligence in the investigation of the crime, and especially in the inquiry as to the responsibility of Andrés López who was formally charged by the Attorney General of the State with the murder of Charles Ferris Sturtevant.

The Attorney General having been specially commissioned to investigate the facts, the proceedings were directed by that official. It appears in the aforementioned decision that these proceedings were begun on June 26th

and that on the 28th of the same month the Judge of the Court of First Instance formally committed López to prison.

From the 4th of June, the date on which the crime occurred until the 26th of the same month, the Prosecuting Attorney of Mocorito made the investigations necessary to establish the *corpus delicti* and to ascertain the identity of the persons responsible therefor. As can be seen, there was no unjustifiable delay.

Neither does there appear to have been any delay in the proceedings during the time included between the date on which the Judge of the Court of First Instance took cognizance of the case and the 13th of October when the investigation was concluded and the cause remitted to both parties for the purposes of Article 211 of the Code of Criminal Procedure of the State of Sinaloa.

The claimant Government objected in its oral argument, to the intervention of a Collector of Revenue as the representative of the Prosecuting Attorney and called the attention of the Commission to the fact that this official had asked for the acquittal of the accused. But the decision shows that the intervention of the Collector in question was in compliance with an order of the trial Court by reason of a legal excuse filed by the Prosecuting Attorney. With respect to the plea for acquittal made by the treasury employee acting as the Prosecuting Attorney it can be seen in the said decision that by order of the Judge, the plea in question was attached to the records of the case and these originals sent to the Attorney General of the State of Sinaloa for the purposes of Article 220 of the Code of Criminal Procedure. The Attorney General disapproved the non-accusatory plea of the subordinate and pleaded condign punishment for the accused, Andrés López.

The Judge rendered a decision of acquittal on January 21, 1925, leaving open the investigation to be continued against any person or persons who might be found responsible for the murder of Charles Ferris Sturtevant, basing his action upon the findings resulting from the proceedings and the provisions of the law applicable to the case.

It is a question of surmise, more or less, whether the judicial authorities omitted any effort to ascertain the identity of, and to punish, the guilty person; but it is clear that there is no evidence or record of any negligence so palpable as to constitute a violation of international law.

Counsel for the American Agency referred at considerable length to the fact that certain persons who might have been able to throw some light on the crime were not called upon to testify. That omission certainly would have been serious in its effect on the international responsibility of the Government of Mexico, if it had been established that the testimony of such persons was so important and decisive that its lack would have caused the failure of the investigation. But from the very evidence submitted by the American Agency it is deduced very clearly that the statements of those witnesses, owing to the fact that there were no eye-witnesses to the crime, would not have thrown any new light upon the profound mystery in which unfortunately the crime remained enshrouded from the moment of its execution.

As to the third point, the Commission has already stated, in its discussion of the previous charge, that it does not find that there was any unjustifiable delay in the proceedings followed in order to ascertain the identity of the person or persons responsible for the murder in question.

With regard to the complaint of the claimant Agency of the failure of the Mexican authorities to continue the investigation after having decreed the liberty of Andrés López, it is noted that the law imposes no obligation upon the judicial authorities to prosecute those investigations within any fixed period and consequently their action depends upon whether as the result of some unforeseen cause fresh clews are discovered which may lead to the clearing up of the facts.

By reason of the foregoing the Commission is of the opinion that this claim must be disallowed.

Nielsen, Commissioner:

I concur in the disallowance of the claim.

Decision

The claim of the United States of America on behalf of Sophie B. Sturtevant against the United Mexican States is disallowed.

DICKSON CAR WHEEL COMPANY (U.S.A.) *v.* UNITED MEXICAN STATES

(*July —, 1931, dissenting opinion by American Commissioner, undated. Pages 175-206.*)

CONTRACT CLAIMS.—CREDITORS CLAIMS.—SEQUESTRATION.—RESPONSIBILITY FOR DEBTS OF SEQUESTERED CORPORATION.—CLAIMS AGAINST GOVERNMENT-OWNED CORPORATION.—UNJUST ENRICHMENT AS A BASIS FOR INTERNATIONAL CLAIM. Claim was made for car wheels sold and delivered to National Railways of Mexico prior to date possession thereof was taken by Mexican Government. Said corporation retained its corporate existence from date of sequestration of its property in December, 1914, to date of return of such property in 1925. During such period the railways were operated by the Mexican Government and no part of the revenues therefrom was paid over to such corporation. Following such period the net revenues therefrom were distributed in accordance with a certain agreement between the Mexican Government and the International Committee of Bankers. Claim disallowed, since (i) injury, if any, was against a Mexican corporation, (ii) creditor of such corporation has no standing to present an international claim, (iii) suit in Mexican courts was at all times available to claimant for such debt, and (iv) no basis of claim for unjust enrichment lies, inasmuch as any obligation to compensate for use of car wheels would have been owed to Mexican corporation, whose property they became on sale and delivery.

PROCEDURE.—FORMALITIES IN RENDERING AWARD. Fact noted, in dissenting opinion of American Commissioner, that "Decision" signed by other two Commissioners was not rendered at "a public sitting" as required by rules of procedure.