

**REPORTS OF INTERNATIONAL  
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES  
ARBITRALES**

**J. and O.L.B. Nason and Aubrey Williams (U.S.A.) v. United Mexican States**

2 November 1926

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*Decision*

11. For the reasons stated above the Commission decides that the Government of the United Mexican States must pay to the Government of the United States of America on behalf of Harry Roberts \$8,000.00 (eight thousand dollars) without interest.

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J. AND O. L. B. NASON AND AUBREY WILLIAMS (U.S.A.) *v.*  
UNITED MEXICAN STATES.

(November 2, 1926. Pages 106-108.)

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WRONGFUL DEATH.—RESPONSIBILITY FOR ACTS OF MINOR OFFICIALS.—  
DIRECT RESPONSIBILITY. Evidence *held* not to establish that decedent was wrongfully killed by Mexican customs guards or that the respondent Government condoned wrongful acts on the part of such guards.

1. The same occurrences are the basis of these two claims, and the two Agencies expressed their intention to rely in their arguments on substantially the same evidence which was not filed with both records. The Commission therefore ordered the consolidation of the claims on October 29, 1926.

2. One of these claims is presented by the United States against the United Mexican States in behalf of James Nason and Ophelia Le Barre Nason, father and mother of Hilton Nason, who was killed on December 13, 1922, on the Mexican side of the Rio Grande near Boquillas, Coahuila. The other claim is made in behalf of Aubrey Williams, who was wounded at the same time and place. It is alleged in the Memorials that the two men went on a hunting expedition on the Mexican side of the river; that they obtained some kind of permit to carry arms, written with pencil by an armed Mexican river guard (or customs guard) who signed himself Antonio Flores; that about sunset they were halted by Flores and two or more other armed men and were ordered to throw up their hands; and that thereupon Nason was shot and Williams wounded. Claim is made in the Nason case for indemnity in the sum of \$25,000 and in the Williams case in the sum of \$15,000.

3. With respect to questions of nationality raised by the Mexican Government in each of these cases, the Commission calls attention to the principles asserted in paragraph 3 of its opinion rendered in the case of William A. Parker on March 31, 1926. On the record as presented the Commission holds that it is established that the claimants were by birth, and have since remained, American nationals.

4. From evidence in the somewhat meager records in these cases it appears that the two Americans crossed over to the Mexican side of the river to hunt; that they had no legal permit to do so; that they met some Mexicans, two of them being river guards; and that there was a quarrel and a fight in which Flores and Nason were killed and Williams slightly wounded.

5. From the Memorial filed in the Nason case it would appear that the claim is based on the theory that the Mexican Government is responsible for the acts of some official or officials who wrongfully killed Hilton Nason. But there is no evidence other than the affidavit of Williams that he and his

companion obtained some kind of an informal permit; there is no other evidence that Nason was wrongfully killed; and some evidence produced by the American Agent tended strongly to show that Nason was not wrongfully and unlawfully killed. The Commission therefore must hold that the claim has not been substantiated.

6. In the Memorial filed in the Williams case it is alleged that Williams was killed by "an armed Mexican customs guard in the service of the Government of Mexico" and that "the said Government of Mexico did not punish him for the wrongful acts committed by him as set forth herein, but instead absolved him from all responsibility and condoned the wrongful acts committed by him." The record before the Commission with respect to allegations of wrongful shooting of Williams is the same as that with respect to the unsubstantiated allegations of wrongful killing of Nason. And no evidence was presented by the United States to support a charge that the Mexican Government condoned wrongful acts on the part of the customs guards. The Commission must therefore also hold that no valid claim has been established in this case.

#### *Decision*

7. The Commission accordingly decides that these consolidated claims must be disallowed.

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LAURA M. B. JANES *et al.* (U.S.A.) *v.* UNITED MEXICAN STATES.

*(November 16, 1925, separate statement regarding damages by  
American Commissioner, November 16, 1926. Pages 108-131.)*

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FAILURE TO APPREHEND OR PUNISH. Evidence *held* to establish lack of diligence of Mexican authorities in apprehending killer of American citizen. Claim *allowed*.

DIRECT AND INDIRECT RESPONSIBILITY.—DENIAL OF JUSTICE.—MEASURE OF DAMAGES. Measure of damages in cases of denial of justice based on condonation theory rejected and damages instead allowed limited to such as follow from respondent Government's failure to apprehend and punish, including damages for material losses and for personal indignity and grief.

*Cross-references:* Am. J. Int. Law, Vol. 21, 1927, p. 362; Annual Digest, 1925-1926, pp. 218, 256; British Yearbook, Vol. 8, 1927, p. 184.

*Comments:* Edwin M. Borchard, "Important Decisions of the Mixed Claims Commission, United States and Mexico," Am. J. Int. Law, Vol. 21, 1927, p. 516; J. L. Briery, "The Theory of Implied State Complicity in International Claims," British Yearbook, Vol. 9, 1928, p. 42; Clyde Eagleton, "Measure of Damages in International Law," Yale L. Jour., Vol. 39, 1929-1930, p. 52 at 55 *et seq.*; Joseph Conrad Fehr, "International Law as applied by U.S.—Mexico Claims Commission," A.B.A. Jour., Vol. 14, 1928, p. 312 at 313; Charles Cheney Hyde, "Concerning Damages Arising from Neglect to Prosecute," Am. J. Int. Law, Vol. 22, 1928, p. 140; G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission," Law Q. Rev., Vol. 49, 1933, p. 226 at 230.