

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

William McNeill (Great Britain) v. United Mexican States

19 May 1931

VOLUME V pp. 164-168



NATIONS UNIES - UNITED NATIONS
Copyright (c) 2006

to the Carrancista forces, who afterwards established a Government. They therefore fall within the terms of subdivision 2 of Article 3 of the Convention, and Mexico must be held responsible for their acts.

5. It will always be difficult, and in a majority of cases impossible, to ascertain the exact extent of losses suffered as a result of confiscation and robbery. The number of cart-loads of beans and of head of cattle taken may be subject to controversy. In this case the allegations regarding the items of loss have been confirmed, if not as far as the ultimate details, at least to a very great extent. Deponents all bear witness to the fact that during several days a number of large waggons were occupied in carrying away the beans. One of them declares that the greater part of the cattle and of the work oxen, some mules and horses, the stock of goods in the shop, and the cereals and fodder in storage were commandeered; another how he saw the cattle of the Hacienda were slowly but steadily growing less, until not a single head remained. And Mr. Felipe Vergara, the son of the then Administrator, who lived on the Hacienda and was employed as warehouseman in the store, gives a full account of the number of cattle appropriated, and of which a specification was drawn up as soon as possible.

The Commission see no reason why the quantities and numbers specified in the claim should not be deserving of confidence.

6. While it will hardly ever be practicable to reach complete exactitude in the determining of the volume of the losses, it will not be less difficult to arrive at an absolutely perfect estimate of their amount. The value of beans and cattle will of course depend upon their quality, and upon the current prices in the markets where their owner may be able to sell them. Those prices will be affected by the economic situation of the period, the rate of exchange for the national currency, by the possibilities of transport and exportation, and by the degree of stability and tranquillity prevailing at the time of the marketing.

The Commission do not feel themselves able to weigh all these factors separately and exactly after seventeen years have elapsed. But they feel justified in declaring that sufficient proof has been shown to adopt as fair and reasonable an amount of 8,000 pesos, Mexican national gold.

7. The Commission take this opportunity to lay down a rule regarding the currency in which their awards will be expressed.

It seems arbitrary to let such currency be dependent upon what is asked in the claim. There is no reason why gold pesos should be awarded in one case, silver pesos in another, Pounds Sterling in a third, and United States dollars in a fourth. The Commission, having also regard to Article 9 of the Convention, are of the opinion that the awards can be based upon no other money than the national and legal money of the State to be held liable for the payment. Awards will, for that reason, in future be made in Mexican national gold.

8. The Commission decide that the Government of the United Mexican States shall pay to the British Government on behalf of Mrs. Jessie Watson (*née* Louth) a sum of eight thousand Mexican pesos, oro nacional.

WILLIAM McNEILL (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 46, May 19, 1931. Pages 96-101.*)

FAILURE TO SUPPRESS OR PUNISH.—EFFECT OF NON-PRODUCTION OF EVIDENCE BY RESPONDENT GOVERNMENT. When British Agent showed that the imprison-

ment of claimant by insurrectionary forces either had come or should have come to the knowledge of the authorities, while the Mexican Agent failed to submit evidence of any action taken by such authorities, *held* responsibility of respondent Government established.

EVIDENCE BEFORE INTERNATIONAL TRIBUNALS.—PROOF OF PERMANENT LOSS OF EARNING CAPACITY. Only testimony of independent medical experts appointed by the tribunal will be accepted as evidence of permanent loss of earning capacity of claimant.

ILLEGAL ARREST.—MISTREATMENT DURING IMPRISONMENT.—CRUEL AND INHUMANE IMPRISONMENT.—DETENTION INCOMUNICADO. Claim for illegal arrest and mistreatment during imprisonment *allowed*.

MEASURE OF DAMAGES FOR PHYSICAL INJURY.—PROXIMATE CAUSE. When fact of serious personal injury is established, the damages allowed will take into account the nature of such injury, the probability of resulting medical expenses, and claimant's station in life.

Cross-reference : Annual Digest, 1931-1932, p. 227.

Comments: G. Godfrey Phillips, "The Anglo-Mexican Special Claims Commission," Law Q. Rev., Vol. 49, 1933, p. 226 at 230.

1. This is a claim for compensation for physical, moral and intellectual damages caused by arrest and imprisonment by revolutionary forces at Bacis, in the State of Durango, in April 1913.

The Memorial sets out that William McNeill was at the time of his imprisonment General Manager of the Bacis Gold and Silver Mining Company (Limited), a British Company. During the night of the 18th April, 1913, the mining area of Bacis, in the State of Durango, was visited by a party of revolutionaries numbering about 100 men, under the command of Pedro Gutierrez, Santiago Meráz, and Fermín Núñez. These rebels demanded from the Company a sum of 5,000 pesos. Mr. McNeill refused to pay this sum on the ground that the Bacis Gold and Silver Mining Company (Limited) was a British company taking no part whatever in the political struggle, was paying off taxes, and was, therefore, entitled to be allowed to continue its work unmolested. Santiago Meráz, to whom this refusal was made, arrested the claimant and placed him in solitary confinement under armed guard for about twenty hours. During the time of his imprisonment no communication with the mine officials or other employees of the Company was allowed to the claimant. After several threats of shooting and hanging, the claimant agreed to deliver to Santiago Meráz five bars of silver and a promissory note in favour of Santiago Meráz for the sum of 5,000 pesos. Mr. McNeill was then set at liberty and the silver and promissory note were handed over. Later the five bars of silver and the promissory note, through the intercession of the *Jefe Politico* at San Dimas, were returned to the company for a cash payment of 201 pesos. Shortly after this the revolutionaries left the neighbourhood of the mine. As a result of his imprisonment and the serious threats of death to which he was subjected, the claimant had a nervous breakdown, from which he has never recovered.

Dr. C. H. Miller examined Mr. McNeill after his release by the revolutionaries and found him suffering from "nervous shock and mental agony entirely due to his imprisonment". Dr. Miller's evidence is given in an affidavit made on the 16th June, 1913, before the Acting British Vice-Consul at Mazatlán. On the 19th June, 1913, Mr. McNeill was examined by Dr. J. A. René in the presence of Dr. C. H. Miller. Dr. René found that Mr. McNeill was suffering from "a

terrible nervous depression with total absence of reflex movement of the knees". He considered that the bad treatment to which the claimant had been subjected was sufficient to produce the state of nervous prostration in which he found Mr. McNeill. Dr. René was also of the opinion that the infirmity might be incurable and might become graver in later years. Mr. McNeill had been examined by his own medical adviser, Dr. Frederick Spicer, of 142, Harley Street, London, in 1912, and his state of health was then very good. He was again examined by Dr. Spicer in September 1913 when he was found to be a complete wreck, suffering from a loss of knee reflexes. Dr. Spicer, after reading the sworn statements of Mr. McNeill, Dr. J. A. René and others, was of the opinion that the claimant's state of health was a natural consequence of his ill-treatment. On the 25th October, 1928, Dr. Spicer again made a careful and thorough examination of Mr. McNeill and found that he was still suffering from the loss of knee reflexes. Dr. Spicer is firmly of the opinion that this loss of knee reflexes was entirely due to the suffering to which he was subjected by the revolutionaries in 1913. No improvement was found to have taken place in Mr. McNeill's condition during the past fifteen years and the claimant's medical adviser is now of the opinion that his condition is chronic.

The sum of £5,000 sterling is claimed as compensation for the permanent damage to the claimant's health. This sum is considered to be quite reasonable by Dr. Spicer. A claim is also made for compensation for the humiliating and severe treatment to which the claimant was subjected during his arrest and imprisonment. The amount of this part of the claim is left to the Commission for assessment.

His Majesty's Government claim on behalf of William McNeill the sum of £5,000 sterling, together with such sum as the Commission might consider equitable compensation for moral and intellectual damages suffered by him during his imprisonment.

2. The Mexican Agent, while allowing that proof had been shown of the claimant's imprisonment, denied that there was any evidence as to the way in which he was treated during his confinement. Furthermore, he contested that it had not been proved that the loss of knee reflexes was a consequence of the imprisonment, or that this loss in itself constituted a permanent reduction of the capacity for work or the earning power of the patient. In his submission the loss of knee reflexes was not an illness, but merely a symptom of neurasthenia, which could just as well originate in physical conditions or in a nervous disposition as in the events alleged in the claim. Upon the medical certificates, produced as annexes to the Memorial, the Agent refused to reply, since they were all signed by experts chosen by the claimant. He did not regard their testimony as independent evidence and asserted that no award, and certainly not the unfounded amount claimed by the British Government, could be granted before a new examination of the claimant by impartial and independent medical advisers had taken place.

Apart from these arguments, the Agent failed to see any proof of the character of the forces, to which the acts were attributed. He could not admit that they were Maderistas or that they formed part of forces that afterwards constituted a Government. In the archives of the Mexican War Ministry the names of Pedro Gutierrez, Santiago Meráz, and Fermín Núñez had not been found and he must therefore conclude that they never served in the army. In case the individuals in question had to be regarded as insurrectionaries or as brigands, the Agent rejected any responsibility of his Government, because it had not been established that the competent authorities had omitted to take reasonable measures for suppression or punishment.

3. The British Agent held that there could be no doubt, either as to the facts or as to their consequences. There had been presented abundant evidence as to Mr. McNeill's imprisonment and as to the effects of the inhuman treatment to which he was subjected. The documents filed showed that the claimant was a strong and healthy man at the moment when he was arrested and that he left the prison a complete wreck. It had also been shown that before his imprisonment he had refused to comply with the demands of the Revolutionists and that he had, when released, given them what they asked for. Therefore the inference might safely be made that he was, during his confinement, compelled by force to give in. The Agent, in opposition to his Mexican colleague, attached very great value to the testimony of the expert (Dr. Spicer) who had been the medical adviser of the claimant since 1894, and who declared in 1914 that he had then found him a complete wreck. It could not, in the Agent's submission, be contested that Mr. McNeill had suffered very grave personal injury, which, even apart from a permanent reduction of his capacity for work, entitled him to substantial compensation, the amount of which ought certainly not to be less than the figure claimed by his Government.

As regards the classification of the forces responsible for those acts, the Agent asserted that they were either Maderistas or Constitutionalists, in both cases forces for whose acts the Mexican Government had accepted financial liability.

4. The Commission have found in the annexes to the Memorial sufficient evidence of the imprisonment of the claimant on the 18th April, 1913. Corroboration is furnished by declarations made by George F. Griffiths, Engineer of the Bacis Gold and Silver Mining Company, by Charles Leon Whittle, an employee of the same Corporation, by Ismael Reyes, a merchant at Bacis, by Tomas Venegas, a citizen of Bacis, by Dr. C. H. Miller, the Company's physician at that place, and by Dr. J. A. René, who saw the claimant at Mazatlán. Their declarations, dated the 16th, the 23rd, the 24th, or the 30th June, 1913, all state that they were either present at, or were informed, very soon afterwards, of the imprisonment of the claimant. Three of them saw him immediately after his release, and they unanimously state that he was then suffering from a very serious nervous breakdown. The same documents show that the claimant, although he first refused to comply with the wishes of his assailants, afterwards not only gave them a note for the 5,000 pesos originally demanded, but five bars of silver over and above that amount.

This evidence satisfies the Commission as regards the following facts:

- (1) Mr. McNeill was illegally imprisoned during twenty hours.
- (2) He was during that time treated very harshly and subjected to indignities and probably threatened with worse things.
- (3) He was only released when this maltreatment had resulted in his giving in.
- (4) The effects of such ill-treatment and threats were that Mr. McNeill suffered very serious nervous prostration, which was apparent to those who knew him before his arrest and saw him soon afterwards.
- (5) In the statement of the claimant and in the declarations of the witnesses, the forces commanded by Gutiérrez, Meráz and Núñez are alternatively identified as revolutionaries and also as rebels, but there is no indication that they were Maderistas or Constitutionalists. As, furthermore, the Mexican Agent has not been able to trace the names of those three chiefs in the archives of the Army, it seems justified to classify them and their followers as insurrectionaries, dealt with in subdivision 4 of Article 3 of the Convention.

As regards the financial responsibility of the Mexican Government for their acts, the Commission refer to the rule laid down by them in previous decisions,

for instance in section 6 of their decision No. 12 (*Mexico City Bombardment Claims*), reading as follows:

"In a great many cases it will be extremely difficult to establish beyond any doubt the omission or the absence of suppressive or punitive measures. The Commission realizes that the evidence of negative facts can hardly ever be given in an absolutely convincing manner. But a strong *prima facie* evidence can be assumed to exist in those cases in which *first* the British Agent will be able to make it acceptable that the facts were known to the competent authorities, either because they were of public notoriety or because they were brought to their knowledge in due time, and *second* the Mexican Agent does not show any evidence as to action taken by the authorities."¹

In the present case it is evident that the authorities were informed of what had happened, because the *Jefe Politico* of San Dimas intervened and returned to the Company the bars of silver and the promissory note in exchange for a cash payment of 201 pesos. Apart from this it seems next to impossible that such a sensational act as the imprisonment of the General Manager of one of the principal concerns of the State could not have come to the knowledge of those whose function it was to watch over and to protect life and property. But not the slightest indication has been given that they took any action.

For these reasons the Commission are of the opinion that the claim falls within the terms of Article 3 of the Convention.

6. The question of the permanent loss of capacity for work or earning power has not been stressed by the British Agent. If such a loss had to be the outstanding factor in the determination of the award, the Commission could not fail to observe that Mr. McNeill, at the age of sixty-eight, still carries on the profession of Consulting Mining Engineer, and still fills the positions of Secretary and Consulting Engineer of the Bacis Gold and Silver Mining Company. And they also hold that so serious a statement as the measuring of the permanent effect on a man's earning capacity of events which occurred eighteen years ago, could only be accepted when given by independent medical experts of high standing, appointed by the Commission.

In the present case, however, there are facts—and they are enumerated in section 4—which in themselves entitle the claimant to compensation. The alleged imprisonment of Mr. McNeill constitutes a serious personal injury, and this injury was very much aggravated by the appalling and cruel way in which he was compelled to deliver up silver and money. It is easy to understand that this treatment caused the serious derangement of his nervous system, which has been stated by all the witnesses. It is equally obvious that considerable time must have elapsed before this breakdown was overcome to a sufficient extent to enable him to resume work, and there can be no doubt that the patient must have incurred heavy expenses in order to conquer his physical depression.

The Commission take the view that the compensation to be awarded to the claimant must take into account his station in life, and be in just proportion to the extent and to the serious nature of the personal injury which he sustained.

7. The Commission decide that the Government of the United Mexican States shall pay to the British Government, on behalf of Mr. William McNeill, six thousand (6,000) Mexican pesos, oro nacional.

¹ See also Decision No. 18 (*Bowerman*), section 7, and Decision No. 19 (*Santa Gertrudis*), section 9.