

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Edith Henry (Great Britain) v. United Mexican States

3 August 1931

VOLUME V pp. 268-272



NATIONS UNIES - UNITED NATIONS
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These consignments, under vouchers Nos. 23, 24 and 26, were loaded on train No. 12, belonging to the Mexican Railway Company, which left Nogales Station at 9.50 p.m. on the 10th January. When the train had reached a place known as Galera it was attacked by a large party of rebels. These rebels ransacked the train and afterwards set fire to a number of the wagons forming it. Of the three consignments of cotton yarn only one badly-damaged bale was recovered, the remainder being destroyed by fire. Judicial proof of the destruction of this train is given in one of the annexes to the Memorial. The Mexican Railway Company, in notifying Messrs. Watson, Phillips and Co., Successors, and Messrs. Norcross and Taylor of the loss of the three consignments of cotton yarn, declined all responsibility for this loss on the grounds of *force majeure*.

The amount of the claim is 6,318.18 pesos Mexican. A certificate of the value of the three consignments of cotton yarn is given in one of the annexes.

The British Government claim on behalf of Mr. Joseph Taylor the sum of 6,318.18 pesos Mexican.

2. Although at the time of the assault on the train, the business was still being carried on in the name of the firm of Norcross and Taylor, the Commission after examining the terms of the dissolution of the firm, regard Mr. Joseph Taylor as entitled to present the claim.

3. In the opinion of the Commission, the goods which were destroyed, belonged to the claimant and not to his agent, to whom they were consigned.

4. The Commission have found sufficient evidence of the facts in the documents filed with the claim. They are also satisfied on the strength of the same documents, that the attacking forces were rebels or brigands, falling within subdivision 4 of article 3 of the Convention.

5. As it has not been shown that any action was taken by the competent authorities, to which an assault on a train on the principal railroad of the country must have been known, the Commission declare that negligence has been established.

6. The amount having been proved by the invoices, the Commission decide that the Government of the United Mexican States is obligated to pay to the British Government, on behalf of Mr. Joseph Taylor, the sum of \$6,318.18 (six thousand three hundred and eighteen pesos eighteen centavos) Mexican gold or an equivalent amount in gold.

EDITH HENRY (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 102, August 3, 1931. Pages 299-303. See also decision No. 61.*)

RESPONSIBILITY FOR ACTS OF FORCES.—FAILURE TO PROTECT.—FAILURE TO SUPPRESS OR PUNISH. Upon representations by British and American Legations that residents of town were in imminent danger of their lives, Government forces occupied the town but thereafter withdrew overnight without notice. The next day rebel forces entered the town, killed claimant's husband and looted property. Claimant escaped in a destitute condition. Though British Legation informed respondent Government of events and requested apprehension and punishment of murderers, it did not appear that any action was taken by the authorities. *Held*, responsibility of respondent Government established.

CLAIM IN REPRESENTATIVE CAPACITY. Claim for property owned by deceased husband of claimant must be filed on behalf of his estate. Claim nevertheless *allowed* for items of property which appeared to belong to claimant.

MEASURE OF DAMAGES FOR DEATH. When claimant's husband was killed by forces for whose acts respondent Government was responsible, measure of damages will take into consideration age of murdered man, his position, and claimant's age and position.

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 the murder of the claimant's husband, Mr. Francis Colin Henry, and for the loss of personal property at the hands of a band of Zapatistas at Zacualpam on the 3rd January, 1916.

The facts giving rise to the claim are set out in the Memorial, and are fully recapitulated in Decision No. 61 of the Commission, on the motion to dismiss made by the Mexican Agent. It is therefore not necessary to set them out again here.

2. The Commission refer also to the same decision as regards the conclusions come to by them as to the circumstances empowering the Commission to deal with the claim. The date of the occurrences in this case, that is to say the 3rd of January, 1916, falls within the third period referred to in that decision, that is to say the period when there was a Government *de facto*. The Carranza party had then established such a Government, and therefore subdivision 4 of Article 3 of the Convention is applicable, provided that the facts necessary to be proved are established. As regards the losses of personal property the Commission will have to consider Mrs. Henry's claim under two heads, that is to say the portion of the claim relating to losses of her husband's property and consequently to his estate, and that relating to the loss of her own personal belongings. These items will be considered and dealt with later in their appropriate place.

3. The British Agent in opening the claim urged that it was proved that Mr. Henry had been killed by insurrectionaries or bandits believed to be Zapatistas, on the 3rd January, 1916. That on the previous day the Carranza or Constitutionalist forces stationed at Zacualpam departed therefrom without warning, leaving the inhabitants without protection from the bandits and revolutionaries which were in the neighbourhood. And that in spite of the information regarding the subsequent occurrences given to the Mexican authorities, no action was taken by them to punish the delinquents. The case came therefore within the provisions of subdivision 4 of Article 3 of the Convention, and the Government of Mexico as being to blame were financially responsible. He left the amount of the monetary compensation to be awarded to Mrs. Henry for the death of her husband to the Commission, bearing in mind his age, occupation, salary, and other circumstances. As regards Mrs. Henry's own personal effects, and their value, he referred to annex A to Mrs. Henry's Affidavit at pages 8 and 9 of the Memorial. He did not on the claim as it stood stress the claim of Mrs. Henry as regards the loss of her husband's property.

4. The Mexican Agent pointed out that as regards the loss of Mr. Henry's property the claim had not been filed by the proper party as on behalf of and representing Mr. Henry's estate, as required by the Rules of Procedure, and therefore no Award could be given to Mrs. Henry in respect of this part of the Claim. He argued that there was no sufficient evidence or sufficient corroboration of the facts alleged in the Memorial as supporting the claim for compen-

sation for Mr. Henry's death. The presumption was that the perpetrators had been pursued and exterminated, and that the murderers of Mr. Henry had been punished. The amount claimed as damage was excessive, and in any event where compensation is given *ex gratia*, as would be the case under the terms of the Convention, the amount to be awarded should be less severe than in the case of a claim under legal liability. The amount of 50,000 pesos claimed by Mrs. Henry for the death of her husband was excessive.

5. The Commission have found corroboration of the allegations of the claimant in the letter of Mr. E. W. P. Thurston, the British Consul-General, dated the 12th of February, 1916, being Annex 4 to the Memorial, and further in the letters addressed on the 10th and 12th January, 1916, to the Mexican Government by Mr. T. B. Hohler, the British Chargé d'affaires at the British Legation, Mexico, these last being further evidence filed by the British Agent. Mr. Thurston's letter, which was addressed to Mr. C. T. Davies at the County School, Neath, and was in reply to a letter addressed to him by Mr. Davies on the 21st January, 1916, confirms the murder and its circumstances, and also states that representations had already been made to the Constitutional authorities in Mexico in respect of Mr. Henry's murder and that he was still not without hopes that punishment would eventually be inflicted on the guilty parties. The letter of the British Chargé d'affaires, written by him as before referred to on the 10th January, 1916, was as follows:

"Mr. Secretary,

"I have the honour to inform you that in November last a guard was sent to protect the district of Zacualpam, but it was withdrawn on Sunday, the 2nd January. On the 3rd January a party of bandits occupied the place, and they murdered Mr. F. C. Henry, a British subject, superintendent of the mine of San Miguel Tlaxpampa. His wife after burying the body succeeded in escaping unhurt, but the mine was sacked.

"I have the honour to request that the *de facto* Government of Mexico will take the most prompt and energetic measures for the capture and punishment of the guilty parties.

"(Signed) T. B. HOHLER."

A further letter, also addressed to the Mexican Government, was sent by Mr. Hohler on the 12th January, 1916, which was as follows:

"Mr. Secretary,

"With reference to my Note No. 10 of the 10th instant, I have the honour to bring to your knowledge the further details concerning the assassination of the British subject Mr. F. C. Henry at Zacualpam.

"In the month of November last, information having been received to the effect that the foreigners in Zacualpam were in imminent danger of their lives, representations were made by this Legation in concert with the diplomatic agent of the United States of America to General Pablo González, who very courteously promised to do all that was in his power, and a force was promptly sent to occupy the said town.

"Most unfortunately, however, on the night of the 2nd January, this force withdrew without giving any notice of the intended movement, so that the following day the peaceful inhabitants of Zacualpam awoke to find themselves at the mercy of any band of marauders who chose to enter. On that same afternoon a party of some 150 did enter under the leadership of three men named Molina, Mors and Pantalón, and commenced a systematic sack of the

houses. There were also some followers of Castrejon who is known as a 'Salgadista', and the whole body are presumed to style themselves 'Zapatistas'.

"A small body of men soon presented themselves at Mr. Henry's house, but were eventually persuaded to depart on being shown a 'salvo conducto', which Mr. Henry had obtained from Molina a few days previously on payment of \$400. However, at about 4 p.m. a large number of armed men began climbing over the fence, and Mr. Henry, telling his wife and three little children to retire to her bedroom, seized a rifle and went to the door to try and prevent the men entering. Shots rang out, and it subsequently transpired that Mr. Henry was wounded on his doorstep and finally dragged into the yard and despatched on the ground by revolver shots. The men then entered the house in large numbers, including Molina and Pantalon, who had Mr. Henry's pistol in his hand, and proceeded to scramble for all the loot that they could find. Mrs. Henry by dint of much courage and presence of mind, eventually succeeded in escaping with her children. As they were passing through the yard a 'soldier' attempted to club her little boy with the butt-end of his gun, but the boy dodged the gun and the blow fell on his shoulder. Mrs. Henry then saw her husband's dead body in the yard, and realized that there was nothing left but to escape. After hiding in a bed in a peon's house for some days they succeeded in leaving the town, and, after many hardships, reached Mexico City entirely destitute.

"I am given to understand that the headquarters of these horrible miscreants is at the Hacienda belonging to Sr. Amado Figueroa, near Zapolpia; that they are indifferently armed; and that they are deficient in courage.

"I earnestly trust, therefore, that the *de facto* Government of Mexico will take immediate steps to act upon this information, and to send an adequate force to capture the guilty parties and to inflict upon them the condign punishment which they have deserved. A salutary example will thus be given to them that Your Excellency's Government is resolved to punish murderers, and, not least, murderers of subjects of the friendly British Government.

"I have the honour to submit to Your Excellency that the action of the Officer who withdrew his troops from Zacualpam without warning the inhabitants, involves a direct and heavy responsibility.

"Finally, Mr. Secretary, I think it fitting that I should call your attention to the situation to which Mrs. Henry, the widow of the unfortunate victim, is reduced. Her husband was her sole support, and every scrap of property which she possessed in the world has been stolen from her so that she is now absolutely destitute. And she is burdened with three small children and an aged father.

“(Signed) T. B. HOHLER”.

These letters in the opinion of the Commission afford strong corroboration (1) of the facts and circumstances of the murder as detailed in Mrs. Henry's Affidavit (annex 1 to the Memorial); (2) the fact of the withdrawal by the Mexican Government on the previous day of the protecting guard; and (3) of the representations made to the Mexican Government calling for prompt and energetic measures for the capture and punishment of the guilty parties, and placing at the disposal of the Government information as to their headquarters.

6. It does not appear, and it has not been shown, that any action was taken thereon by the Mexican Government, and the Commission must on the evidence before them hold that no such action was in fact taken, and feel bound to declare that the Claimant is entitled to compensation for the murder of her

husband. The Commission assess the amount of this compensation at 29,000 pesos, Mexican gold, taking into consideration the age of the murdered man, his position, and Mrs. Henry's age and position.

7. Mrs. Henry's claim as regards the loss of her husband's personal property is not brought by her as representing, or on behalf of her husband's estate, and she has not shown any legal authority for so claiming it, as provided by the Rules of Procedure. But the Commission find, on an analysis of the particulars of the total claim for losses of personal property, amounting to 6,585 pesos, that she lost personal and individual articles of property and deem that the value of these has been proved to the amount of 1,700 pesos, which they award to her in addition to the sum of 29,000 pesos awarded in respect of her husband's death.

8. The Commission accordingly decide that the Government of the United Mexican States is obligated to pay to the British Government, on behalf of Mrs. Edith Henry, a sum of 30,700 pesos (thirty thousand and seven hundred pesos) Mexican gold, or an equivalent amount in gold.

THE BRITISH SHAREHOLDERS OF THE MARIPOSA COMPANY
(GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 103, August 6, 1931. Pages 304-307.*)

RESPONSIBILITY FOR ACTS OF FORCES.—EQUITY AS A BASIS FOR AWARD. Where cattle were confiscated by Villista forces in order to supply the population of a town with meat, *held* compensation will be awarded as a postulate of equity.

1. The Memorial describes the claim as one for losses and damages suffered by the Mariposa Company on its ranch in the State of Coahuila during the period from the 1st May, 1915, to the 1st May, 1920.

The Mariposa Company was incorporated on the 8th April, 1909, under the laws of the State of Arizona, U.S.A. The Company has therefore the status of a citizen of the United States of America, and in the first place the Company submitted a claim to the United States Agency, General and Special Claims Commissions, United States and Mexico. This Agency, in a letter dated the 19th August, 1925, enquired whether there was an American interest of any kind in the Mariposa Company. It appears that the Company were unable to point to any American interest, and in a letter dated the 17th August, 1926, the Agency definitely refused to file this claim on the grounds that all the stockholders of the Company are British subjects. A list of the shareholders in this Company is given in an affidavit made by Winchester Kelso, junior, on the 11th June, 1928, before Kelso Stanfield, notary public, Bexar County, Texas. A list of these shareholders, giving the proportions of their respective interests in this Company, is given in an affidavit made by Winchester Kelso, junior, on the 11th June, 1928, before the above-mentioned Kelso Stanfield.

The above-mentioned shareholders are all British subjects.

The Company has allotted to each of its shareholders a proportional part of its losses and damages forming the subject of this claim. This allotment is contained in an affidavit made by the Company's president, D. S. McKellar, on the 20th June, 1927, before Royal W. King, notary public in and for