

**REPORTS OF INTERNATIONAL  
ARBITRAL AWARDS**

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**RECUEIL DES SENTENCES  
ARBITRALES**

**Turner C. Gillenwater (United States) v. Germany**

13 August 1926

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From the foregoing it appears that the measures complained of by claimants were taken by Australia against Germany, not by Germany; they were taken not in territory in which the German laws and decrees were then effective but in territory which had been ceded by Germany and which was governed and controlled by one of her former enemies; and they were taken at a time when Germany had been stripped of her power to take any war measures whatsoever.

It is the opinion of the Umpire, and he so decides, that while under the Treaty of Berlin Germany is liable for all exceptional war measures *taken by her* "in German territory as it existed on August 1, 1914" resulting in damage to the property, rights, and interests of American nationals, even though on the date of the Treaty's coming into force such territory was no longer German territory, she is not liable for exceptional war measures and measures of transfer, as those terms are defined in the Treaty, taken with respect to German property by a former enemy of Germany to her detriment and to its advantage in territory which was German on August 1, 1914, but which had been ceded by Germany and was governed and controlled by such former enemy at the time the measures were taken.

Wherefore the Commission decrees that under the Treaty of Berlin of August 25, 1921, and in accordance with its terms the Government of Germany is not obligated to pay to the Government of the United States any amount on behalf of Paula Mendel *et al.*, the claimants herein.

Done at Washington August 13, 1926.

Edwin B. PARKER  
*Umpire*

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TURNER C. GILLENWATER  
(UNITED STATES) *v.* GERMANY

(August 13, 1926, pp. 798-801.)

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WAR: TREATMENT OF PRISONERS OF WAR, RESPONSIBILITY UNDER TREATY OF BERLIN. Claim for damages on account of maltreatment of American private when a prisoner of war. *Held* that no evidence submitted of maltreatment for which Germany liable under Treaty of Berlin, and in particular that violence in subduing and capturing enemy on battlefield constitutes no such maltreatment.

UNITED STATES OF AMERICA  
on behalf of  
Turner C. Gillenwater,  
Claimant,  
*v.*

GERMANY.

} Docket No. 5851.

PARKER, *Umpire*, rendered the decision of the Commission.

This case is before the Umpire for decision on a certificate of disagreement of the National Commissioners.

Turner C. Gillenwater, an American national, while a private soldier in the American Army, was taken prisoner by the German military forces in Argonne Forest September 29, 1918, and claims to have been held for four or five weeks at a German prison camp at Sedan, France, and then removed

to a German prison camp at Rastatt, Germany. He alleges that while a prisoner of war he was subjected to maltreatment resulting in pecuniary damage to him. His two *ex parte* affidavits are wholly uncorroborated and in one important detail they conflict. No testimony is submitted from fellow prisoners or from those members of the American Expeditionary Force to whom he reported after he was released from the prison camp on December 8, 1918, although they must have had knowledge of his then physical condition, which he claims was bad. He states that his left eye and the left side of his face were wholly paralyzed at the time of his release from the German prison camp and are still partially paralyzed, which condition he attributes to his having been "inoculated with something by the German Military authorities". In another statement he says that he was "innoculated three times and vaccinated once by the enemy." The fact that the German authorities inoculated and vaccinated claimant would imply that they were seeking to give him all proper and necessary attention rather than to maltreat him. The claimant offers and relies on a recent statement from a physician who has treated him since the latter's discharge from the Army for partial paralysis of his left eye and left side of his face and also for intestinal infection and indigestion, but there is no attempt on the part of this physician to attribute these maladies to the maltreatment of which claimant complains.

Since the certification of this case to the Umpire excerpts from the records of the War Department and of the United States Veterans Bureau pertaining to the physical condition of this claimant have been filed with the record in this case. From these it appears that following claimant's release on December 8, 1918, from the German prison camp he was admitted to a hospital for observation, was subjected to a physical examination, was found to be in good condition, and made no complaint of any physical disability; and that thereafter while on duty with the A. E. F. at St. Aignan, France, about February 14, 1919, he experienced muscular weakness and inability to close his left eye, "Exact cause not determined". These records negative the contention now put forward by claimant that he suffered any disability or impairment of health because of the treatment he received at the hands of the German authorities while a prisoner of war.

The German Agent presents statements of ten witnesses whose testimony with respect to the specific allegations of maltreatment, while of a negative character, tends circumstantially to rebut the claimant's testimony. They find no record of this claimant having been in the prison camp at Sedan. Their statements of the conditions at both Sedan and Rastatt contradict the claimant. At Rastatt particularly it appears that the authorities in charge had strict orders from the German War Ministry to treat American prisoners courteously and to make their lot as easy as possible. Members of the Young Men's Christian Association were permanently quartered in that camp and made the wishes of the American soldiers known and assisted the German authorities in carrying them out. Two American sergeants, whose names are given, and who visited the camp headquarters almost daily, far from lodging complaints, thanked the German authorities for their considerate treatment of American prisoners. The statement is made by one of the German officials in charge of the Rastatt Camp that "Whole carloads of the finest preserved goods and choicest delicacies for the Americans arrived from Switzerland. The management, distribution and preparation of the foregoing was left entirely and exclusively to the Americans." In one affidavit the claimant states that "during the time he was confined at Rastatt, he was fed by the Red Cross". Had he been subjected to maltreatment it would seem that he had ample opportunity to lodge a complaint with members of the Red Cross.

or the Young Men's Christian Association, but there is no evidence that such a complaint was ever made.

In one affidavit the claimant states that "when he was taken prisoner his raincoat was taken away from him and he was cut across the abdomen with a sword by the German soldiers who captured" him. The use of physical violence in subduing and capturing an enemy on the battlefield in order to make him a prisoner does not constitute "maltreatment of prisoners of war" within the meaning of the Treaty of Berlin.

In this state of the record the Umpire finds that the claimant has failed to discharge the burden resting upon him to establish the maltreatment complained of.

Applying the rules and principles heretofore announced in the decisions of this Commission to the facts as disclosed by the record herein, the Commission decrees that under the Treaty of Berlin of August 25, 1921, and in accordance with its terms the Government of Germany is not obligated to pay any amount to the Government of the United States on behalf of Turner C. Gillenwater.

Done at Washington August 13, 1926.

Edwin B. PARKER  
*Umpire*

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