

AMERICAN ELECTRIC AND MANUFACTURING CO. CASE

PAÚL, *Commissioner* (for the Commission):

The claim of the American Electric and Manufacturing Company against the Venezuelan Government is based on two distinct groups of facts. The first is the taking possession of by the Government of the State of Bolivar on May 26, 1901, of the telephone office and service of the line for the use and convenience of the military operations during the battle, which took place in Ciudad Bolivar, until the 29th of said month, against revolutionary troops, and the damages which the property so occupied suffered in consequence thereof, owing to acts of destruction performed by the revolutionists. The amount claimed for such damages is the sum of \$ 4,000.

The second group of facts consists in the damages suffered by the telephonic line in August 1902, during the bombardment of Ciudad Bolívar by the vessels of the Venezuelan Government, the claim on this account being for \$ 2,000.

By the documentary evidence presented it is proven that when the loyal troops of the Government were fighting the rebels of Ciudad Bolívar, Gen. Julio Sarria, constitutional President of the State, ordered the absolute interruption of all the telephonic service with the exception of the instruments which connected the house of said general with the military commander; the administrator of the custom-house; the marine custom's office; the police inspector's office; the telegraph office, and such other places as are stated in the note which he sent to Mr. Eugenio Barletta, manager of the company, dated May 26, 1901, and ordered also the occupation of the central office of the company, and stationed near the machinery an armed guard, which remained there until the town was evacuated by the Government troops.

It is also proven that the revolutionary forces destroyed the posts and wires of the lines and caused damages in the central office, destroying the switch boards and forcing the employees to abandon the office.

The general principles of international law which establish the nonresponsibility of the Government for damages suffered by neutral property owing to imperious necessities of military operations within the radius of said operations, or as a consequence of the damages of a battle, incidentally caused by the means of destruction employed in the war which are not disapproved by the law of nations, are well known.

Nevertheless, the said principles likewise have their limitations according to circumstances established by international law, as a source of responsibility, when the destruction of the neutral property is due to the previous and deliberate occupation by the Government for public benefit or as being essential for the success of military operations. Then the neutral property has been destroyed or damaged by the enemy because it was occupied by the Government troops, and for that reason only.

It is the seizure of private property for the public use and its loss or destruction while so employed, whether by the enemy of the Government, that entitles the owner to payment. Even if it be morally certain that the enemy would himself take the property and use it, depriving the owner of it forever, still, its destruction by the Government entitles the party to compensation. (See Grant's case, 1 Ct. Claims, p. 41; and observations of Ch. J. Taney in *Mitchell v. Harmony*, 13 Howard, 115.) We must hold, even in such case, that the public has received the value of the property, by embarrassing its enemy by its destruction, and is bound to make just compensation. It can never be just that the loss should fall exclusively on one man, where the property has been lawfully used or destroyed for the benefit of all. (*Putegnat's Heirs v. Mexico*, 4 Moore Int. Arb., 3720.)

The seizure of the office and telephonic apparatus by the Government at Ciudad Bolívar, required as an element for the successful operations against the enemy, the damages suffered and done by the revolutionists as a consequence of such seizure, gives to the American Electric and Manufacturing Company the right to a just compensation for the damages suffered on account of the Government's action.

The claimant company, exhibiting evidence of witnesses, pretends that the damages caused amount to the sum of \$ 4,000, but it must be taken into consideration that the witnesses and the company itself refer to all the damages suffered by the telephonic enterprise from the commencement of the battle which began on the 23d of May, whilst the seizure of the telephonic line by the Government which is the motive justifying the recognition of the damages, only took place on the 26th, which reduces in a notable manner the amount

for damages which has to be paid by the Government and therefore the damage is held to be estimated in the sum of \$ 2,000.

With reference to the second section of the claim for the sum of \$ 2,000 for damages suffered by the telephonic company during the bombardment of Ciudad Bolívar in August, 1902, these being the incidental and necessary consequences of a legitimate act of war on the part of the Government's men-of-war, it is therefore disallowed.

No interest is allowed for the reason that the claim was never officially presented to the Venezuelan Government.

In consequence thereof an award is made in favor of the American Electric and Manufacturing Company for its claim against the Venezuelan Government in the sum of \$ 2,000 American gold.
