

AMERICAN-VENEZUELAN COMMISSION
DEL GENOVESE CASE

PAÚL, *Commissioner* (for the Commission):

This claim is based on a breach of a contract entered into by Virgilio del Genovese, the claimant herein, and the Government of Venezuela, through its department of public works, on the 26th day of January, 1897, for the extension of West Ninth street, in this city.

The various items of the claim are as follows:

	<i>Bolwars</i>
First. Balance due, under contract, on account of sections first and second, completed and accepted, as per statement of director of the bureau of roads, etc., April 11, 1903	158,704.05
Second. Extra stonework and filling on sections first and second made necessary by increased length of culverts	32,370.53
Third. For work done to date of this claim (June 29, 1903) on section 3, which has not been fully completed because of failure on the part of the Government of Venezuela to make payments for completed works, as agreed, as follows:	
Total amount agreed to be paid on account of said section, as per article 3 of the contract.	203,358.51
Less amount necessary to complete unfinished portion of the work	4,000.00
	<hr/> 199,358.51

	<i>Bolivars</i>
Fourth. Damages for delays due to arbitrary stoppages of the work by Venezuelan authorities (1,049 days, at 250 bolivars per day)	262,250.00
Fifth. Damages for indignities suffered and loss of mules, etc., March 2, 1903	25,000.00
Sixth. Interest for payments in arrears at 6 per cent per annum, as follows:	
Section 1. Balance due under contract, but not including extra work, 73,074.05 bolivars, from March 28, 1898, to date, in round numbers	21,600
Section 2. Balance due under contract, not including extra work, 86,630 bolivars, due since June 19, 1900, 3 years, in round numbers	15,593
Sections 1 and 2. Extra work done and accepted by Government, amounting to 32,370.53 bolivars	5,826
	43,019.00
Grand total	720,702.09

From the examination of the documents joined to this claim and by the papers mentioned by the department of public works in its report referred to by the honorable agent for Venezuela in his reply, made before this Commission, the following facts appear proved:

That the Government of Venezuela on January 26, 1897, through the department of public works, made a contract with Mr. Virgilio del Genovese, for the extension of West Ninth street of this city. By article 2 of said contract del Genovese bound himself to begin the work on the construction of the culvert of the stream "Las Tinajetas" and its filling; that upon completion of this work he was to begin the construction of the culvert of the stream "El Tajamar" and its filling, and, this second part of the work completed, to begin that of the stream "Los Padrones" and its filling.

Article 3 of the same contract stipulated the total value of the work to be executed by del Genovese in the sum of 423,492.62 bolivars, distributed in the following way:

	<i>Bolivars</i>
First section	133,494.05
Second section	86,630.00
Third section	203,358.57

Article 5 stipulated that on the completion of each section the contractor should notify the department of public works so as to obtain the acceptance; that the payment of each one of the sections was to be made by weekly installments, to begin when the completed section had been received by said department, the office of which should determine the amount of each weekly installment. The progress of the work was to be regulated by the department of public works in such manner that the second section was to be constructed at the same time the payments for the first were being made, and the third section during the payments of the second, but the payment for no section should have begun until the preceeding had been liquidated; the payment for the third section to be made in a period proportionate to that of the two former, in relation to their respective estimates.

Article 8 stipulated that the work was to be inspected by an engineer appointed by the department of public works, and no trenches for foundations were to be filled in without the order of said employee.

Article 9 provided that the Government reserved to itself the right to modify the plans and other conditions of the work, and the differences which such modification could have produced in relation to the estimate should be calculated at the prices established in the sheet of conditions.

By article 10 the Government of Venezuela allowed Mr. del Genovese the importation free of custom duties of the machines and tools required for the construction of the work, and also granted to him the exoneration of one-half of the dues of the breakwater pier at La Guaira, and one-half of the freight on the La Guaira and Caracas Railway for the said machinery and tools, and for the cement to be used in said work.

From the information asked by the director of the section of roads and aqueducts of the department of public works on the 11th of April of this year it appears that the Government of Venezuela owes to Virgilio del Genovese the sum of 158,704.5 bolivars, balance of the price of the work executed for the extension of West Ninth street of this city, with specification of the price of the sections completed and delivered, according to the contract, and of the sums received by del Genovese on account of section first, as per the orders of payment issued in his favor by the department of public works on the national treasury, and personal payments made to del Genovese by the said department.

Mr. del Genovese found correct the liquidation made by the department of public works of the balance due him for the price of the two sections, first and second, completed and delivered. On August 6, 1900, Mr. del Genovese addressed to the secretary of public works a note, a copy of which has been presented, in the following terms:

Caracas, August 6, 1900.

Citizen Minister of Public Works:

I have the honor to address myself to you in order to advise you that, having completed, since the 19th of June of the current year, the work of the second section, according to the provisions of the contract which I celebrated with the Government of the Republic, I complied with the duty of communicating same to that department, begging that it should proceed, as was natural and just, to accept the work, but up to date this has not been done in spite of all my exertions, verbally and in writing to that end.

As it is now forty-eight days since said work was completed, without its having been accepted officially, which causes me serious material damages and moral uneasiness, I find myself in the indispensable and unavoidable position of requesting once more that you will be pleased to order whatever may be necessary for the official delivery of said work at the earliest possible moment.

I take the liberty of submitting to you, that if the consideration that, in accordance with the provisions of the contract, the value of the first section should be paid to me on the delivery of the second, this consideration ought no longer to delay the said acceptance, because my previous conduct may serve you as a guaranty that I shall know how to appreciate the difficult situation of the Government, and that I shall lend myself gladly to a just and equitable arrangement for the purposes of said payment, since my greatest desire is to begin the work on the third section in order to comply with what I have bound myself in said contract, and that the honor may be mine that this Government, which has given so many proofs of honesty, of progressive spirit, and of the desire to protect the honest and industrious people, and for which I have so much sympathy, may continue satisfied with me.

It is not beside the point to indicate to you that, according to the weekly reports which I have furnished to your department, I have given work daily to some forty laborers who are waiting for me to begin the third section in order to once more have an occupation and bread for themselves and their families.

Confident that all which I have submitted will determine your department to accede to my just request, believe me,

Your obedient servant,

Virgilio DEL GENOVESE.

It can be seen, by the terms of this letter, the contractor considered in accordance with the contract an obstacle for the acceptance of the second section of the work by the department of public works, the fact of the first section not having been paid for, and by his own request the said department consented, as it appears from the documents presented, to receive said second section, continuing the periodical payments to del Genovese during the remainder of 1900, 1901 and 1902, to the amount of 21,600 bolivars for the first section, as shown by the liquidated account.

It has not been proved that there had been a breach of contract on the part of Venezuela, as the delay in the payment of the weekly installments that should have been made to del Genovese for the price of the two sections completed and delivered, were tolerated by him, and as it has already been stated, he said to the Government that the delay should not be a cause to stop the acceptance of the second section of the work, his past conduct being a guarantee that he knew how to appreciate the economical difficulties of the Government, and that he would gladly accept a just and equitable arrangement for the payment of said delayed installments.

The circumstance that the contractor again addressed the Government of Venezuela a letter dated March 20, of the current year, acknowledging that the work on the third section had been suspended for two years on account of the political state of the country, and that he was ready to resume said work, evidently proves that he was willing to suspend said work without being justified to make the Government of Venezuela responsible for a breach of contract which he now pretends to establish.

Regarding the balance due to Virgilio del Genovese by the Venezuelan Government, for the price of the first section and the whole price of the second section, amounting to the sum of 158,704.05 bolivars, it appears as shown in an account furnished to Mr. del Genovese under date of April 11, 1903, by the director of the bureau of roads, etc., in the department of public works, that the Government of Venezuela admitted to be due to the claimant, the said sum of 158,704.05 bolivars to that date.

From the evidence presented by the memorialist, it is proven that some extra work in the sum of 32,370.53 bolivars, specified in the affidavit sworn to by the civil engineer, J. Luch, executed by the contractor at the unit price specified in the sheet of conditions, really amounts to that sum and must be allowed.

From the documentary evidence presented by the claimant and also from the other documents recorded in the department of public works, which has been put at the disposal of this Commission for its examination, it is apparent that said department of public works was informed by del Genovese several times that he had prosecuted the work in its third section and, especially in his note of March 16, 1903, he informed the secretary of public works that on that date the work on the third section had been resumed. There exists in the record some orders from the secretary of public works, authorizing del Genovese to introduce free of duties a number of barrels of cement to be employed in the execution of the third section of the extension of West Ninth street. The memorialist admits that some work remains yet to be done for the conclusion of the third section, which he estimates, in conformity with the opinion of two contractors of public work, named José Rodríguez and Daniel Martínez Poleo, could be done for the sum of 4,000 bolivars.

This Commission, desiring to obtain all the necessary information about the value of the work that remained to be done for the completion of the third section, asked and obtained the learned opinion of Dr. Carlos Monagas, a Venezuelan engineer. After having taken in consideration that opinion, and

the careful examination of all the evidence presented by both parties, the Commission arrives at the conclusion that the sum of 30,000 bolivars must be deducted from the amount of 203,358.51 bolivars to be paid for said third section, as per article 3 of the contract.

The damages claimed for the stoppages of the work amounting to the sum of 262,250 bolivars, and the interest at 6 per cent per annum on the balance due for the price of the first and second sections which the claimant puts forth for 43,019 bolivars, must be disallowed, because the stoppage of the work has not been caused by arbitrary action of the Government of Venezuela, but by the natural consequences of the civil war, which were admitted by the same contractor as justified, as it appears from his correspondence with the department of public works.

The damages for indignities suffered and for loss of mules, etc., on March 2, 1903, amounting to 25,000 bolivars, can not be taken into consideration, as the fact on which this part of the claim is founded appears to consist in an act of highway robbery that can not affect the responsibility of the Government of Venezuela.

For the aforesaid reasons an award is made in favor of Mr. Virgilio del Genovese for the sum of \$ 70,083.28 United States gold, without interest.
