

DUFFIELD, *Umpire* :

In this case the opinion of the Commissioner for Germany is that the case should be received by the Commission and acted upon notwithstanding the fact that the time fixed by the protocol has expired, as has also the extended term fixed by the Commissioners at the seventh session, June 22, 1903. The Commissioner for Venezuela disagrees with this conclusion and is of the opinion that the extension of time made at the seventh session of the Commission, on the 22d day of June, 1903, exhausted the power of the Commissioner to make further extension, and that, moreover, the period covered by that extension having expired, the Commission has no power to create a new term.

The extension of the term at the seventh session was made by the agreement of the Commission without consultation with the umpire.

There is a decided misunderstanding by the Commissioners as to their action on the 22d of June, 1903, and even as to the accuracy of the record of that date. Fortunately it is not necessary to decide this difference. It appears upon a careful examination of the protocols that the translation into English which the Commission have been using contains a material error in the first paragraph of Article III of the additional agreement of May 7, 1903, the language of the translation being :

The claims shall be presented to the Commissioners by the Imperial German minister at Caracas before the 1st day of July, 1903. A reasonable extension of this term may eventually be granted by the Commissioners —

while the original English duplicate, signed by Mr. Bowen and Baron von Sternberg, reads :

The claims shall be presented to the Commissioners by the imperial German minister at Caracas before the 1st day of July, 1903. A reasonable extension of this term may in proper cases be granted by the Commissioners.

If the former translation were correct, there would be much force in the argument of the Commissioner for Venezuela. The Commission, however, must accept the language of the protocol signed by the representatives of the two countries. Under its language no authority is given to the Commission to make a general extension of the term for the presentation of claims. This is the necessary and only inference from the words "in proper cases." The umpire is therefore of the opinion that the action of the Commissioners on June 22 does not affect the power of the Commission to consider on its merits the application of the claimant for permission to present his claim.

In the German text of the original protocol, signed by Baron von Sternberg and Mr. Bowen, the word "Commission" is used instead of the word "Commissioners" in the clause providing for the extension in proper cases. Basing his argument upon the English translation, the Commissioner for Venezuela has suggested that this may be a case in which the umpire, in case of disagreement of the Commissioners, has no power to decide. Even if the German original did not differ from the English, the umpire is of opinion that the word "Commissioners" as used in this article should properly be interpreted to mean the Commission. In other parts of the protocol the words "Commissioners" and "Commission" seem to have been used synonymously, and it is obvious that if the umpire had no authority to decide what is a reasonable extension in case of disagreement of the Commissioners, it would be entirely in the power of the Venezuelan Commissioner to prevent any extension that did not seem to him reasonable. Such an intention on the part of the representatives of the two countries can not, in the opinion of the umpire, be fairly presumed. Moreover, in the original protocol of February 13, 1903, to which the agreement of May 7 was supplemental, it is provided in Article IV: "in each case where the two members come to an agreement on the claim, their decision shall be final. In cases of disagreement *the claims* shall be submitted to the decision of an umpire to be nominated by the President of the United States of America." The claimant asks leave to present his claim upon the following grounds: It is based upon alleged injuries to and wrongful seizures of property on his breeding ranch, some of which occurred as late as May, 1903. This property was in charge of an agent of the owner, the latter having left Venezuela in 1901 and removed to Madrid with his family, where he still lives. It appears that the agent took the proofs which are offered in support of the claim in the latter part of June. They seem to be in proper form, although perhaps the evidence of the agent's authority may be subject to technical objections. Possibly on this account or for prudential reasons the agent deemed it necessary to send it on to his principal for approval. For some reason which does not appear they were sent to Germany and did not reach the claimant until about July 31, 1903. This occasioned the delay.

Under these circumstances the umpire is of the opinion that the case falls within the provision in the additional agreement of May 7, and is a proper one in which to grant an extension of the term fixed by the representatives of the two Governments.

While there is force in the objection of the Commissioner for Venezuela that the claimant may be presumed to have had knowledge of the protocol of February, it appears that the two Governments did not consider their convention complete as to modes of procedure and other matters provided for by the additional agreement of May 7. The earliest date, therefore, at which it would seem to have been incumbent on claimant to set about preparing his claim and

proofs would be May, 1903, and as it also appears in this case that the injuries and seizure of property continued into that month, the case does not show, in the opinion of the umpire, an unreasonable delay on the part of the claimant.

In accordance with these conclusions, the claim will be admitted for the consideration and such disposition as the proof may warrant.

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