

ILLINOIS CENTRAL RAILROAD CO. (U.S.A.) *v.* UNITED
MEXICAN STATES.

(December 6, 1926. Pages 187-190.)

1. This case is before the Commission for a final decision after counsel have been heard in oral arguments on the merits. Claim was originally made by the United States of America or behalf of the Illinois Central Railroad Company in the amount of \$1,807,531.36 with interest thereon from April

1, 1925, alleged to be due in payment of the purchase price of ninety-one locomotive engines sold by the Company to the Government Railway Administration of the National Railways of Mexico under a written contract. On October 15, 1925, the Mexican Agent filed a motion to dismiss the claim, alleging, first, that the claim being based on the alleged non-performance of contractual obligations, was not within the jurisdiction of the Commission, and, second, that the obligation to pay the amount claimed not being denied by Mexico, no controversy existed for the decision of the Commission. This motion was overruled by the Commission on March 31, 1926. Subsequently certain questions were raised with respect to the right of the Mexican Agency, under the rules of the arbitration, to file an Answer on April 1, 1926, the date on which the Answer was presented for filing. It became unnecessary for the Commission to consider that matter in view of the waiver filed by the American Agent on November 18, 1926, of his right to a hearing on a motion which he filed on September 8, 1926, to reject the Answer filed by the Mexican Agent.

2. The indebtedness of the respondent Government under the contract made between the Illinois Central Railroad Company and the National Railways of Mexico under Government Administration is admitted in the aforesaid motion of the Mexican Government to dismiss the claim and in the Mexican Answer. On page 3 of that Answer it is stated that "the Mexican Agent leaves the case in the hands of the Honorable Commissioners for their decision, and only takes the liberty to request them to take into consideration the equitable reasons which the parties directly interested took into account in arriving at the private settlement referred to above." From copies of correspondence which accompany the Answer it appears that, subsequent to the filing of the claim with the Commission, steps were taken looking to a private adjustment of the Railroad Company's claim against the Government of Mexico. Whatever may be the facts with regard to this proposed arrangement between the parties to the aforesaid contract which arrangement was not consummated, it can have no bearing on the liability of Mexico in the case before the Commission to make compensation in satisfaction of obligations under the terms of the aforesaid contract. The indebtedness of the Mexican Government is admitted, and it is the duty of the Commission to render an award for the amount which has been withheld from the claimant company.

3. During the course of oral argument the Mexican Agent called attention to the provision of Article 4 of the aforesaid contract that the sale of the locomotives "is made upon condition; that it to say, that the title to said locomotives and each of the same shall remain in and shall not pass from the vendor and shall not vest in the purchaser until such time as the purchaser shall have paid all sums due by it hereunder, and shall have fulfilled completely all the terms, covenants, provisions, and conditions, herein set forth and contained, and be performed and kept by the purchaser." With respect to this point the Agent of the United States, on behalf of the American Agency and the claimant company, announced a disclaimer of title in the company to the locomotives, the subject matter of the contract.

4. By virtue of the aforesaid contract there was due the railroad company on April 1, 1925, the principal sum of \$1,472,200 and interest on deferred payments amounting to \$335,331.36, the total sum due on that date being \$1,807,531.36. The Memorial asks for the payment of this amount "with a proper allowance of interest thereon from April 1, 1925."

5. Unfortunately the Convention of September 8, 1923, contains no specific stipulation with respect to the inclusion of interest in pecuniary awards. Allowances of interest have been made from time to time by international tribunals acting under arbitral agreements which, like the Agreement of September 8, 1923, have made no mention of this subject. See for examples: Treaty of October 27, 1795, between the United States and Spain, *Malloy*, vol. 2, p. 1640; Convention of February 8, 1853, between the United States and Great Britain, *ibid*, vol. 1, p. 664; Convention of November 25, 1862, between the United States and Ecuador, *ibid*, p. 432; Convention of July 4, 1868, between the United States and Mexico, *ibid*, p. 1128. Other agreements have contained stipulations authorizing awards of interest under specified conditions and for more or less definitely prescribed periods. See for examples: Treaty of November 19, 1794, between the United States and Great Britain, *Malloy*, vol. 1, p. 590; Convention of September 10, 1857, between the United States and the Republic of New Granada, *ibid*, p. 319; Convention of December 5, 1885, between the United States and Venezuela, *ibid*, vol. 2, p. 1858; Convention of August 7, 1892, between the United States and Chile, *ibid*, vol. 1, p. 185; Special Agreement of August 18, 1910, between the United States and Great Britain, *Redmond*, vol. 3, p. 2619. None of the opinions rendered by tribunals created under those agreements with respect to a variety of cases appears to be at variance with the principle to which we deem it proper to give effect that interest must be regarded as a proper element of compensation. It is the purpose of the Convention of September 8, 1923, to afford the respective nationals of the High Contracting Parties, in the language of the convention "just and adequate compensation for their losses or damages." In our opinion just compensatory damages in this case would include not only the sum due, as stated in the Memorial, under the aforesaid contract, but compensation for the loss of the use of that sum during a period within which the payment thereof continues to be withheld. However, the Commission will not award interest beyond the date of the termination of the labors of the Commission in the absence of specific stipulations in the Agreement of September 8, 1923, authorizing such action. With respect to the Commission's conclusion touching this point, it may be noted that some conventions have contained provisions requiring the payment of awards within a year from the date of the rendition of the final award, without interest during that period. See for example: Article 15 of the Treaty of May 8, 1871, between the United States and Great Britain, *Malloy*, vol. 1, p. 707. But although it has been stipulated that interest should not be paid after the date of the last award, allowances of interest on awards up to that date have been made even in the absence of any provision authorizing them. In Hale's Report, page 21, it is stated that the Commission created by Article 12 of the Treaty of May 8, 1871, between the United States and Great Britain "ordinarily allowed interest at the rate of 6 per centum per annum from the date of the injury to the anticipated date of the final award".

6. The amount claimed in the Memorial, \$1,807,531.36, consists of the unpaid principal sum of \$1,472,200 and interest on deferred payments under the contract up to April 1, 1925, amounting to the sum of \$335,331.36. The Commission is of the opinion that the award should consist of \$1,807,531.36, the specific amount claimed, plus interest at the rate of six per centum per annum on the sum of \$1,472,200.00 computed from April 1, 1925, to the date on which the last award is rendered by the Commission.

Decision

7. For the reasons stated above the Commission decides that the Government of Mexico shall pay to the Government of the United States of America the sum of \$1,807,531.36 (one million eight hundred and seven thousand five hundred and thirty-one dollars and thirty-six cents) plus interest at the rate of six per centum per annum on the sum of \$1,472,200.00 from April 1, 1925, to the date on which the last award is rendered by the Commission.