

Special Agreement.

[See p. 875.]

ARBITRAL TRIBUNAL OF INTERPRETATION

CREATED UNDER THE PROVISIONS OF ANNEX II TO THE LONDON AGREEMENT
OF AUGUST 9, 1924, BETWEEN THE REPARATION COMMISSION AND THE GERMAN
GOVERNMENT.

Award No. II

delivered on January 29, 1927.

BEFORE:

M. THOMAS NELSON PERKINS, *President*,
M. MARC. WALLENBERG,
M. A. G. KRÖLLER,
M. CHARLES RIST,
M. A. MENDELSSOHN BARTHOLDY.

*The annuities prescribed by the Experts' Plan as payable to the Agent General for
Reparation Payments do not comprise: Compensation paid since the 1st September,
1924, or which may be paid in the future by the German Reich to German nationals*

in respect of the retention, liquidation or transfer of their property, rights or interests—on whatever date such measures may have been taken—such payments being made in execution of the Treaty of Versailles and in particular under the following Articles of that Treaty—that is to say, Articles 297 (i), 74, 145, 156 (2nd paragraph) read with paragraph 2 of the Protocol signed at Versailles on the 28th June, 1919, and 260.

REASONS.

1. Clause I of Annex II A of the London Agreement of August 9th, 1924, between the Reparation Commission and the German Government provides that “subject to the powers of interpretation conferred upon the Reparation Commission by paragraph 12 of Annex II to Part VIII of the Treaty of Versailles and subject to the provisions as to arbitration existing elsewhere, “and in particular in the Experts’ Plan or in the German legislation enacted “in execution of that Plan, all disputes which may arise between the Reparation Commission and Germany with regard to the interpretation either of “the Agreement concluded between them, the Experts’ Plan, or the German “legislation enacted in execution of that Plan, shall be submitted for decision” to arbitrators, that is to say: to this Tribunal. As a statement preliminary to the reasons for its present Award, the Tribunal desires to recall this clear provision, which received express confirmation in the correspondence exchanged by the Reparation Commission and the German Government on the 30th May and 4th June, 1925. The provision shows that the Tribunal’s jurisdiction is limited, limited to the interpretation, *inter alia*, of the Experts’ Plan. It follows that the Tribunal has to take the Plan as it finds it, interpreting its meaning as it thinks is correct, without allowing itself to be influenced by considerations as to whether or not it might be rightly contended that its Award will have consequences which might be looked upon as not desirable. If the Tribunal took another view, and allowed itself to be influenced by considerations of the nature just referred to, its activities might result in what in effect would tend to be an alteration of the Experts’ Plan, and it goes without saying that for this Tribunal any such action would be outside its competence. The Tribunal feels bound to explain its point of view in this respect, were it only because either Party has represented to it that a decision in favour of its opponent will have undesirable consequences.

2. In the interest of a correct appreciation of its opinion, the Tribunal wishes to emphasise the exact nature of the question submitted to it at this time. It is to be noted that the question, the only question for determination is: whether compensation paid or to be paid after the 1st September, 1924, by the German Reich to German nationals in respect of the retention, liquidation or transfer of the property, rights or interests of such nationals under the provisions of the Treaty of Versailles enumerated in the Terms of Submission governing this Arbitration, irrespective of the date of such retentions, liquidations or transfers, is to be included in the annuities prescribed by the Experts’ Plan. It seems to the Tribunal to be essential to remember that it is here solely concerned with this question whether *compensation* paid or to be paid to German nationals after the 1st September, 1924, for the retention, liquidation or transfer of their property, rights or interests is to be comprised in the annuities, and to distinguish between this question and the entirely different question which is not submitted to it by the Terms of Submission, namely whether *credits* given or to be given to Germany after the 1st September, 1924, for the value of property, rights or interests of German

nationals, retained, liquidated or transferred, are to be deducted from the annuities.

3. Turning now to the Experts' Plan, the Tribunal observes that, in its beginning, it is pointed out that they were invited by the Reparation Commission to "consider the means of balancing the budget and the measures to "be taken to stabilise the currency of Germany". The Experts understood their task to mean that they were not (in the words of Part I, Section IV, of the Plan) to lose "sight of the fact that the stabilisation of the currency and the "balancing of the budget are means designed to enable Germany to satisfy "her own essential requirements and to meet her Treaty commitments. the "fulfilment of which is so vital to the reconstruction of Western Europe".

4. This was the starting-point from which the Experts began to build their Plan. As already stated, it is the function of this Tribunal to interpret that Plan, and this is a case of interpreting it. For this interpretation, the primary source of information is the Plan itself, and it has been the object of the Tribunal to determine the leading thoughts underlying the scheme laid down therein. What did the Experts do? They provided that an amount which in their opinion, based on a careful study of the economic condition of Germany, could safely be taken without jeopardising the equilibrium of the German budget (by no means necessarily a maximum amount, but an amount which could safely be taken), should be paid in gold marks or their equivalent in German currency into the Bank of Issue to the credit of the Agent General for Reparation Payments. The Plan says (Part I, Section XII): "This payment is the definitive act of the German Government in "meeting its financial obligations under the plan." Then, to guard against the unsettling of the German exchange, the Experts provided for a committee known as the Transfer Committee, whose task it would be to regulate the withdrawals of the sums thus paid by the German Government into the Bank of Issue to the credit of the Agent General for Reparation Payments, and they laid down the purposes for which this Committee, to the extent that it deemed possible without endangering the stability of German currency, was to effect withdrawals from the Agent General's account with the Bank. The Experts provided that any surplus which there might be in the Bank over and above the transfers that could be effected without endangering the stability of German currency, should be accumulated in the Bank and invested in Germany up to a limit of five milliards of gold marks, and, further, that, if and when such accumulations reached five milliards of gold marks, the payments by the German Government into the Bank to the credit of the Agent General for Reparation Payments should be reduced, below the standards set out in the Plan, to that amount which, in the opinion of the Transfer Committee, could be transferred without endangering German currency. The purposes for which the Committee was empowered and commissioned to effect withdrawals from the Agent General's account with the Bank are indicated in Part I, Section XIII, of the Plan, and more precisely defined in its Annex No. 6; they are, apart from investments in loans in Germany in case of need as above stated: payments for deliveries in kind, payments under the Reparation Recovery Acts, and the conversion of credit-balances into foreign currencies. This definition does not include, and cannot, in the opinion of the Tribunal, be read as including, compensation to German nationals to be paid under the above-enumerated Articles of the Treaty of Versailles.

5. This interpretation of the Plan is supported by many passages, to be found almost throughout its text, whilst the passages relied upon by Counsel

for Germany do not, in the opinion of the Tribunal, when read in their context, militate against the construction given in the preceding paragraph. It seems unnecessary to quote all these supporting passages, or even to refer to them all; the Tribunal is content to make three quotations.

The first passage which the Tribunal desires to quote is to be found in Section XVII of the first part of the Plan, in which the Experts emphasize some of their points. It is as follows: "From the standpoint of the taxpayer "in creditor countries the plan means in due course an annual relief to the "extent of two and one half milliards, plus such additional amount as the "index of prosperity may provide."

Secondly, the Experts stated in Part I, Section V, last paragraph, of their Report: "Without undue optimism, it may be anticipated that Germany's "production will enable her to satisfy her own requirements and raise the "amounts contemplated in this plan for reparation obligations." The distinction between Germany's own requirements and amounts destined for the discharge of reparation obligations, which is made in this passage is, in the opinion of the Tribunal, only comprehensible if the said amounts are looked upon as destined to the exclusive economic benefit of the Allied and Associated Powers.

Lastly, the Tribunal desires to quote Part I, Section XI, first paragraph, of the Plan. This passage reads: "We desire to make it quite clear that the "sums denoted above in our examination of the successive years, comprise all "amounts for which Germany may be liable to the Allied and Associated "Powers for the costs arising out of the war, including reparation, restitu- "tion, all costs of all armies of occupation, clearing house operations to the "extent of those balances which the Reparation Commission decide must "legitimately remain a definitive charge on the German Government, com- "missions of control and supervision, etc. Wherever in any part of this "Report or its Annexes we refer to Treaty payments, reparation, amounts "payable to the Allies, etc., we use these terms to include all charges payable "by Germany to the Allied and Associated Powers for these war costs." And immediately thereafter, in the next paragraph, the Experts add: "The funds to be deposited in the special account in the bank are to be avail- "able for the foregoing purposes, notwithstanding anything in this Report "which may be interpreted to the contrary", etc. The Tribunal cannot understand, especially when having regard to the leading thoughts which are the basis of the scheme worked out by the Experts and have been set forth above, how this passage can show anything else than that the annuities were meant by the Experts to go in full to the Allied and Associated Powers.

The above-quoted provisions, together with the many others which occur throughout the Plan, confirm the Tribunal in its opinion that it is impossible to place upon the Experts' Plan a construction according to which the annuities were intended by the Experts to comprise compensation to German nationals in respect of the retention, liquidation or transfer of their property, rights or interests which gave rise to the present arbitration.

Done at The Hague, on January 29, 1927, in English, French and German. In case of dispute as to the interpretation of this Award, the English text shall be authoritative.

THOMAS N. PERKINS, *President.*

E. N. VAN KLEFFENS, *Secretary.*