

AMERICAN SHORT HORN BREEDERS' ASSOCIATION (U.S.A.)
v. UNITED MEXICAN STATES.

(April 27, 1927, concurring opinions by American Commissioner and Mexican Commissioner, April 27, 1927, Pages 280-285.)

Van Vollenhoven, Presiding Commissioner :

1. This claim is asserted by the United States of America on behalf of the American Short Horn Breeders' Association, an American corporation, against the United Mexican States to recover the sums of \$1,220 and \$1,645, with interest thereon. The claim is predicated on two different counts.

2. In the first place, it is alleged that the Industrial Agent of the Mexican National Railroads, by name J. B. Rowland, induced the claimant in December, 1922, and subsequent months, to participate in a cattle exhibition at Mexico City in the Spring of 1923; that he guaranteed the association the price of the cattle left unsold or unpaid for at the close of the exhibition; and that, instead of fulfilling this guarantee, cattle of the value of \$1,220 were neither paid for nor redelivered. The Industrial Agent, it is alleged, is a Mexican official, or at any rate one "acting for" the Mexican Government; the exhibition, it is alleged, was a Government affair; Mexico, therefore, should be held responsible.

3. The record as submitted is incomplete and meager. It is worthy of note that the Memorial combines the facts of this first count of the present claim with the facts of its second count and of two other claims (Docket Nos. 2403 and 3217) which are essentially different and should be carefully separated.

4. About December 1, 1922, Rowland came to Chicago, Illinois, U.S.A., to take up with the claimant its willingness to ship cattle to the Mexico fair. Claimant establishes that it only knew him in his capacity of Industrial Agent of the Government-owned Mexican National Railroads. The exposition would be held from March 29 to April 5, 1923. The Government patronized and subsidized it in several ways. The claimant apparently was unwilling to participate unless he were given a guarantee; the only contract alleged by the claimant is to the effect that Rowland, on behalf of Mexico, undertook to give such guarantee. A telegram sent to the claimant on January 25, 1923, by one Treviño, quoting another telegram by Rowland himself states, "Stock guaranteed from exposition to date" —a sentence which would seem garbled. On February 11, 1923, Rowland's associate Abbott wrote: "Mr. Rowland is now in Mexico City, where he will take up with the Department of Agriculture, as well as the Director General of Railways, the matter of some form of guarantee that should satisfy all of the Associations"; on February 18, 1923, Rowland wired from Mexico City; "Arrived here today find letter asking guarantee am arranging agricultural department take any surplus stock Abbott sending detailed letter on orders everything very satisfactory"; and on February 21, 1923, there followed a telegram from Mexico City by the same Rowland reading: "Will guarantee carload" (follows description of carload desired). The link between the two last telegrams is such as to render acceptable an interpretation by the claimant to the effect that it was the Department of Agriculture at Mexico City which guaranteed that, in case not all of the cattle shipped were sold or paid for, this Department would take the surplus stock and pay its market value.

5. Acceptable though such an interpretation may have been, it is doubtful whether the Commission is warranted in fixing a liability on Mexico exclusively on an assumption of this kind. Neither Rowland nor his associate Abbott, a private man as far as the record shows, ever mentioned in their dealings the Government or the Mexican Railroads as the party concerned; goods were shipped to Rowland, checks accepted from Rowland, complaint of nonfulfillment of promises lodged with Rowland, as is shown by Rowland's letter of May 21, 1923. The claimant was right and was acting in a business manner by requesting a guarantee before taking the risks of shipping cattle to Mexico; but he did not ascertain who it was that gave the guarantee mentioned in the telegram of February 21, 1923, nor what was guaranteed. From Abbott's letter of February 11, 1923, stating that Rowland would "take up with the Department of Agriculture" the matter of "some form of guarantee" it should have been sufficiently clear that, without special authorization, Rowland could not give a guarantee binding on the Mexican Government. The record does not show that the claimant made any inquiry as to the author and the contents of the guarantee referred to in Rowland's telegram of February 21, 1923. It would seem, therefore, that the Commission can not, on the evidence presented, consider Mexico as having given through Rowland the guarantee the claimant desired; and if this causes the Association a disappointment, it suffers from its own lack of sufficient care.

6. The second count of the claim is based on the fact that in the fall of 1923 there was to be another cattle exhibition at Mexico City, and that once more Rowland came to Chicago (September, 1923) to invite the claimant to participate. The Association shipped cattle in the value of \$1,645 (costs and charges included), and did not receive any money nor were the cattle redelivered. The claimant had already experienced that the outcome of a cattle exhibition in Mexico might not measure up to Rowland's expectations; its participation in the fair of March-April, 1923, had ended in an unpaid check "a few months after the exposition". With respect to the second count of the present claim there is not even a suggestion of the existence of some guarantee or similar contract—the record merely states that "an order for (this) livestock * * * was placed"—nor is there evidence that the Mexican Government actually received and retained for its benefit the claimant's animals.

7. On the grounds stated the claim should be disallowed.

Nielsen, Commissioner:

I am of the opinion that the claim must be disallowed. Unfortunately, the evidence in this case is of such an uncertain character that it is not possible to reach a positive conclusion with respect to the nature of the transaction entered into by J. B. Rowland and the claimant. The contentions with respect to the validity of the claim appear to rest on two propositions, namely, (1) Rowland acted as a representative of the Government of Mexico which is responsible for the nonfulfillment of the undertakings which he entered into with the claimant; and (2) Rowland entered into a contract with the claimant to sell cattle which the association exhibited, to remit the proceeds of sales to the association, and to pay the association for cattle not disposed of to private purchasers.

The precise relation of the Mexican Government to the exposition to which the cattle were sent and Rowland's status as a representative of that Government are controverted questions, which, in the view I take of the case, need not be considered in reaching a decision, because in my opinion there is not in the record evidence which could justify the Commission in reaching the conclusion that Rowland undertook to make sales of all cattle shipped, and to pay the claimant an agreed value of all cattle not sold to private purchasers.

To be sure there is evidence indicating that such an agreement may have been made, or that the claimant's representative may have thought that the interviews and correspondence with Rowland resulted in such an agreement. But in my opinion there is not evidence to justify the Commission in holding that such an agreement was actually consummated. There is evidence of an understanding that Rowland should undertake to obtain orders from Mexicans desiring to purchase stock placed upon exhibition, and that stock should only be sent when purchasers were found. In a communication addressed under date of February 11, 1923, to F. W. Harding, an official of the American Short Horn Breeders' Association, it was stated that Rowland would take up with the Department of Agriculture and with the Director General of the Railways the matter of "some form of guarantee that should satisfy" the associations interested in the exposition. In a telegram sent by Rowland to Harding under date of February 21, 1923, it is stated that the former will guarantee a certain number of cattle. But it is not possible on the strength of evidence of this character to reach the conclusion that the legal effect of the guarantee

mentioned, whatever may have been its precise character, was a contractual obligation in the nature of that upon which the claim apparently is grounded. Evidence with respect to the final disposition of the stock shipped for which the claimants were not paid might throw light on this point, and also on the broader question of the responsibility of the Mexican Government in connection with the transactions underlying the claim. But no such evidence is found in the record. I am of the opinion that the record is wanting in certainty and sufficiency of evidence upon which to predicate the consummation of a contract.

While my conclusions with respect to a proper decision in the case are based solely on this point, I may observe that it seems to be doubtful that there is evidence upon which a conclusion could properly be grounded to the effect that Rowland so represented himself to the claimants that they were justified in believing that he, as a representative of the Mexican Government, acting within the scope of his authority, undertook to bind the Government of Mexico to see to it that the claimants were paid for the cattle shipped to Mexico. The decision in the *Trumbull* case cited by the United States, Moore, *International Arbitrations*, vol. 4, p. 3569, was apparently grounded on the theory that the United States was liable to make compensation for services obtained by an American Minister in connection with an extradition case because he had made a promise in the name of his Government which, according to rules of responsibility of governments for acts performed by their agents in foreign countries, could not be repudiated.

Rowland evidently informed the claimant of certain privileges granted to exhibitors with respect to customs duties and railway rates. But the fact that he was in a position to do this is no clear indication of his representative character. I presume that remission of customs duties which was promised to the claimants is something that governments usually grant to foreign exhibitors in connection with expositions over which they have no direct control. In the instant case it may readily be perceived that the Mexican Government, being in charge of railway operations in Mexico, could see fit, in view of its desire to encourage and assist the exposition, to grant reductions in railway rates.

Fernández MacGregor, Commissioner:

I concur with the statements of fact and law made by the Presiding Commissioner and with his conclusion that the claim must be disallowed.

Decision

The Commission decides that the claim of American Short Horn Breeders' Association must be disallowed.
