

IRMA EITELMAN MILLER, LILLIAN EITELMAN, AND  
B. B. EITELMAN (U.S.A.) *v.* UNITED MEXICAN STATES

(September 26, 1928. Pages 15-17.)

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*Commissioner Fernández MacGregor, for the Commission:*

1. This claim is presented by the United States of America against the United Mexican States in behalf of Irma Eitelman Miller, Lillian Eitelman and B. B. Eitelman, children of George Eitelman, who at the time of his death was employed by the Cusi Mining Company as blacksmith at their mines situated in the vicinity of Cusiuhiriachic, State of Chihuahua, Republic of Mexico. On the morning of September 16, 1916, the body of George Eitelman was found by the roadside bearing wounds which indicated that he had been murdered. His skull was fractured; the bones of the face and some of the bones of the back and chest were also broken. There were some indications pointing to robbery as the motive for the crime. It is alleged that on account of this killing, the children of the deceased, who are American citizens, sustained damages in the sum of \$50,000.00 United States currency, and that the Mexican Government should make compensation in that amount, as the Mexican authorities showed a lack of diligence and intelligent investigation in prosecuting the culprits, to such a pronounced degree as to constitute a denial of justice.

2. The nationality of the claimant was not challenged by the respondent Government except in the course of oral argument. The Commission considers that there is convincing evidence that the deceased, as well as the claimants, are American citizens.

3. The contention of lack of diligence or lack of intelligent investigation on the part of the Mexican authorities after the murder of George Eitelman is made in a general way; the American Consul at Chihuahua, on September 17, 1916, brought the case to the attention of the Governor of that State; on October 1 following, Dr. I. S. Gellert, a reputable resident of Cusiuhiriachic, informed the aforesaid Consul that the authorities had done practically nothing, in the two weeks that had passed since the murder; then the Consul again called the attention of the Governor to the inactivity of the authorities at Cusiuhiriachic, but his communication, so it is alleged, was ignored by the Mexican officials.

4. From the record it appears that the local authorities, early in the morning of September 16, 1916, proceeded to the spot at which the killing had taken place, and made an investigation, having instituted the necessary legal procedure by appointing experts to make the post-mortem examination. On September 17th following the self-same authorities proceeded to the mine at which the deceased had been working, to obtain

information about him; it was disclosed that the man had only been a fortnight on the mine, and that no one knew him well. On September 19th two men who had been arrested on suspicion were questioned, but as no evidence was found warranting their detention they were released on September 22nd. On September 20th and 21st other persons were summoned and examined, one of whom was probably the last to see Eitelman on the night of September 15th, talking to an unknown man whose general description he gave. On October 3, another man, a prospector, was arrested on suspicion, but was released on the following day for want of evidence against him. On the same day the postmortem certificate was filed by the experts. On October 9, the Supreme Tribunal of Chihuahua transmitted to the Judge at Cusihuiriachic a letter from the American Consul to the Governor of Chihuahua, requesting greater activity in the apprehension of the culprits; the said Tribunal directed the judge to proceed with more speed and to report immediately, which he did. From that date on nothing is recorded, but the Mexican Agent filed evidence to the effect that the local police made efforts to get clues and to apprehend the culprits.

5. This Commission has in other cases expressed its views regarding criminal procedure, and in the light of the record of this case, and of the principles underlying the decision in the case of *L. F. Neer and Pauline E. Neer*, Docket No. 136,<sup>1</sup> before this Commission, it is not prepared to hold that Mexico is responsible.

#### *Decision*

The claim of the United States of America on behalf of Irina Eitelman Miller, Lillian Eitelman, and B. B. Eitelman is disallowed.

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