

364

MEXICO/U.S.A. (GENERAL CLAIMS COMMISSION)

BOND COLEMAN (U.S.A.) *v.* UNITED MEXICAN STATES

(October 3, 1928. Pages 56-61.)

Commissioner Nielsen, for the Commission:

Claim is made in this case by the United States of America in behalf of Bond Coleman to obtain an indemnity in favor of the claimant in the amount of \$4,000.00. The claim is predicated on two grounds: (1) failure of Mexican authorities to apprehend and punish persons who seriously injured the claimant, and (2) the action of Mexican military authorities in depriving the claimant of prompt means of conveyance which his employers had put at his disposal to enable him to receive urgently needed medical attention.

Briefly stated the facts in the case as set forth in the Memorial are as follows:

During the month of June, 1924, and for some time previous thereto, the claimant was employed by the *Cía. Mexicana de Terrenos y Petróleo, S. A.*, of Frontera, Tabasco, Mexico, as a geologist. His work necessitated his going into unfrequented and sparsely populated sections of Mexico for the purpose of making geological surveys and investigations. During the first few days of the month of June, 1924, the claimant and three other men in his charge, namely, Bruce Harlton, an Englishman, and Rutilio Vengas and Pedro Carpio, both Mexicans, were travelling, in the conduct of their work, on horseback from Huimanguillo to Villa Hermosa, in Tabasco, Mexico. They carried with them necessary equipment on four pack mules.

On June 4, 1924, while in the performance of their work, the claimant and the men in his charge were unexpectedly attacked by a band of twelve or fifteen armed supporters of de la Huerta, near Soledad on the road between Huimanguillo and Villa Hermosa. The attack was made without warning and was explained by one of the attacking Mexicans as having been made on the assumption that claimant and his associates were members of federal forces.

As a result of the shots fired during the attack, a bullet lodged in the claimant's left wrist, fracturing the bone, and inflicting a painful wound.

After convincing the attackers that neither he nor his associates were in any manner connected with the federal military forces and had no knowledge of the whereabouts of certain Obregón forces, the claimant and his party were robbed of their equipment and pack mules and were thereupon permitted to continue on their way to Villa Hermosa.

The claimant was given medical treatment at Villa Hermosa and then sent to Galveston, Texas, and later to Kansas City, Missouri, for further necessary medical attention. In spite of the seriousness of the claimant's injury and the fact that his employers had chartered a boat and sent it to Villa Hermosa for the purpose of taking the claimant to Galveston, Texas, for medical treatment, General Gonzáles, Federal Commander in charge at Villa Hermosa and vicinity, detained for a period of three days for the purpose of transporting his troops and equipment the boat sent by the *Cía. Mexicana de Terrenos y Petróleo, S. A.* As a consequence of the resulting delay, the wound in the claimant's wrist, which still had fragments of the bullet therein, became infected, it is alleged, causing the claimant further pain, suffering and damage.

It is alleged that, as a result of the injuries received, the claimant was obliged to expend several hundred dollars for medical treatment and attention; that he has never regained the full use of his hand or arm;

and that he is even now suffering from the disability which has impaired his former earning capacity.

Upon arrival at Villa Hermosa, the claimant reported the entire matter to General González and to General Martínez, who were then in military charge of that city and the vicinity, and requested that proper steps be taken for the apprehension and punishment of the offenders. However, no endeavor was made, it is charged, to apprehend or to punish the attackers, who were a band of Mexicans, said to have been notoriously and openly violating the law in that vicinity.

The Commission is confronted with difficulties such as it encounters from time to time because of vagueness or lack of evidence. That which accompanies the Memorial of the United States is scanty on important points, and no evidence at all is presented with the Mexican Answer. The right is reserved in the Answer "to file evidence if it is deemed fit".

It is alleged in the Answer that "the claimant has no right to be heard, inasmuch as the acts of which he complains are not comprised within the Convention of 1923". And the question of jurisdiction is mentioned in the Mexican brief, but it was not raised in oral argument. It is not perceived how there can be any question as to the jurisdiction of this Commission to pass upon a claim involving a complaint against the conduct of Mexican federal military authorities in the month of June 1924.

There was considerable discussion by counsel on both sides whether the persons who wounded the claimant should be considered to be revolutionary soldiers or brigands. In the Memorial it is stated that the claimant and the members of his party were attacked by a band of armed supporters of de la Huerta, but it was contended in the written and the oral arguments by counsel for the United States that the territory in the vicinity of Villa Hermosa was not in control of the de la Huerta forces on June 4, 1924, and that Mexico was not without responsibility for failure to prosecute and punish wrong-doers for wrongs committed in that locality. There was considerable discussion by counsel on each side whether it could be considered that the so-called de la Huerta revolution had been suppressed at that time. It would probably be difficult or impracticable for the Commission to undertake to arrive at a definite conclusion with regard to that point, and it seems to be unnecessary to analyze the contentions made with respect to this matter.

In the opinion rendered in the claim of *G. L. Solis*, Docket No. 3245¹, the general principle with regard to responsibility of a government for the acts of insurrectionists was discussed. It was emphasized that in considering the question account must be taken of the capacity to give protection, and the disposition of authorities to employ proper measures to do so, and that in the absence of convincing evidence of negligence, responsibility could not be established.

In the Mexican Answer and in the brief no defense is made to the claim except the untenable objection to the jurisdiction of the Commission, and the contention that the Mexican Government can not be held responsible for acts of insurgents. However, the broad denial of complete non-responsibility for insurgents made in the Answer and brief apparently was not maintained in oral argument during the course of which counsel explained his view that a government might be held

¹ See page 358.

responsible for acts of insurgents, when it was chargeable with negligence. It is of course important to take cognizance of the precise charge made by the United States which is not a failure on the part of Mexican authorities to prevent the acts from which the claimant suffered, but a failure to apprehend and punish the wrongdoers.

It is alleged in the Memorial that the claimant reported the attack made on his party to General González and to General Martínez, and requested that proper steps be taken for the apprehension and punishment of the offenders. However, there is no evidence in the Memorial to support that allegation. Indeed there is no specific information accompanying the Memorial to show that the military authorities were notified of these deplorable occurrences. However, at the hearing of the case there was introduced an affidavit of the claimant in which he swears that General González was notified that the claimant had been shot, and that no action was taken either by General Martínez or by General González to punish the men who did the shooting. There is no information in the record regarding the nature of the region in which the occurrences in question took place except such as possibly may be inferred from the statements to the effect that the claimant's work necessitated his going into unfrequented and sparsely populated sections of Mexico. There is information that Mexican federal forces at the time of the attack were in the neighborhood of Huimanguillo, "a day and a half travel by mule from this place", and that the shooting took place about twenty-five miles from Villa Hermosa. There is no information as to the number of federal troops or as to the possibilities of apprehension. Whatever conclusions might be made as to a complete or substantially complete suppression of the de la Huerta revolution, the Commission, in the unfortunate state of the record, is constrained to hold that an indemnity can not be awarded on the ground of negligence with respect to the apprehension and punishment of the persons who injured the claimant. The same general principles with regard to proof of negligence in the prevention of wrongdoing is applicable to proof with respect to negligence in the matter of apprehension and punishment. And in giving application to those principles in the instant case it is not important that the persons who attacked the claimant's party should be placed under some precise category or designation.

On the other hand, responsibility must be fixed on the Mexican Government for action of General González in seizing the boat which was sent to enable the seriously wounded man to obtain medical assistance. No defense was made by the Mexican Government to this complaint with respect to this action. It is unnecessary to consider any legal questions with respect to the right of military authorities to requisition, conformably to law and on the payment of proper compensation, a vessel that may be needed for public purposes. This ship was seized without compensation, and at a time when the dictates of humanity should have prompted assistance to the claimant, measures taken for his relief were frustrated. No imperative necessity for taking the boat has been shown. The evidence may leave some uncertainty as to the length of time he was delayed in getting medical aid, and of course as to the precise consequences of the delay. But it may be taken as a certainty that his sufferings and injuries were aggravated by that delay, and it is clear that he was the victim of

wrongful action. It is believed that the claimant may properly be awarded the sum of \$1,000.00 for the injury inflicted upon him.

Decision

The United Mexican States shall pay to the United States of America in behalf of Bond Coleman the sum of \$1,000.00 (one thousand dollars.)
