

NORTHERN STEAMSHIP COMPANY, INC. (U.S.A.) *v.* UNITED
MEXICAN STATES

*(October 3, 1928, dissenting opinion by American Commissioner, undated.
Pages 20-22.)*

The Presiding Commissioner, Dr. Sindballe, for the Commission:

On April 12, 1924, the steamship *Stal*, time-chartered by the Northern Steamship Company, Inc., an American Corporation, and sub-chartered by that company to the Tampa Box Company, arrived at the port of

Frontera, Tabasco, Mexico, then in the hands of insurgent forces, for the purpose of loading a cargo of cedar logs and forwarding that cargo to Tampa, Florida. The loading was begun on April 14. On April 22, when only part of the cargo had been loaded, the vessel was ordered to put to sea by the gunboat *Agua Prieta*, flying the flag of the Mexican Federal Government. It obeyed the order and proceeded to Tampa with its partial cargo.

On behalf of the Northern Steamship Company, Inc., the United States of America are now claiming that the United Mexican States should pay the company damages in the amount of \$7,439.43 with due allowance of interest on account of the loss suffered by the company from the action of the *Agua Prieta*. On the grounds set forth in the case of *The Oriental Navigation Company*, Docket No. 411,¹ the Commission, however, holds that the action of the *Agua Prieta* did not constitute a breach of international law.

Having unloaded its partial cargo in Tampa, the *Stal* returned to Frontera, loaded a cargo of cedar logs during the time from May 8 to May 18, and brought this cargo to Tampa. This time the vessel met with no hindrances.

On May 30, the *Stal*, still time-chartered by the Northern Steamship Company, Inc., but now sub-chartered to the Astoria Mahogany Company of Long Island City, New York, arrived anew at Frontera for the purpose of taking a cargo of mahogany logs to be shipped by Romano and Company, Frontera, from Frontera to Astoria, Long Island. This time the Federal Mexican Government was again controlling the port. No cargo was delivered to the vessel by Romano and Company, and after having waited several days the vessel left Frontera.

Alleging that the reason why the vessel did not receive any cargo was that a loading permit which had been issued by the Mexican Government was afterwards cancelled as a penalty upon the vessel for her having traded to the port of Frontera while in the hands of insurgents, the United States of America are now claiming that the United Mexican States should pay the Northern Steamship Company, Inc., damages in the amount of \$12,277.79 with the allowance of interest thereon.

From the record it does not appear with any degree of certainty that a loading permit ever was issued. In a telegram dated May 28, the claimant company asked I. H. Drake, Vera Cruz, to secure the necessary loading permit, and by a telegram, dated June 9, Drake informed the claimants that the permit was suspended because of the ship's having operated at Frontera during the occupation of the port by the rebels. On the other hand, it appears that Romano and Company have not been able to deliver the cargo. They apologize—in letters dated June 6 and June 7—that the authorities had promised to place a suitable tug at their disposal, but had failed to fulfill that promise. In a letter to the captain of the vessel, dated June 9, they declare, that it will not be possible to deliver the cargo “inasmuch as the vessel under your command has no permit to load wood”. But on June 5 it appears that Romano and Company asked the Maritime Customs House to certify that as communication with Mexico City was interrupted and as no loading permit was received in the Customs

¹ See page 341.

House, delivery of the cargo in question could only take place on the exportation duties being calculated on the basis of the gross tonnage of the vessel instead of on the basis of measurements of the logs to be exported.

Decision

The claim of the United States of America on behalf of Northern Steamship Company, Inc., is disallowed.

Commissioner Nielsen, dissenting.

The principal reasons why I dissent from the opinion of my associates in this case are stated in the dissenting opinion which I wrote in the case of the *Oriental Navigation Company*, Docket No. 411, and I consider it to be unnecessary to make any further statement.
