

HAZEL M. CORCORAN (U.S.A.) v. UNITED MEXICAN STATES

*(April 13, 1929, concurring opinion by American Commissioner, April 13, 1929.
Pages 211-213.)*

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

In this case claim in the sum of \$50,000.00, United States currency, is made against the United Mexican States by the United States of America on behalf of Hazel M. Corcoran, an American citizen, for alleged failure of the Mexican authorities duly to prosecute one Alfredo Ibarra, who on February 28, 1920, shot and killed the husband of the claimant, Raymond A. Corcoran.

The murder took place at the Santa Gertrudis Mine in the State of Hidalgo, Mexico. The deceased was the superintendent of the Santa Gertrudis Mining Company, and the murderer was an employee of that company. Immediately after the murder Ibarra was seized by the guards of the company and delivered to the appropriate Mexican authorities. He was committed to jail at Pachuca, Hidalgo, Mexico, and criminal proceedings were instituted against him. In the morning of May 7, 1920, however, all

the prisoners of the jail at Pachuca, some 150 men, including Ibarra, escaped. It is alleged that the Obregón revolutionary forces were approaching the town at that time, and that they entered the town on the same day. The warden of the jail has testified that the guard of the prison withdrew in the morning of the said day, that he then organised his employees into a guard and requested aid of the mining companies, but that he could not prevent the prisoners, who had broken some of the padlocks, from escaping. The personnel of Court at Pachuca also testified that the padlocks were broken by the prisoners. In the course of the following months some of the prisoners were reapprehended, but Ibarra was never reapprehended.

The respondent Government argues that the present case is not within the jurisdiction of this Commission, the release of Ibarra being due to the activity of the Obregón revolutionary forces. As it is not even alleged, however, that the release of Ibarra was due to a direct act of the Obregón forces, and as no connection between the failure to reapprehend Ibarra and revolutionary movements in Mexico has been shown, the Commission is of the opinion that the case is within its jurisdiction.

The circumstances surrounding the release of Ibarra would hardly justify the Commission in giving an award in the present case. But in view of the failure to reapprehend Ibarra the Commission is of the opinion that an award should be given. It appears that an order to arrest Ibarra was not issued until May 20, 1920, or one of the immediately preceding days. It further appears that on September 8, the American Chargé d'Affaires in Mexico City informed the Mexican authorities that the murderer was in Pachuca, but this communication was not brought to the knowledge of the local Mexican authorities until a month afterwards, and there is no evidence to show that steps, with a view to reapprehend Ibarra, were actually taken, although it would seem reasonable to assume that if serious efforts had been made, some report regarding the result thereof would have been given to the American Embassy, which made inquiries several times, and was promised information about the result of the proceedings.

The Commission is of the opinion that the amount to be awarded can be properly fixed at \$6,000.00, United States currency.

Nielsen, Commissioner :

I concur in the award of \$6,000.00. I should not want to be understood to take the view that the release of Ibarra is an immaterial point in the case. In my opinion that release and the absence of action to reapprehend and punish the murderer clearly revealed a situation with respect to the administration of justice that is below the standards prescribed by international law.

From records before the Commission it appears that some eighteen prisoners were reapprehended and tried on a charge of escape. The general tenor of the evidence given by these persons is that they walked out of jail freely, the doors being opened and there being no impediment to their departure. It appears that on motion of the *Ministerio Publico* persons who thus left the jail were acquitted by a judge of the charge of escape on the ground that they simply without restriction left jail.

For example, one prisoner, serving a sentence for the crime of homicide, testified that the vice president of the prison caused all the prisoners to enter into formation in the court yard and stated that orders had been received to open the doors of the jail for the purpose of releasing every one. He further testified that all the prisoners, leaving in an orderly manner,

passed through the warden's office where they found the warden who said nothing.

Decision

The United Mexican States shall pay to the United States of America on behalf of Hazel M. Corcoran \$6,000 (six thousand dollars) United States currency, without interest.

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