

CENTRAL AGENCY (LIMITED), GLASGOW (GREAT BRITAIN)
v. UNITED MEXICAN STATES

*(Decision No. 7, November 29, 1929, dissenting opinion by Mexican Commissioner,
November 29, 1929. Pages 68-74.)*

1. This claim is presented by the British Government on behalf of a limited liability company, registered in England, called the Central Agency (Limited), Glasgow. In 1913 the claimant company forwarded a consignment of cotton thread to a firm of merchants at Chihuahua. According to the memorial it had reached the railway station of Monterrey, when the place was fired upon by a party of revolutionaries on the 23rd and 24th October, 1913. The result was that the consignment was destroyed in the fire caused by the revolutionary forces, and never reached its destination.

2. The respondent Government have lodged a motion to dismiss the claim mainly on this ground: The Mexican Agent says that the memorial fails to comply with article 10 of the Rules of Procedure, which provides that each Memorial shall be signed by the claimant or by his attorney in fact, as well as by the British Agent. The rule provides also that the memorial may be signed only by the British Agent, but in this event the memorial must include a signed statement by the claimant of his claim.

The memorial contains a statement of claim made by Diego S. Dunbar, Sucr., before the British Consul-General at Mexico City on the 18th January, 1921. It is signed by Robert Craig, with the words "Per pro Diego S. Dunbar, Sucr." just above the signature. The contention of the Mexican Agent is that the Memorial does not show that the firm of Diego S. Dunbar, Sucr., is the representative of the Central Agency, nor that Mr. Craig is authorized to sign on behalf of the firm. An affidavit sworn by Mr. William Simpson, Secretary to the Central Agency, Glasgow, is set out in annex 4 of the Memorial. Mr. Simpson swears that the Central Agency is a British company, incorporated at Edinburgh in 1896, and that Diego S. Dunbar, Sucr., was the Agent of the Central Agency in Mexico City and authorized to make the claim. A certificate of the incorporation of the company is set out in annex 5.

It was contended by the Mexican Agent that Article 10 should be strictly observed in order to ensure that the claimant really wished his claim to be preferred by his Government. He submitted that the affidavit sworn by Mr. Simpson did not establish the fact that he was the Secretary of the Company, nor did it prove that the company had authorized him to make the statement.

It was contended on behalf of the British Government, on the other hand, that Mr. Craig signed the statement of the claim in his capacity as attorney in fact of Diego S. Dunbar, Sucr. The British Agent submitted, secondly, that the affidavits sworn by the Secretary of the Company, in annex 4, proved his authority to act on behalf of the Company, because such a statement came within the ordinary scope of his duties and contained facts and details which could only come within his knowledge in his official position as Secretary of the Company. The British Agent also produced, for inspection by the Commissioners, the original document signed by Mr. Craig, and also the original of the affidavit set out in annex 4. In addition to these he has produced two further documents: (1) a power of attorney, executed on the 16th March, 1918, whereby Mr. Craig is appointed attorney for the firm of Diego S. Dunbar, Sucr., and (2) a document executed before a Notary Public in Glasgow on the 11th February, 1926, signed by Mr. Simpson in his capacity as Secretary of the Company and by two directors of the Company. In his affidavit of the 28th July, 1927, Mr. Simpson declares that the Agent of the Company in Mexico City, Diego S. Dunbar, Sucr., is authorized to make the claim and that all the particulars contained in the claim are true.

3. It is evident from this document that the claim signed by Mr. Craig had been examined by Mr. Simpson as Secretary and that he authenticated it as a document issued by the firm of Diego S. Dunbar, Sucr. The information contained in the affidavit relates to matters affecting the Company which could be known to one who had access to the documents and business papers of the concern.

The Commissioners agree that the object of article 10 of the Rules of Procedure is to ensure that those on behalf of whom the claimant Government is acting really desire their Government to present their claim. On the other hand, the majority of the Commissioners are satisfied beyond any doubt that Mr. Simpson is the Secretary of the Company, that the firm of Diego S. Dunbar, Sucr., is the Company's Agent in Mexico City and that Mr. Craig is authorized to sign on behalf of the firm.

There is no valid ground, in the judgment of the majority of the Commissioners, for disputing the fact that the Central Agency not only assumed the responsibility for the claim, but also authorized its duly accredited agent to present it. On these grounds the majority of the Commissioners are of the opinion that article 10 of the Rules has been complied with.

The motion to dismiss is overruled.

The Mexican Commissioner expresses a dissenting view.

Dissenting opinion of Dr. Benito Flores, Mexican Commissioner

I. The Government of His Britannic Majesty claims on behalf of the Central Agency (Limited), Glasgow, the sum of \$ 1,568.00, Mexican gold, being the value as per invoice of two cases of cotton thread said to have been destroyed by revolutionaries at Monterrey, when said goods were in transit to Chihuahua, consigned to Messrs. Pinoncelly.

II. The Memorial has been signed by the British Agent, and the facts purport to be narrated by one Robert Craig, who signs as follows: "p.p. Diego S. Dunbar, Sucr., as the Agent of the Central Agency (Limited), Glasgow, Scotland."

III. In order to establish the standing of the claimant, the British Government submitted annex 4, in which is set out the deposition of Mr. William Simpson, the Secretary of the Central Agency (Limited), as to the following points:

(a) That the Central Agency (Limited) is a Company incorporated under the Companies Acts, on the 24th day of December, 1896, at Edinburgh, and that it is an English Company.

(b) That the Central Agency (Limited) shipped a consignment of cotton to Chihuahua, Mexico, with two cases of thread which were destroyed in the railway station at Monterrey, Nuevo Leon, by a fire caused by the Revolutionary party.

(c) That the Agent of the Central Agency (Limited) at the City of Mexico, Mr. D. S. Dunbar, Sucr., was authorized to present the claim, and that all the particulars contained in the claim lodged by him on the 14th January, 1921, are true.

IV. The Mexican Agent filed a Motion to Dismiss, based on article 10 of the Rules of Procedure of the Claims Commission, Mexico and Great Britain, which provides that the Memorial shall be signed by the claimant or by his attorney in fact and further by the British Agent, or only by the latter; but that in this case a statement of the facts giving rise to the claim signed by the claimant shall be included in the Memorial; that in the present instance, there is only submitted a statement signed by Mr. Robert Craig as the attorney in fact of Diego S. Dunbar, Sucr., and no proof has been shown that the said Mr. Craig is the representative of the claimant, which is the Central Agency (Limited), Glasgow.

V. The British Agent replied by contending that Mr. Robert Craig signed the statement of claim in his capacity as attorney in fact of Diego S. Dunbar, Sucr., and that it was, therefore, only necessary to show that the said Diego S. Dunbar, Sucr., was the authorized representative of the claimant; and that annex 4 to the Memorial duly proves that Diego S. Dunbar, Sucr., is the authorized representative of the claimant.

VI. In the course of the oral argument the British Agent submitted to the Commission a power of attorney executed by the Central Agency (Limited) to a stranger in this case, from which document it may be seen that one William Simpson signed said power of attorney as the Secretary of the said Company, together with two of the Directors, and he further exhibited the power of attorney executed by Diego S. Dunbar, Sucr., to Mr. Craig.

VII. Both the Agents defended their respective standpoints.

Legal Considerations

I. It is unquestionable that article 10, paragraph 1, of the Rules of Procedure, approved by the Mexican-British Claims Commission, lays upon the British Agent the duty of signing the Memorial, and requires that a statement of the facts giving rise to the claim *has to be signed by the claimant*, when the Memorial has been signed by the British Agent only.

II. It is also a precept established by the Rules of Procedure of the Mexican-British Claims Commission, that the Memorial shall state by whom, and on behalf of whom, the claim is filed; and if the person filing same does so in a representative capacity, that *he must establish his authority*. (Article 10, subdivision (e) of the Rules of Procedure.)

III. In the claim under discussion the claimant is the Central Agency (Limited), Glasgow. Therefore, that Company or its representative should have signed the statement of the facts which gave rise to the claim, pursuant to the legal provisions cited above.

IV. In the opinion of the Mexican Commissioner, the standing of the Central Agency (Limited) has not been established because Diego S. Dunbar, Sucr., has not shown proof of being the attorney in fact of the claimant Company. The deposition of the Secretary, Mr. Simpson, to the effect that Diego S. Dunbar, Sucr., is authorized by that Company to file the claim in question, would only establish the fact that such authorization existed; but from that very admission it is obvious that said authority has not been laid before the Commission. And the Rules of Procedure for the Commission do not consider it sufficient to have information to the effect that one person is the attorney in fact of another, or that it be known, through a third party, that some one is authorized to file a claim on behalf of some one else, but it is necessary, it is imperative, that the fact itself of such representative capacity be established by showing the manner in which it was granted.

At what particular time did the Central Agency (Limited), Glasgow, authorize Diego S. Dunbar, Sucr., to lodge the claim on their behalf? In what manner was such authority granted? What was the extent of such authority? We do not know, for the very reason that the Commission has never had the fact itself of such authority established before it. We do know that such authority exists, because Mr. Simpson, as the Secretary of the Company, has assured us of that fact; but no document whatever establishing the standing of the claimant Company has been produced before the Commission.

V. Neither the Mexican Commissioner, nor the other two Commissioners, would be unduly exacting if they had before them the power of attorney under which Diego S. Dunbar, Sucr., make their appearance, so as to examine same and to decide whether such power of attorney is sufficient or not, according to law, for representing the claimant Company. Not only that, but the Commission would fulfil its duty by examining the power of attorney under which Diego S. Dunbar, Sucr., desires to be considered as the attorney in fact of the claimant Company; but it so happens that if he were called upon to produce said power of attorney, the British Agent would not be able to do so, because it does not exist, and the Commission would, therefore, not be able to perform its duty of examining said power either, because it is not included among the documents submitted by the British Government. That being so, it must be concluded that the standing of the claimant has not been established in the matter of this claim.

VI. Obviously, Mr. Simpson is not the organ through which the Company executes powers of attorney. Then some one else, and not Simpson, the Secret-

ary, is the legal representative of the Central Agency (Limited). It may possibly be the Manager; perhaps it is the Board of Directors; perhaps even the Secretary, Simpson, himself, together with the Directors of the said Company. This we do not know, because the claimant has not established its standing. Through what organ does the Central Agency (Limited) have itself represented in these cases. That we do not know either, because we are not acquainted with the By-laws of the said Company. And judging from the power of attorney produced at the last moment by the British Agent, to show that William Simpson is the Secretary of the claimant Company, it may be inferred that only two Directors and the Secretary himself, *acting jointly*, can grant powers of attorney on behalf of the Central Agency (Limited), and that being the case, the statement of the Secretary only in regard to the existence of authority granted to Diego S. Dunbar, Sucr., is of absolutely no value for establishing the standing of the Company.

VII. The Mexican Commissioner wishes to place on record once more, that in his opinion the Commission is not authorized to supply any deficiencies in the proofs submitted by the parties, in the name of equity, when it is a matter of technical questions going directly to the jurisdiction of the Commission itself, or to the standing of the parties, and more especially when, as happens in this case, the Commission has Rules to which to conform, for deciding the point under discussion.

VIII. And, lastly, considering that on the side of the Commissioners the unavoidable duty exists of complying with the Rules of Procedure approved by the Commission itself, and of seeing that they are complied with, the Mexican Commissioner, conformably to that opinion, and for the reasons stated, holds that the claimant Company has not established its standing before the Commission, and has thus failed to comply with the provisions of article 10, paragraph 1, subdivision (*e*) of the Rules of Procedure. The Motion to Dismiss filed by the Mexican Agent should, therefore, be allowed.
