

VERACRUZ TELEPHONE CONSTRUCTION SYNDICATE
(GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(Decision No. 8, December 6, 1929. Pages 74-78.)

The Memorial sets out the following facts:

The Company was formed in 1910 to acquire and operate a concession, dated the 22nd October, 1906, for the installation of a telephone system at Veracruz, which was granted by the Government of the State of Veracruz to José Sitzenstatter and Manuel de Corbera, and a further concession, dated the 2nd January, 1911, which was granted by the Federal Government to the said José Sitzenstatter. In or about the month of January 1916 the Company was ordered by the Government of the State of Veracruz to make large increases in the wages of its employees. The Company's resident manager, Mr. Sitzenstatter, attended before the tribunals of the Government and attempted to satisfy them of the

absolute impossibility of compliance with these orders. They refused to entertain his protests and declined to examine the books of the Company. On the 13th May, 1916, an order was received signed by Gonzalo C. de la Mata, the President of the Civil Administration of the State of Veracruz, directing the Company to hand over its offices and all its effects to a commission. This commission took possession of everything, and the Government remained in possession until the 26th October, 1920, when the property was handed back to the Company. During the period of sequestration no materials or labour were expended on maintenance of the plant, no materials were purchased for new installation and the materials of the existing lines were used for other purposes.

By a decree of the 1st March, 1920, authorizing the retransfer of the concession to the company, the Government of Veracruz appointed a representative, and directed the company to appoint another representative, in order to examine the amount of the damages resulting from the intervention. A report was drawn up and the total of the damages was calculated at the amount of \$100,824.95 Mexican gold. Although the Company took proceedings to recover the sum, the Veracruz Court declined to hear any evidence; the action was dismissed and no payment followed.

2. The arguments on which the Mexican Agent based his Motion to Dismiss are classified under three headings:

I. The Memorial does not comply with article 10 of the Rules of Procedure, because it is not shown that Mr. A. H. M. Jacobs, Secretary of the Company, really possesses that official character nor that he has been duly authorized to sign the statement of the claim (annex 1). Neither has the status of Mr. Sitzenstatter been established.

II. The Veracruz Telephone Construction Syndicate has no right to present the claim, because at the time of the sequestration the lines belonged to Mr. Sitzenstatter and not to the Company. Both concessions were in the name of Mr. Sitzenstatter, and there is no evidence that he transferred them to the Syndicate; on the contrary, annex 4 shows clearly that up to the 1st March, 1920, no transfer of the concession had taken place. Moreover, the concession provided that the lines could only be transferred to a Mexican company after the approval of the Government of the State of Veracruz had been obtained. If, in spite of this, the lines have been operated by the Syndicate, which is an English Company, the terms of the concession have been violated and the Company has no right to claim for damage, if suffered.

III. The Commission is not competent to decide the claim for the following reasons:

(a) The acts on which the claim is based are not covered by Article 3 of the Convention. It was a civil authority who ordered the sequestration and, according to the last paragraph of Article 3, losses or damages caused by acts of civil authorities must be due to revolutionary events and conditions, and the acts must have been committed by one of the forces specified in subdivisions 1, 2 and 3 of this Article.

In this case the order of the Governor of the State of Veracruz did not take its origin in revolutionary events but in the difficulties which had arisen between the enterprise and its workmen. It was, therefore, not a revolutionary movement but social and industrial discontent which led up to the sequestration. Furthermore, the sequestration was not executed by armed forces but by a commission which acted on behalf of a civil authority.

(b) As the memorial sets out, the lines were transferred in 1920, and at the same time the Company entered into an agreement with the Government of Veracruz whereby the consequences of the intervention were to be adjudicated

upon. By this arrangement the relations between the two parties became those of a contractual nature, and ceased to be of a nature which fell within the terms of the treaty.

(c) It is stated in the Memorial that the claimants, failing to receive the amount which in their opinion was due to them, appealed to the Mexican Courts. In the opinion of the Mexican Agent, this Commission is not a Court of Appeal from the judgments of the national Courts. Only in the event of there having been a denial of justice could there have been reason for intervention, but not in this case, where the Courts have given their decision.

3. The British Agent has filed copies of documents to the effect that the Board of Directors of the Veracruz Telephone Construction Syndicate have adopted the claim of Mr. Sitzenstatter, that he was a director and that Mr. Jacobs was the Secretary of the Company. The Agent drew the attention of the Commission to annex 7 of the Memorial, which shows that there was a decree of the Government of the State of Veracruz by which the formation of the Company was duly legalized and approved. The existence of this decree is denied by the Mexican Agent. In the view of the British Agent, the document reproduced in annex 4 only meant to regularize the actual form in which the lines were operated. The fact was that a British company carried out the concession and suffered the damages, which fact makes the question as to whether the concession had been legally transferred or not immaterial.

As to Article 3 of the Convention, the British Agent pointed out that there can be no doubt as to whether the confiscation found its origin in revolutionary events, which brought about the depreciation of the currency, the increase of prices and the consequent demand for higher wages. The official order to increase wages must be regarded as an act of force. Moreover, the order of sequestration was signed by an officer, Colonel de la Mata, who acted under the orders of General Jara, then Governor of the State of Veracruz. Behind the commission which executed the confiscation were the armed forces to which Article 3 of the Convention refers.

The British Agent denies that by the agreement between Mr. Sitzenstatter and the Government of Veracruz the right to claim has been extinguished. The damage has continued to exist, and there has never been an interruption of the responsibility which the treaty imposes upon the Mexican Government. Neither can the Company be made to suffer because it went to the Mexican Courts. The Convention in Article 6 provides that the Commission shall not set aside or reject any claim on the grounds that all legal remedies have not been exhausted prior to the presentation of the claim, but there is no clause in the Convention declaring the Commission incompetent to deal with cases where the claimants tried to assert their right before the national Courts.

4. The Commissioners are of opinion that, in order to do justice to the arguments brought forward by the Agents, the following questions must be answered:

I. Has it been established that Mr. A. H. M. Jacobs possesses a representative capacity and that he is empowered to prefer a claim? (Article 10 of the Rules of Procedure.)

II. Has the same been established as regards Mr. José Sitzenstatter?

III. Is the question as to whether the concession had, at the time of the sequestration, been duly transferred to the claimant, material to the decision of the Commission on the Motion to Dismiss?

or

IV. Is it sufficient for admission of the claim that operation was actually carried on by the claimant without opposition from the Mexican authorities?

V. If the answer to question III be in the affirmative, to whom did the concession belong at the time of the sequestration, and is the Veracruz Telephone Construction Syndicate entitled to claim?

VI. Were the losses for which compensation is claimed caused by any one or more of the forces enumerated under subdivisions 1, 2, 3, 4 or 5 of Article III of the Convention, or do they fall within the terms of the last paragraph of this Article? Was the confiscation ordered by a civil authority? Were the losses due to revolutionary events and disturbed conditions (*sucesos y trastornos revolucionarios*) and were the acts committed by one of the forces specified in subdivisions 1, 2 and 3 of Article III?

VII. Is the fact that in 1920 the claimant entered into an agreement with the Government of the State of Veracruz on the return of the property sufficient ground on which to allow the Motion to Dismiss?

VIII. Is the fact that the claimant, when no payment was received, resorted to the Mexican Courts, sufficient ground on which to allow the Motion to Dismiss?

5. The Commissioners have come to the conclusion that question VI, which perhaps is the most important of all, cannot be answered without entering an interpretation of Article 3 of the Convention.

In nearly all the answers of the Mexican Agent to the claims, it has been contended that the acts on which the claim is based are not covered by Article 3. This question will therefore have to be answered by the Commission in its judgment on nearly all the claims that have been filed. The Commissioners see no reason why only in this particular case this very important point should be decided by way of a motion to dismiss.

In their opinion, the question as to whether the losses or damages were due to revolutionary events and caused by the acts of forces specified in Article 3 cannot be decided without entering into an examination of essential facts, i.e., of the merits of the claim itself, and the question must therefore be suspended until the claim itself will be examined by the Commission.

Although the other questions enumerated can be answered in this stage of the procedure, the Commission prefers to deal with the Motion to Dismiss as a whole, and therefore postpones the decision until the claim be examined on its merits.

In the meantime, the Commission invites the Mexican Agent to file his answer on the claim.