

W. ALLAN ODELL (GREAT BRITAIN) *v.* UNITED MEXICAN STATES

(*Decision No. 39, May 13, 1931. Pages 61-64.*)

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1. The Memorial sets out that on the 21st March, 1911, Mr. W. Allan Odell was appointed locomotive engineer on the Interoceanic Railroad of Mexico, and was stationed at Puebla in the State of Puebla. On the 6th May, 1911, he was detailed in the regular manner to take a military train to the city of Atlixco, some 47 kilometres distant. This military train carried horses, mules, attire, ammunition and soldiers at the command of Colonel, afterwards General, Blanquet. Mr. Odell objected to taking this train, but was persuaded to go on the grounds that the city of Atlixco was without protection from revolutionaries. When the train reached the switchstand at San Agustín, kilometre 39.2, the train left the rails. The switch at this point had been secretly spiked and tampered with by Maderistas, who were against the Government. Mr. Odell was thrown out of the engine and very seriously injured, and his fireman was killed. The injuries which Mr. Odell suffered are fully described in his affidavit (Document C) and the Annexes to it. With the help of a crutch Mr. Odell was able to get back to work in January 1912, but he was making little progress towards recovery, and, finally, on the 23rd July, 1912, he left Mexico for Canada. Since the time of his injuries Mr. Odell has suffered considerably, and on the 6th May, 1923, he was taken seriously ill. The doctors attending Mr. Odell unanimously are of the opinion that Mr. Odell's illness is the direct result of the injuries which he received in 1911. Mr. Odell is now in such a state of ill-health that it is extremely unlikely that he will recover sufficiently to work again.

The amount of the claim is 53,100.00 dollars gold, composed as follows:

For loss of earning capacity as locomotive engineer, based on an average rate of 1,500 dollars per annum for 18 years . . . . .	27,000.00
Estimated overtime during 18 years . . . . .	500.00
Interest on 27,500 dollars for 15 years . . . . .	9,000.00
Medical expenses . . . . .	1,600.00
Compensation for pain and suffering and for future disability . . . . .	15,000.00
	53,100.00

His Majesty's Government claim, on behalf of Mr. W. Allan Odell, the sum of 53,100.00 dollars gold.

2. The Mexican Agent pointed out that there was no proof that the accident suffered by the claimant was due to the acts of men. It could just as well have been the consequence of a defect of the switch. And even if it were proved to have been a voluntary act, it had not been proved that this act had been committed by any forces within the meaning of Article 3 of the Convention nor, in the event that it fell within the fourth subdivision of Article 3, that the Mexican authorities were in any way to blame. In the submission of the Mexican Agent, Mr. Odell should have brought suit against the Interoceanic Railroad Company, the more so because he was, against his will, ordered to conduct a military train. Neither could the Agent admit that it had been proved that, as the British Agent contended, a passenger train had a very short time before the military train, passed the same spot without accident.

The Agent also denied that the amount of the alleged losses had been established.

3. The British Agent alleged that the injuries of the claimant were the direct result of the acts of forces within the meaning of the Convention, and that there was therefore no necessity for the claimant to have brought suit against the Railway Company. The Agent referred to the abundant medical testimony accompanying the Memorial, and also pointed out that the amount had been duly evidenced by the calculation given by the claimant.

4. The Commissioners do not deny that the description of the derailment, as given by the claimant, and taken as a whole, bares a certain appearance of truth, but a judicial decision cannot be based on this personal impression alone. If they were to do justice on such a subjective and uncertain foundation, an element of considerable frailty, and even whimsicality, would be introduced into international jurisdiction. A decision which imposes upon a state a financial liability towards another state, cannot rest solely upon the unsupported allegations of the claimant.

This is what the Commission have laid down in more than one of their judgments and to which they must in this case also adhere.<sup>1</sup>

All that has been proved in this claim by outside evidence is the injury suffered by Mr. Odell, which has been testified to by several medical experts. But as regards the derailment and the cause of it, and all the details in connexion with it, there is no other statement than that of the claimant himself. The Commission is therefore, through lack of proof, left in uncertainty as to whether it is true—

- (1) That he did conduct a military train,
- (2) That he was induced to conduct it against his will and in spite of his objections,

<sup>1</sup> See *i.a.* Decision No. 12, *Mexico City Bombardment Claims*, section 5.

- (3) That the train was thrown off the rails through a defective switch,
- (4) That a local passenger train had, a short time before, passed without accident,
- (5) That the defect of the switch was due to the fact that it had been secretly spiked and tampered with,
- (6) That those who were responsible for this act were Maderistas.

5. If an international tribunal were to accept all these allegations without evidence, it would expose itself to the not unjustifiable criticism of placing jurisdiction as between nations below the level prevailing in all civilized states for jurisdiction as between citizens. The Commission fully realize, as they have already expressed in their decision No. 2 (*Cameron*) No. 3, that in international jurisdiction technical rules of evidence may be less restricted and less formal than in lawsuits before a domestic tribunal. That in the admission of evidence great liberality can obtain, has been shown by the Commission on several occasions, but in the present claim there is no question of the admission or the value of evidence: there is an absence of evidence and the greatest liberality cannot overcome this defect.

6. The Commission also realize that the weighing of outside evidence, if any such be produced, may be influenced by the degree to which it was possible to produce proof of a better quality. In cases where it is obvious that everything has been done to collect stronger evidence and where all efforts to do so have failed, a court can be more easily satisfied than in cases where no such endeavour seems to have been made. This consideration has guided and will guide the Commission in other cases, for instance, as regards the fixing of the amount of the award. But in the claim now before them the Commission cannot believe that it would have been impracticable to produce at least some corroboration of the statements of the claimant.

The wrecking of a military train by revolutionaries in the neighbourhood of one of the principal towns of the country, is a fact that could hardly have passed unnoticed. It must have left some trace in the archives of the Railway Company and in the contemporary press. Mr. Odell relates that on the fatal spot itself he was attended to by a surgeon, that the Superintendent of the Railway Company at Puebla also spoke to him at the scene of the derailment, that he was as soon as possible taken to the Hospital at Puebla, that he resumed work nine months later, and that finally, in June 1912, he was given a certificate of dismissal on account of his disability to serve.

It is difficult to believe that none of those sources could furnish confirmation of one or more of the facts alleged by the claimant.

7. The claim is disallowed.
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