

THE BACIS GOLD AND SILVER MINING COMPANY (LIMITED)  
(GREAT BRITAIN) *v.* UNITED MEXICAN STATES

*(Decision No. 94, August 3, 1931. Pages 272-277.)*

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1. The Memorial divides the claim into two parts. The first part is for compensation for the loss of mining machinery and equipment in transit from Tampico to the mine at Bacis; and the second is for compensation for goods taken from the Company's two stores at Bacis by revolutionary forces.

PART I

During the period from November 1912 to May 1913, the Bacis Gold and Silver Mining Company, Limited, purchased mining machinery and equipment at a total cost price of £2,084 5s. 7d. This machinery was shipped in various lots, on various dates within the above-mentioned period at Tampico. A list of these shipments, showing the value of the consignments, is given in Section 11 of the affidavit of William McNeill. About the time these goods

arrived at Tampico a revolution was in progress over the area through which the railway from Tampico to Bacis passed. As a result of this revolution the railway system was paralysed, and none of the consignments of machinery and mining equipment were delivered at Bacis. The Company made a number of efforts, without success, to trace the missing consignments. According to the Memorial, there appears to be no doubt that these goods were either looted or destroyed by revolutionary forces while in transit, or, owing to the disorganization of the railway system by the revolution, were dumped at various parts of the line and subsequently looted. The cost of replacing this machinery is now at least 50 per cent more than the cost in 1912 and 1913. The Company's claim has, therefore, been increased by that amount.

The amount of this part of the claim is £3,126 8s. 5d., being £2,084 5s. 7d. in respect of the cost price of the lost machinery and equipment, and £1,042 2s. 9d. in respect of the additional cost of replacement owing to the increased prices now prevailing.

## PART II

The Company maintained at Bacis two stores, one of which was the general food and clothing store, and the other the maize and bean store. These stores were necessary for the clothing and subsistence of the men employed by the Company, and did not carry any stocks of machinery or other mining equipment. It was customary to take an annual inventory at Bacis on the 31st day of August, and on the 31st August, 1912, such an inventory was taken, which showed a value of 16,559.63 Mexican pesos. The value of the stocks in the general food and clothing store did not vary materially in total value throughout the year, except in April and May, when those stocks were increased because of the difficulties of transport during the rainy season, which usually commenced before the end of May. The value of the stocks in the maize and bean store varied throughout the year, being greatest in December, immediately after harvest. Purchases, however, were made throughout the year and the stock in April 1913 would be about equal to the stock held on the 31st August, 1912, when stocktaking took place. The value of the maize and beans held at the latter date was 2,850 Mexican pesos. On the 18th April, 1913, revolutionary forces, under the command of Pedro Gutiérrez, Santiago Meráz and Fermín Núñez, entered the town of Bacis and on the following day arrested William McNeill, the then General Manager of the Company at Bacis, and demanded the delivery of a sum of 5,000 pesos. After some twenty hours of ill-treatment and imprisonment Mr. McNeill agreed to hand over to the revolutionaries 10 Winchester rifles, 800 cartridges and five bars of silver. Some time later the revolutionaries returned the five bars of silver on the payment of 201 pesos. These rebels remained in Bacis until the 23rd April, 1913, and during their stay they continually demanded money, food and goods from the stores, and personal belongings from the Company's employees. Shortly afterwards another band of rebels, under the command of Carlos Flores, entered Bacis. About this time, owing to the difficulty in obtaining supplies on account of the complete disorganization of the railway during the previous two months, the Company's Manager was compelled to reduce the number of workmen employed at the mine. On the night of the 23rd April, 1913, Carlos Flores ordered that the Company should pay to each single workman the amount of 3 pesos a week and to each married workman the amount of 6 pesos a week in goods from the two stores. It was not possible to resist this demand, which was given with threats of death for disobedience, and the rebels were in fact so threatening in their demeanour that the General Manager and the other

foreign employees were compelled to leave Bacis secretly on the night of the 24th April. Full particulars of their flight from Bacis are given in the claim of William McNeill already filed with this Commission.<sup>1</sup>

The amount of this part of the claim is £1,516 19s. 11d., details of which are given in the affidavit of William McNeill. The Company claim only 75 per cent of the valuation of the stocks in the food and clothing store, in spite of the fact that the stocks were greater in value immediately before the 18th April, 1913, and that on the 24th April, when the Company's manager left Bacis, at least 75 per cent of these stocks had been given away under threats or taken forcibly by rebels. In the case of the bean and maize store, the Company's manager is unable to state precisely the loss which took place, but he is certain that at least 50 per cent of the contents of this store had been given away under threats or forcibly taken during the period the 18th to the 24th April, 1913. The Company have, therefore, restricted their claim to 50 per cent of the inventory value of the 31st August, 1912. It should be noted that, in addition to the losses suffered at the two stores and to the payment of £20 for the return of the five bars of silver, the Company were obliged to billet twenty men for five days at the cost of £20, and that the revolutionaries carried off mules, saddles, rifles and ammunition to the value of £95.

On the 9th July, 1913, the Company forwarded a Memorial to His Majesty's Principal Secretary of State for Foreign Affairs. This Memorial having been presented before all the details had been received from the Company's employees, requires some alteration. The necessary alterations are given in section 9 of William McNeill's affidavit. Owing to the unsettled state of Mexico at that time it was impossible to take any steps to obtain compensation for the Company. This claim, which belonged at the time of the losses, and still does, belong solely and absolutely to the claimant, was presented to His Majesty's Government on the 29th January, 1929. It has not been presented to the Mexican Government, nor has the Company received compensation from the Mexican Government or any other source.

The British Government claim on behalf of the Bacis Gold and Silver Mining Company, Limited, the sum of £4,643 8s. 4d., being £3,126 8s. 5d. in respect of machinery and mining equipment lost in transit from Tampico to the mine, and £1,516 19s. 11d. in respect of losses from the Company's two stores at Bacis and other losses inflicted by revolutionary forces.

2. The Commission will deal with the two parts of the claim separately.

As regards part I, the British Agent held the view that sufficient corroboration of Mr. McNeill's affidavit was to be found in the bills of lading and the invoices of the goods shipped from England to Tampico.

The Mexican Agent observed that those documents only showed that the Company ordered the machinery, and that it arrived at the Mexican port, but not that it had been lost or destroyed, and still less that this was due to revolutionary acts. The Agent had not seen the bills of lading of, nor any correspondence with, the Railway Company. He concluded that for this part of the claim all the evidence consisted in the affidavit of the General Manager of the claimant Company.

3. The Commission do not feel at liberty to accept this part of the claim as sufficiently proved. There is no evidence whatever as to what happened to the machinery after its arrival at Tampico. If it was lost, no proof has been given as to where or when or through what circumstances or by whose acts. It has not escaped the Commission's attention that the Company in its Memorial of

<sup>1</sup> See Decision No. 46.

the 9th July, 1913, addressed to the Secretary of State for Foreign Affairs, did not mention any loss on this account, nor was this done by Mr. McNeill and the other officials who, after their escape from the mines, made statements before the British Vice-Consul in San Diego (California).

The Commission fail to see a sufficient ground on which an award could be based.

4. The facts underlying the second part of the claim seem, in the eyes of the Commission, to have been satisfactorily established. The affidavit of the Company's General Manager is corroborated by the contemporary declarations of the witnesses, Carlos L. Whittle, Ismeal Reyes, Tomas Vanegas and Dr. C. H. Miller. They all certify that at the time mentioned in the Memorial, armed forces entered the town of Bacis, arrested the General Manager and demanded the delivery of 5,000 pesos. The witnesses also confirm the fact that after Mr. McNeill was released he gave the leaders what they asked, and further that the troops, during their occupation of the town of Bacis, continually demanded money, food and goods from the stores.

We have here the same assemblage of facts, of which the outrage done to Mr. William McNeill (see Decision No. 46) forms a part.

5. In the Decision cited the Commission explained why they looked at the forces responsible for the offences, as forces falling within subdivision 4 of Article 3 of the Convention. They here insert section 5 of the Decision:

"5. In the statement of the claimant and in the declarations of the witnesses, the forces commanded by Gutiérrez, Meráz and Núñez are alternately identified as revolutionaries and also as rebels, but there is no indication that they were Maderistas or Constitutionalists. As, furthermore, the Mexican Agent has not been able to trace the names of those three chiefs in the archives of the Army, it seems justified to classify them and their followers as insurrectionaries, dealt with in subdivision 4 of Article 3 of the Convention.

"As regards the financial responsibility of the Mexican Government for their acts, the Commission refer to the rule laid down by them in previous decisions, for instance, in section 6 of their Decision No. 12 (*Mexico City Bombardment Claims*), reading as follows:

" 'In a great many cases it will be extremely difficult to establish beyond any doubt the omission or the absence of suppressive or punitive measures. The Commission realizes that the evidence of negative facts can hardly ever be given in an absolutely convincing manner. But a strong *prima facie* evidence can be assumed to exist in those cases in which *first* the British Agent will be able to make it acceptable that the facts were known to the competent authorities, either because they were of public notoriety or because they were brought to their knowledge in due time, and *second* the Mexican Agent does not show any evidence as to action taken by the authorities.' (See also decision No. 18 (*Bowerman*), section 7, and Decision No. 19 (*Santa Gertrudis*), section 9.)

"In the present case it is evident that the authorities were informed of what had happened, because the Jefe Político of San Dimas intervened and returned to the Company the bars of silver and the promissory note in exchange for a cash payment of 201 pesos. Apart from this, it seems next to impossible that such a sensational act as the imprisonment of the General Manager of one of the principal concerns of the State could not have come to the knowledge of those whose function it was to watch over and to protect life and property. But not the slightest indication has been given that they took any action.

"For these reasons the Commission are of opinion that the claim falls within the terms of Article 3 of the Convention."

6. The question remains as to what amount is to be granted as a reasonable compensation for the losses suffered by the claimant under this head. The exact dates when the goods were taken or delivered, are not available, nor are data as to their value. The valuation presented in the claim rests upon the calculation of a certain percentage of the last annual inventory of the stocks in the stores. It seems an estimate which contains a considerable element of uncertainty and arbitrariness. The Company also brings into the account the value of the provisions supplied to the workmen, after work had had to be stopped, but this item would seem to be a normal measure of social welfare rather than a loss, in respect of which a claim can be made.

For these reasons the Commission cannot regard the sum claimed as proved to its full amount.

7. The Commission decide that the Government of the United Mexican States is obligated to pay to the British Government, on behalf of the Bacis Gold and Silver Mining Company, Limited, the sum of \$10,000 (ten thousand pesos), Mexican gold, or an equivalent amount in gold.