

THE PALMAREJO AND MEXICAN GOLD FIELDS (LIMITED)
(GREAT BRITAIN) *v.* UNITED MEXICAN STATES

*(Decision No. 118, August 6, 1931, majority decision on claim for forced abandonment.
Pages 347-352.)*

1. This is a claim for losses and damages suffered by the Palmarejo and Mexican Gold Fields (Limited) through the acts of revolutionary and counter-revolutionary forces during the period 1910 to 1920 on their mining properties situated principally on the Palmarejo and Huruapa estates in the State of Chihuahua.

The facts are set out in the Memorial as follows:

The Palmarejo and Mexican Gold Fields (Limited) was formed in 1866 with a capital of £700,000 for the purpose of purchasing, developing and working a group of mines on the Palmarejo estate in the State of Chihuahua, Mexico. The company, in developing these mines, erected a mill at Zapote, built a railway some twelve miles in length from that place to the Palmarejo mine and also built a conduit, 10 miles in length, to bring water from the upper reaches of the Chinipas river to the mill. The cost of these improvements amounts to 2,650,000 pesos. It is estimated that from 1886 to 1910 a sum of approximately 20,000,000 pesos had been expended by the company on the Palmarejo mine and on the adjoining Huruapa estate. The revolution which broke out in 1910 hampered the work of the company and, when in April 1911 a part of the conduit was destroyed by revolutionaries, the operations of the mill stopped through lack of water. Later labour was difficult to obtain and the whole business came to a standstill. For a period of two years the officials in charge of the mine were unable to communicate with their directors in London owing to a breakdown in the postal service. As a result of the complete stoppage of operations, the company has suffered large losses through damage and deterioration. These losses are divided into five headings. The losses under each of these headings will now be considered in detail.

Schedule A

This is a claim for the sum of 1,574,287.80 pesos for the cost of replacement caused by damage to and loss of plant and machinery. In 1910 the claimants,

with a view to increasing the output of silver and gold and to adopting a new and better system of ore treatment, decided to partly abolish the old mill, to erect a new one with the necessary plant and machinery and to erect an aerial tramway from the mine to the mill in order to facilitate all transport and to reduce its cost. The necessary purchases for the erection of the new mill and tramway were made in London, and the goods were shipped and landed in Mexico. Only a very small quantity of these materials was delivered to the mine. Some of the material was stolen by revolutionaries, some parts of the machinery were destroyed, rendering the remaining parts useless, other portions of machinery could not be delivered beyond the railway head of the Kansas City and Mexico Railway, where, at the time annex 1 was written, they still remained. These portions of machinery, after a lapse of some years without attention or care, became useless. The total amount expended on material for these two new installations was 524,762.60 pesos or £52,476 8s. 2d. Before operations can be restarted it will be necessary to purchase new sets of plant and machinery. It is estimated that to replace the lost materials will cost at least three times the amount of the purchase price in 1910. This estimate is made in a letter dated the 24th July, 1920, from the Cyanide Supply Company (Limited), and in a letter dated the 28th July, 1920, from E. T. McCarthy, the company's consulting engineer. The sum, therefore, that will be required to replace the machinery, either lost, destroyed or rendered useless, amounts to 1,574,287.80 pesos.

Schedule B

This is a claim for the sum of 234,538.75 pesos, being the amount paid in Mexico for the purchase of stocks in connexion with the reconstruction referred to under schedule A, and for freight paid on the importations of machinery and other goods from England. It is now impossible to give exact details of this loss as most of the books of the company in Mexico have either been mislaid or lost during the revolution. The total sum expended, however, appears in the company's books in London.

Schedule C

This is a claim for 375,000 pesos, being the expenditure incurred in protecting the property. In 1914, owing to the uncertain conditions in Mexico, which made it impossible for the company to continue operations, the company was unable to pay interest on its debenture debt. A receiver was appointed to take possession of the property on behalf of the debenture holders and he retained possession until 1918, when, by an arrangement between the shareholders and the debenture holders, the possession of the property was returned to the company. It was necessary, however, to pay to the receiver 375,000 pesos, being the amount expended by him in protecting the property. This amount is certified as correct by a chartered accountant.

Schedule D

This is a claim for compensation amounting to \$384,926.20 pesos in respect of damage to the Palmarejo mine, aqueduct, railway and Guerra al Tirano mine. These damages are divided into four headings.

(1) Damage to Interior and Exterior of Palmarejo Mine

This damage is caused through the forced suspension of the company's operations. The executive staff of the company were forced to leave the property on the 12th May, 1912, owing to the revolution which was then in pro-

gress. From this date until the 18th October, 1918, no attention could be paid to the mine. On the latter date Mr. W. D. Hole made a careful survey of the mine and estimated the extent of the damage and the cost of repair. This estimate amounts to 222,086.28 pesos.

(2) *Damage to Conduit*

On the 11th April, 1911, Maderista forces broke down the sluices at Agua Caliente with axes. The conduit had been repaired and its respective bridges rebuilt, only a short time before this event, at a cost of 48,250.13 pesos. On the 12th of the same month these revolutionaries broke the sluices in Cuba and gave orders to Jesús Beltran, who was in charge of the aqueduct, not to let water in again without their permission. On the 7th May, 1911, Federal troops under the command of Lieutenant-Colonel Manuel Reyes, set fire to the wooden bridge which crossed the stream of Ranchito. The company's manager repaired provisionally the damages done by Señores Becerra and Loya, the leaders of the revolutionaries, and by the Federal troops and maintained the conduit until he was obliged to leave the district in May 1912. From that date the conduit has suffered considerable dilapidation. An account of the acts of the revolutionary and Federal forces is given in a letter dated the 15th July, 1911, from Jesús Beltran, whose signature is certified by the Judge of First Instance of Arteaga in the State of Chihuahua. A detailed report of the damage and an estimate of the cost of repair is given in Mr. W. D. Hole's letter dated the 5th March, 1920. The truth of the statements contained in this report is affirmed by certain local inhabitants of Chinipas.

(3) *Damage to the Railway*

This railway was in good condition when the company's officials were forced to leave the district in May 1912. Owing to the lack of attention and care a considerable amount of labour will be required to restore it to working order. Mr. W. D. Hole's estimate of the cost of repair is 27,684.92 pesos.

(4) *Damage to the Guerra al Tirano Mine*

This mine, through neglect and inattention, suffered considerable damage and the estimated sum of 53,000 pesos will be required to put it into working condition.

Schedule E

This is a claim for repayment of import duty, amounting to 41,267.40 pesos, paid on the plant and machinery referred to under schedule A.

A further proof of the fact that the company had expended large sums of money on the mine and had suffered damage through the revolutionary and counter-revolutionary forces is given in a certified copy of voluntary proceedings *ad perpetuam* before the Court of First Instance in the district of Arteaga in the State of Chihuahua, Mexico.

In order to substantiate the claims based on the reports of Mr. W. D. Hole, the Judge of First Instance of Chihuahua was requested to appoint an expert to estimate the damages caused by the revolution to the properties and interests of the Palmarejo and Mexican Gold Fields (Limited). The Court appointed Mr. Eduardo Enriquez for this duty and the Court subsequently appointed Mr. Jacob W. Breach to make a similar investigation on behalf of the Federal Government. Mr. Breach came to the conclusion that the losses suffered by the Company through the revolution amounted to 403,812.55 pesos. This valuation represents the losses referred to in schedule D, and it will be noted

that Mr. Breach's estimate is higher than the sum now claimed. At the end of Mr. Breach's report is attached a petition by the Judge of First Instance of the district of Arteaga and other local citizens requesting that this claim may be settled at an early date in order that the Palmarejo mines may be reopened and thus provide work for local people. Mr. E. W. Enriquez also submitted a report and supplementary report. Mr. Enriquez only considered the damage done to the aqueduct, the railway and the Palmarejo mine, and his estimate of the damage amounts to 335,012.88 pesos. Mr. Enriquez was unable to come to a decision about the Guerra al Tirano mines, but considered Mr. Hole's estimate of 53,000 pesos to be insufficient to re-condition this mine. In regard to the plant and machinery Mr. Enriquez considered that the best course would be to appoint two expert valuers to decide what parts of machinery and plant still existing in various places in Mexico are still usable and what further supplies would be required to complete the installations.

The total amount of the claim is 2,610,020.15 pesos Mexican gold.

This claim belonged at the time of the losses and still does belong solely and absolutely to the claimants. The company informed His Majesty's Government on the 12th March, 1912, that the neighbourhood in which their mines were situated was overrun by bandits and that communication with their employees at these mines was impossible. Acting on instructions from the Foreign Office, His Majesty's Minister at Mexico City addressed a note to the Minister for Foreign Affairs on the 14th March, 1912, asking for protection of this company's property. Señor Manuel Calero replied on the 18th March, 1912, that he had written to the Ministry of the Interior in the sense of His Majesty's Minister's note. Instructions were subsequently issued by the Governor of Sonora to the Prefect of the District of Alomas to take such steps as may be possible for the protection of the company's interest if the property should be situated within his jurisdiction. In May 1912 the company informed His Majesty's Government that they had been forced to close down their mines.

The British Government claim, on behalf of the Palmarejo and Mexican Gold Fields (Limited), the sum of 2,610,020.15 pesos Mexican gold.

2. As regards schedule A, the Commission have found, *inter alia*, in the report of E. W. Enriquez (annex 15) outside evidence that a part, but not the greater part, of the plant and machinery was lost, stolen or destroyed in transit. It has not been shown what caused the loss, nor who were responsible for it. If the machinery was lost because its transport became impossible, as a consequence of the confiscation of mules, the Commission have not been enabled to ascertain whether the confiscation was a governmental (and therefore a lawful) act, or a measure taken either by revolutionary forces or by bandits.

For this reason the Commission are not in a position to determine whether the losses, claimed for under this heading, are covered by the Convention.

3. The Commission take the same line as regards schedule B, and moreover, fail to understand why these stocks, or part of them, could not have been sold or utilized for other purposes.

4. The expenditure referred to under schedule C, must not, in the view of the Commission, be considered as a loss, but as a means of avoiding loss, with the exception, however, of the amount which was paid out for Government taxes, restitution whereof seems just and equitable.

This restitution is, however, only justified as regards the period of the receivership, being from 1914 to 1918. As the claim relates to the taxes from 1910 to 1918, only one half of the amount of 94,120 pesos can be taken into consideration.

5. As regards schedule D, the majority of the Commission have arrived at the conviction that the damages recorded under numbers 1, 3 and 4 were caused through the suspension of the Company's operations in May 1912. They are equally satisfied that this suspension was a forced one, and a consequence of the revolution then in progress. This results from the contemporary correspondence between the Company and the British Minister and between the British Minister and the Mexican Ministry for Foreign Affairs, and from the fact that, according to expert testimony, the works were in perfect order before the abandonment and the Company had recently given large orders for new machinery. It cannot, therefore, be assumed that operations were voluntarily stopped or because the Company found itself in an unfavourable financial condition.

The amount claimed for these items is 302,771.20 pesos and has been corroborated by outside estimate, but it has not, in the opinion of the Commission, been taken into account that part of the expenditure must have been devoted to the replacement of old and worn out equipment by new.

A deduction would therefore seem to be necessary and the Commission fix the amount of this deduction at 27,771.20 pesos.

6. The damage, alleged under schedule D, No. 2, is sufficiently proved and it has been shown that it was caused by the acts of Maderistas, falling within subdivision 2 of Article 3 of the Convention, with the exception, however, of the burning of the bridge, which was done by Federal troops in a fight against the Maderistas. As the Federal troops were the troops of the Government, this last act must be regarded as lawful, and does not entitle the claimant to compensation.

For this part of the claim, the Commission think that an award of 60,000 pesos is adequate.

7. As regards schedule E the Commission deem it in accordance with the principles of justice and equity that a part of the import duty, paid on the plant and machinery referred to in paragraph 2, be repaid, and they determine this part at 30,000 pesos.

8. The Commission decide that the Government of the United Mexican States is obligated to pay to the British Government on behalf of the Palmarejo and Mexican Gold Fields (Limited) 47,060 plus 275,000 plus 60,000 plus 30,000 = \$412,060 (four hundred and twelve thousand and sixty pesos) Mexican gold or an equivalent amount in gold.
