

CECELIA DEXTER BALDWIN. ADMINISTRATRIX OF THE ESTATE
OF HARRY D. BALDWIN, AND OTHERS (UNITED STATES) *v.*
PANAMA

(June 26, 1933. Pages 330-339.)

In this case the United States of America have presented claims of, respectively, \$1,250, on behalf of Cecelia Dexter Baldwin, administratrix of the estate of Harry D. Baldwin, also known as Henry G. Baldwin, deceased; \$2,500, on behalf of Joseph Balun \$700, on behalf of Morris I. Berkowitz; \$2,500, on behalf of Everett E. Bowden; \$1,250, on behalf of Webster T. Brandon; \$4,500, on behalf of Joseph A. Donnelly; \$3,750, on behalf of Henry C. Foster; \$1,250, on behalf of Charles Jagatich; \$700, on behalf of Erich Jeschke; \$10,000, on behalf of Augustine A. Kane; \$1,250, on behalf of Nathan H. Kelly; \$1,000, on behalf of Frank Mosouskie; \$2,000, on behalf of Walter Organ; \$2,000, on behalf of Oliver G. Reber; \$1,350, on behalf of Charles B. Reppert, administrator of the estate of Morris C. Stettler, deceased;

\$2,000, on behalf of George Simon; \$1,000, on behalf of Joseph Steinbrenner; \$1,000, on behalf of Lowndes O. Webb. Interest on these amounts is also claimed.

The claims arise out of events which took place during the carnival in the city of Panama in February 1915. In the course of February 13 a number of soldiers from the American forces in the Canal Zone had come on leave to Panama to witness the celebrations. The American military authorities had provided the customary patrol. Such patrols were not only allowed but welcomed by the Panaman Government, as being effective to prevent disturbances arising out of conflicts between soldiers and civilians or between soldiers and the police. The Government of Panama had insisted on having these patrols, asserting that it disclaimed responsibility for such conflicts if patrols were not provided. The American Government, on the other hand, while desirous to cooperate with the Panaman Government, had maintained that whether such patrols were provided or not, the Panaman Government would be responsible for the maintenance of order and for adequate police protection. It appears from the Banks case (Registry Nr. 4) that as late as 1921 the Panaman and the American authorities had somewhat different conceptions of the exact scope of the duties of the patrols; this might become a source of difficulties in the carrying out of the arrangement, but did not affect the situation in the present case. It is however clear that the most perfect delimitation of the task of the patrols must fail to remove the difficulties inherent in the separate exercise of authority by the police over the civilians and by the patrols over the soldiers, when conflicts arise in an intermingled crowd of civilians and soldiers, unless both the police force and the patrols be adequate and unless each of them, under all circumstances, show by their action that they are determined to have not only their own authority but also that of the other respected. It has to be noted that, whether it was customary for the members of the patrol to carry firearms or not, the allegation that they did so on this occasion is unfounded.

The events happened in the early morning of February 14, 1915, in the so-called Cocoa Grove district of the city. Before midnight there had been the excitement of the celebration, but no unusual incidents. Shortly after midnight some minor disturbance occurred, which rapidly spread and developed into a general fight. The main body of the fighting crowd divided into two groups facing each other, the one consisting almost entirely of American soldiers, the other composed of local civilians and the Panaman police. The lieutenant in command of the patrol dealt with the situation by directing his efforts towards separating the soldiers from their opponents and preventing them from attacking the latter. The police should have seconded his efforts by restraining the civilians; they did not do so but continued to consider these as their allies against the soldiers. Both sides threw stones and other missiles and used firearms. From the side where the police were revolver shots were fired, the arms used by the soldiers were three rifles taken from a shooting gallery which they had broken into for the purpose of arming themselves against the revolver fire from the other side. The lieutenant disarmed the soldiers after they had fired a few shots. He had some contact with the police and made them see that the obvious course of action under the circumstances was for them to keep the civilians under control and for him to contain the soldiers. He also left the rifles in the care of a policeman. The police actually contained the civilians for some time, while the lieutenant forced back the soldiers by means of a cordon formed by those of his patrol who were there and by non-commissioned officers present on the spot whom he ordered to assist him. Those forming the cordon had linked hands and were facing the soldiers; they had their backs turned to the side where the civilians and the police were.

While they were thus placed the throwing of stones and other missiles and the shooting from that side continued. After a while the police no longer kept back the civilians, the mob advanced and the revolver fire increased; heavy firearms were now also used. The lieutenant then ordered a quick retreat to the Canal Zone. During the whole of that retreat and until the Canal Zone was reached the soldiers were under rifle fire.

Not all the soldiers had, however, left the city. When the disorder broke out, the proprietors of the saloons had closed their establishments and those soldiers who were within remained there, waiting for the end of the disturbance. There were also soldiers in other parts of the city. The police accompanied by the civilians broke into the saloons in order to conduct the soldiers found there to the police station. In some cases the soldiers were maltreated by the police and the accompanying civilians, in other cases they were, upon entering the street, left defenseless in the hands of the mob, or they were attacked while being escorted to the police station. Soldiers coming to Cocoa Grove unaware of the disturbances which had happened there, were also attacked and even in places distant from that district soldiers were assaulted.

In the course of the events described above a Nicaraguan civilian was killed by a bullet; a number of American soldiers in addition to those claiming in these proceedings, a number of Panaman policemen and some civilians, amongst them the claimant Baldwin, received injuries, and damage to property was done.

Immediately after the events both the American authorities of the Canal Zone and the Panaman judiciary started investigations and each of them allowed the other to be represented at the taking of evidence. The American authorities took the evidence of a great number of soldiers and some civilians. The Panaman judge examined a number of policemen and some civilians and also received the evidence of the soldiers. The latter's evidence was taken in this way: a Spanish translation of their testimony previously rendered before the Canal Zone authorities was translated back into English to them, whereafter they stated in how far they confirmed their statements as translated to them or wished them amended and they further answered questions which the judge put them. The American investigation tended to find out the circumstances under which the American soldiers and one American civilian received injuries. The Panaman investigation was the ordinary investigation in criminal matters, having for its object to discover criminal acts and the persons responsible therefor under the law of Panama; as it did not lead to the discovery of the person who was responsible for the death of the Nicaraguan civilian, or to the establishing of responsibility for the damage done to property, and as the policeman, who had been seen firing from the street into a closed saloon and against whom criminal proceedings were ordered on December 18, 1916, for the wounding of a female servant of that establishment, died on January 4, 1917, both the criminal proceedings against the policeman and the proceedings as to the other criminal acts were terminated in February 1917.

In the Panaman investigation 18 members of the police force were heard. Included in this number are a lieutenant and a policeman who were at the Central Police Station and the sublieutenant in command and three policemen of the Cocoa Grove station who did not leave the station. Of the remaining 12 only two make mention of efforts of the police to contain the civilians. Another, a mounted lieutenant, saw the soldiers retiring to the Canal Zone and declared that from their direction were coming shots produced by arms of large caliber. The police evidence contains no other reference to what happened after the opposing groups first faced each other. The evidence of the captains of police, whose names are mentioned in different statements, both of

soldiers and policemen, has not been taken. No attempt was made to find out the persons responsible for the injuries suffered by the American civilian Baldwin, since, instead of taking the evidence of the person, who Baldwin had been told was Captain Arias, it was thought sufficient to state that there was at the time no Captain Arias in Panama City.

The Government of the United States has submitted to this Commission claims on behalf of one civilian and 17 soldiers. In the course of the proceedings five claims (those of Joseph Balun Morris I. Berkowitz, Charles Jagatich, Erich Jeschke and Frank Mosouskie) were withdrawn because at the time the claimants received their injuries they had not yet become naturalized American citizens.

The claims are based on an alleged failure of the police to afford protection, improper conduct of the police and failure to prosecute the offenders.

The Commission is of opinion that insufficient police protection and improper police action have been proved. The offending police officers have not been prosecuted. There is no doubt that policemen were roughly handled by soldiers, but the improper conduct of some soldiers can not justify the police in attacking, or allowing others to attack, soldiers generally. There were in Panama City and in the neighbourhood of Cocoa Grove district sufficient police to have mastered the whole situation very quickly, if they had adopted the right attitude. They failed to restore order because they did not assert their authority against the civilians, but turned against the soldiers.

At the hearing the Panaman Agent argued that the patrol, which consisted of a lieutenant with nine men, ought to have been stronger, alleging that it did not at all times keep all the soldiers under control and citing in support of that allegation the statement of the lieutenant that, when the cordon was first formed, soldiers repeatedly broke through (the lieutenant stated however also that he brought them back within the cordon) and the testimony of a soldier that after having arrived at the Canal Zone border he and three others went back to Panama. The Commission is of opinion that the patrol, assisted by the non-commissioned officers, whom the lieutenant had the right to commandeer for such assistance, performed their task efficiently. Consequently the Commission does not have to consider whether the rights of the claimants in these proceedings would have been impaired if the patrol had been insufficient. In the opinion of the Commission responsibility for the maintenance of order rests upon the territorial sovereign.

The Commission finds that all the claimants whose claims have been maintained, with the exception of Joseph Steinbrenner, are entitled to an award and will now deal with the individual claims.

Cecelia D. Baldwin, as administratrix of the estate of Harry D. Baldwin, also known as Henry G. Baldwin, deceased, is awarded the sum of \$1,000. Baldwin was beaten by the police while tending to Stettler's wounds in the Panama Athletic Club, and was later beaten by the mob while in the custody of the police. In the first attack, he was punched in the eye by a person alleged to have been Captain Arias, and there is some evidence that this permanently affected his eyesight.

Everett Ezra Bowden is awarded the sum of \$1,250. He was watching a moving picture in the Panama Athletic Club, went outside, was locked out, and was clubbed and kicked in the street by several policemen. He suffered scalp, elbow, and knee injuries and was treated at the hospital and [was] sick in quarters for over a month. There is evidence of a permanent leg and hip injury, but the connection between that and the injuries received on this occasion has not been fully established.

Webster T. Brandon is awarded the sum of \$250. He formed a part of the cordon on Pedro [de] Obarrio Street, and while there was shot through the fleshy part of the hip, from behind. The wound was not serious.

Joseph A. Donnelly is awarded the sum of \$2,500. He was severely beaten, both by the police and by the crowd. He was first clubbed by two policemen near the Panama Athletic Club, then was attacked by a crowd of negroes when he ran away. He hid in a house, where he was found by a policeman who beat him; Donnelly attempted to resist, but desisted when he was clubbed. While in custody, he was again beaten by the crowd, this time into unconsciousness, in spite of the efforts of a mounted policeman to assist him. But Donnelly had been drinking, and his injuries may have resulted in part from his own belligerence. Moreover, though there is evidence of permanent injury to his right ear, the permanent injury to the sight of his right eye, alleged to have resulted, is controverted by his own medical testimony of subsequent eyesight tests.

Henry Foster is awarded the sum of \$500. He was in a carriage approaching the Cocoa Grove, which was stopped by the crowd. A policeman arrested him at pistol point, and on the way to the station the crowd struck at him, shots were fired, and Foster started to run. While running he was shot in the hip from behind, fell and was beaten by the crowd. Evidence of permanent injury is slight.

Augustine A. Kane is awarded the sum of \$5,000. He was shot in the back apparently at an early stage of the riot, fell unconscious, and while in that condition was terribly kicked and beaten. He is permanently disfigured, and his eyesight permanently impaired. He was the most seriously injured of the claimants, and though he may have been shot before the police arrived on the scene, his condition corroborates a statement in the evidence that he was dragged about the street at a time when the police should have been master of the situation.

Nathan H. Kelly is awarded the sum of \$1,250. He ran out of the Panama Athletic Club when the police forced the doors and was beaten unconscious in the street. He received a severe cut in the forehead, and a bayonet wound in the chest. There is no evidence of permanent disability.

Walter Organ is awarded the sum of \$500. He was on the way to the Canal Zone and became included in the group of the retreating soldiers. He was hit on the back of the head, but knows neither who nor what hit him. He was knocked unconscious and came to in the hospital. From the contemporaneous medical report, he must have been severely beaten while unconscious. He was permanently disfigured, but suffered no permanent disability. The award is reduced in amount because of the vagueness of the record as to police activities at the time and in the region of his injuries.

Oliver G. Reber is awarded the sum of \$250. He was in the carriage with Foster, approaching Cocoa Grove. He was pulled from the carriage, fell, and received a long, shallow cut in the back. The exact cause of the injury is not known, but it was a policeman who stopped the carriage and ordered the occupants to put up their hands. Reber was in custody when injured and entitled to protection.

George Simon is awarded the sum of \$1,250. He hid behind the bar in the Panama Athletic Club when the police broke in. One policeman hit him with a rifle and another stuck him with a bayonet, in order to get him out. He went into the street, was chased, was grazed by a bullet fired by a mounted policeman, fell, and was beaten unconscious by the mob. Though he was badly beaten, his injuries are not proven to have caused any serious permanent disability.

The claim of Joseph Steinbrenner is disallowed. His evidence is ambiguous and unconvincing, and seems to indicate that his injuries arose out of a fight with the police in which he was the aggressor. Though he was knocked unconscious, his injuries were not serious, and seem to have all been inflicted in that encounter for which Panama cannot be held accountable.

Charles B. Reppert, administrator of the estate of Morris C. Stettler, deceased, is awarded the sum of \$250. Stettler's injury, a bayonet wound in the chest, was received in a fight with the police in which, by his own statement, he was the aggressor, and no award is rendered therefor for that reason. But he was very roughly carried to the police station in a semiconscious condition, after being taken from the Panama Athletic Club where his wound was being tended, and the award is for this rough treatment of a wounded man.

Lowndes O. Webb is awarded the sum of \$500. He was in a carriage outside of Cocoa Grove, with several other soldiers. The carriage was attacked by a crowd and the occupants thrown out. Webb ran away, and while running was shot in the back of the leg. Though he saw no police in the crowd, his companions did, and one of them saw police in the crowd shooting. Webb incurred no permanent disability.

The Commission decides that the Republic of Panama is obligated to pay to the United States of America, on behalf of the claimants herein, the sum of \$14,500, without interest. This sum is apportioned in the manner indicated above, and all awards are without interest.
