

JUAN AÑORBES (PANAMA) *v.* UNITED STATES

(June 27, 1933. Pages 762-764.)

On October 23, 1911, Añorbes, then a winchman employed by the Division of Dredges of the Panama Canal at a salary of \$50 per month, sustained a severe fracture of the right arm while cleaning an engine. This resulted in permanent partial disability. Under the compensation law then in force, he was given free hospital and medical treatment and a year's salary as compensation for his injury. Except for a few very brief interims he was employed by the United States Government from December, 1912, to April, 1915, and from January, 1924, to June, 1933, at rates of salary averaging substantially over \$50 per month. By special Act of Congress of June 30, 1930, there were extended to him, from that date, the benefits of the 1916 Compensation Act. He is thereby assured that if his earnings in future drop below \$50 per month the deficiency will be made good under the statute.

The Commission holds that the United States is responsible for the injury to the claimant. He was ordered by his superiors to clean an engine, and those superiors allowed the engine to be put in motion while he was cleaning it.

This, unexplained, is sufficient evidence of negligence. The United States is answerable therefor (see the opinion of this Commission in the claim of Juan Manzo, Registry No. 21).

The compensation of a year's salary originally awarded to the claimant seems clearly inadequate, in view of the seriousness of his injury. It is equally clear, however, that if, from the time of his injury, he had been entitled to the benefits of the system of compensation established by the 1916 Act, which was made applicable to him by the special Act of 1930, he would have been justly treated.

The Commission finds that the claimant has not been prejudiced by the fact that he did not receive the protection of the 1916 compensation law until 1930. During the period from his injury until the passage of the Act of June 30, 1930, the Canal Zone authorities took pains to provide him with employment. The amounts received by him from the United States alone during this period total only slightly less than what he would have received if he had gotten a regular monthly compensation of \$50 during the entire time.

It is to be noted, moreover, that from 1915 to 1924 the claimant was not employed by the United States. The evidence shows that he was gainfully employed during at least part of that period, by the Government of Panama. And in that interval he was twice offered employment by the United States.

The Commission therefore feels that the facts show that the claimant, in net result, is as well off as he would have been if the present system of compensation had been available to him from the time of his injury. Since that present system is adequate and just, the claimant is not entitled to an award. In reaching this conclusion the Commission assumes that the claimant will in the future continue to enjoy the protection afforded by the 1916 act.

The Commission decides that the claim is disallowed.
