

HAMPDEN OSBORNE BANKS, HAZEL E. HILTBOLD, LEWIS CRANDALL GOLDER, AND RICHARD JOSEPH LEE (UNITED STATES) *v.* PANAMA

(June 29, 1933, dissenting opinion of Panamanian Commissioner, undated. Pages 148-152.)

This claim is made by the United States of America on behalf of Hampden Osborne Banks, Mrs. Hazel E. Hiltbold, in representation of herself and her minor children, Richard L. Hiltbold and Robert C. Hiltbold, heirs of Valentine Hiltbold, deceased, Lewis Crandall Golder, and Richard Joseph Lee. All the claimants are American citizens.

Ensign Banks, Chief Petty Officer Hiltbold, Engineman First Class Golder and Engineman Second Class Lee were in May 1921 regular members of the United States Navy and were attached to the U.S.S. *Tacoma*, then lying off the city of Panama.

On May 11, Ensign Banks was on duty in Panama City as commander of a patrol provided from the *Tacoma*, Hiltbold and Golder belonged to his patrol, Lee was on shore leave. Lee was in the Cocoa Grove district where he was not allowed to go by the navy regulations and had been drinking. He hit a woman with his elbow, she protested vigorously and he shoved her against the wall of a house. She called in a policeman and was talking to him, while Lee was standing near them. Patrolman Golder arrested Lee in order to take him to the *Tacoma* according to his instructions. In the first statement which Golder made (July 25, 1921) he said that he found Lee in custody of the policeman, in his second statement (August 8, 1921) that the policeman was standing near Lee, but did not have hold of him. Lee says (July 25, 1921) that the policeman was going to arrest him for striking a woman and that before the policeman said anything to him Golder came up and arrested him. The evidence of the Panaman police has to be gathered from the letters which the American Legation received from the Panaman Government in reply to its complaints concerning the incident. Panama holds that the policeman, Teodoro Hernández, no. 186,

informed Lee that he was under arrest, that Golder objected to Lee's arrest and pulled him from his hands. Golder says that he asked the policeman what the trouble was, but could not understand the answer which was given in Spanish and that he thereupon took Lee's arm and started to walk away with him. It also results from one of the letters of the Panaman Government that the woman declared that she had first made her complaint to the patrolman but that he did nothing more than take Lee with him, that she thereupon complained to the policeman who placed the sailor under arrest and that thereupon the patrolman took Lee by one arm and walked off with him and the policeman.

Considering the above-mentioned declarations made on both sides, the Commission can come to no other conclusion than that Golder and not Hernández first took custody of Lee, and that the latter was under his custody when the conflict happened which started the incidents upon which the claims are based. When Golder was waiting for a conveyance to take him and Lee to the harbor, the policeman intervened. He had realized that Golder was not going to take Lee to the police station. He talked to Golder and finally grabbed Lee's arm. Golder did not give in.

The American version of what follows is based upon the declarations of witnesses, submitted *in extenso*. It can be resumed as follows: Golder and Lee were attacked by civilians. Other policeman and Hiltbold arrived. Lee and the two patrolmen were led to the police station; Hiltbold whose evidence indicates that he took a very reasonable view, saying to Golder that the best would be to go all together to the police station and have the matter out there, was grabbed by the belt by a policeman who conducted him to the station at pistol point. Ensign Banks, who had been warned that sailors were being beaten by the police, came upon the scene and was attacked by civilians. He was rescued by two civilians who hurried him to the police station. Both Hiltbold and Banks stated that they approached the group to inquire the cause of what was happening.

The Panaman Government, whose version is based upon information which is not before the Commission, ignores the attack made by the crowd upon Golder and Lee, asserts that all the claimants and also other members of the United States Navy who it is alleged were present assumed a threatening attitude, that Banks rushed in and tried to carry off Lee and minimizes the attack on Banks by saying that private persons intervened to oppose Banks' joining the others in their resistance to the police and that in the struggle the latter was struck by someone unknown.

The two Governments are in agreement as to what happened within the police station:

In the presence of the night judge, Ensign Banks explained that he was the commander of the patrol and expressed his desire to return to the *Tacoma* and asked for protection during his passage through the town, which he received. Hiltbold and Golder were released and Lee was sentenced to 30 days in jail or 15 balboas fine. He was released on the following day, upon payment of that sum.

The Commission feels that the conflict between Hernández and Golder was largely due to the following circumstances: Golder had orders to arrest and send to the *Tacoma* all seamen found in Cocoa Grove contrary to the navy regulations. In the moment of the conflict with Hernández he understood, however, that the latter wanted Lee to be brought to the police station for having struck a woman. It must be supposed that he opposed this wish, because his orders were in conformity with the view taken by the American military and naval authorities, but not shared at that time by the Panaman Government, that members of the United States forces who had committed minor offenses

under Panaman law, should, if arrested by the patrol, be turned over to the said authorities for trial. The policeman, if he was at all authorized under Panaman law to arrest Lee on the complaint made to him by the woman, was however wrong in trying to take Lee from Golder. He should have upheld the latter's authority, instead of provoking an incident between police, members of the United States forces and civilians, since the patrols were provided, at the request of the Panaman Government, for the express purpose of preventing such incidents.

Having thus, for a trivial reason, raised the conflict, the police maintained the attitude of disregarding the rights of the patrol, treating them as if they had no standing in the matter, arresting Hiltbold for no reason and allowing the crowd to interfere and to assault the commander of the patrol. There is evidence in the record (statements of the eyewitnesses Fournier and Lieutenant Hanchett) indicating that no members of the United States Navy were on the spot other than the four claimants. The policemen have clearly not given their Government a true story.

The Commission thinks that there is no evidence showing that the attack upon Golder and Lee, although due to the rash action of policeman Hernández, could have been prevented by that policeman. According to Golder they were not further attacked, and Hiltbold says he was not attacked at all. Although the action of the police towards the two patrolmen was reprehensible, the Commission does not feel that an award would be justified on that account. There was a clear failure by the police to protect Ensign Banks. He was severely beaten by the crowd and only escaped worse through the assistance of the two civilians who helped him to the police station, the crowd still beating him from behind. He is entitled to an award.

Decision

The claims presented on behalf of Hazel E. Hiltbold, Lewis Crandall Golder and Richard Joseph Lee are disallowed.

The Republic of Panama is obligated to pay to the United States of America, on behalf of Hampden Osborne Banks, the sum of \$750, without interest.

Dissenting opinion of Panamanian Commissioner

While in accord with the conclusion relative to claimants Lee, Golder and Hiltbold, I do not agree with the reasoning on which it is based nor with the considerations of the majority of the Commission tending to lay upon the Panaman police the sole responsibility for what occurred, without attaching any to the sailors of the *Tacoma*. It is not presumptuous to maintain that pursuant to the evidence in this claim both shared the responsibility.

The evidence itself shows that the cooperation of the naval and military patrols with the Panaman police has been sought to the end of maintaining order among the sailors and soldiers and preventing their having trouble with the residents of the cities of Panama and Colón. But there is nothing to indicate that because of the agreement under consideration, violations of the laws of Panama by sailors, soldiers and patrols should be immune or exempt from the penal jurisdiction of the Republic. Neither is it possible to consider that the patrols are authorized to snatch from the hands of the Panaman police members of naval or military forces who have been arrested for violating penal or police provisions of the Republic of Panama.

There is evidence that the attitude of Ensign Banks when he penetrated the group formed by the police who were taking the sailor and the patrols as well

as a number of civilians to the police station was not wholly pacific; nor is it clearly established that the policemen nearby did not impart the protection which they could have given. Banks himself testifies that the attack was so unexpected and that events developed in such a way that there are ample grounds to suppose that the police did not have time to come forward and protect him.

For these reasons I am of the opinion that likewise in the case of Hampden Osborne Banks the claim should be disallowed.

The foregoing conclusions are likewise applicable to the cases of Richeson *et al.*, Registry No. 7. and Baldwin *et al.*, Registry No. 9, in which my not having made analogous observations when signing was due to the short time available to the Commission and not because I subscribe to all the reasoning on which they are based. I desire to make of record as I enter this reservation that especially in the case of Richeson, Registry No. 7, there is a superabundance of evidence furnished by American Army officers that the conduct of the soldiers during the train episode was highly reprehensible and aggressive, which doubtlessly contributed largely to the regrettable development of the incident. Nevertheless, this evidence has not even been mentioned in the opinion rendered