

**REPORTS OF INTERNATIONAL
ARBITRAL AWARDS**

**RECUEIL DES SENTENCES
ARBITRALES**

Harry Roberts (U.S.A.) v. United Mexican States

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that it can not render an award for pecuniary indemnity in any given case in the absence of convincing evidence of a pronounced degree of improper governmental administration.

Decision

10. In the absence of evidence of this kind in the instant case, the Commission decides that the claim must be dismissed.

HARRY ROBERTS (U.S.A.) *v.* UNITED MEXICAN STATES.

(November 2, 1926. Pages 100-106.)

ILLEGAL ARREST. Evidence *held* not to establish that claimant was arrested without probable grounds.

DILATORY PROSECUTION. When claimant was imprisoned for several months without trial in contravention of Mexican law, *held*, an indemnity is due.

CRUEL AND INHUMANE IMPRISONMENT. Evidence *held* to establish that claimant was imprisoned under sub-standard conditions.

INTERNATIONAL STANDARD.—EQUALITY OF TREATMENT OF ALIENS AND NATIONALS. Equality of treatment of aliens and nationals is not the test of international responsibility when aliens are not treated in accordance with the ordinary standards of civilization.

Cross-references: Am. J. Int. Law, Vol. 21, 1927, p. 357; Annual Digest, 1925-1926, p. 227; British Yearbook, Vol. 8, 1927, p. 184.

Comments: Edwin M. Borchard, "Important Decisions of the Mixed Claims Commission, United States and Mexico," Am. J. Int. Law, Vol. 21, 1927, p. 516 at 521.

1. This claim is presented by the United States of America in behalf of Harry Roberts, an American citizen who, it is alleged in the Memorial, was arbitrarily and illegally arrested by Mexican authorities, who held him prisoner for a long time in contravention of Mexican law and subjected him to cruel and inhumane treatment throughout the entire period of confinement.

2. From the Memorial filed by the Government of the United States and accompanying documents, the allegations upon which the claim is based are briefly stated as follows: Harry Roberts, together with a number of other persons, was arrested by Mexican Federal troops on May 12, 1922, in the vicinity of Ocampo, Tamaulipas, Mexico, charged with having taken part in an assault on the house of E. F. Watts, near Ebano, San Luis Potosi, Mexico, on the night of May 5, 1922. The claimant was taken prisoner and brought to Tampico, whence he was taken to Ciudad Valles, San Luis Potosi, where he was held under detention until he was placed at liberty on December 16, 1923, a period of nearly nineteen months. It is alleged that there were undue delays in the prosecution of the trial of the accused which was not instituted within one year from the time of his arrest, as required by

the Constitution of Mexico. These delays were brought to the notice of the Government of Mexico, but no corrective measures were taken. During the entire period of imprisonment he was subjected to rude and cruel treatment from which he suffered great physical pain and mental anguish.

3. The United States asks that an indemnity be paid by the Government of Mexico in the sum of \$10,000.00 for the wrongful treatment of the accused. It is stated in the Memorial that Roberts earned prior to the time of his arrest \$350.00 a month; that he would have earned \$6,650.00 during the nineteen months that he was under arrest; and that he spent \$1,000.00 in fees paid to a lawyer resident in the United States to assist in obtaining his release. A total indemnity is asked in the sum of \$17,650.00 together with a proper allowance of interest.

4. The evidence presented by the Agency of the United States consists of affidavits made by Roberts and by other persons; correspondence which Roberts and fellow prisoners exchanged with the American Consul at Tampico, and correspondence exchanged by the Consul with Mexican authorities and with the Department of State. The Mexican Government on its part presented records of judicial proceedings, including proceedings instituted against Roberts and others.

5. It does not appear from this evidence that the Mexican authorities had not serious grounds for apprehending Roberts and his companions. The record of the proceedings instituted by the Mexican authorities shows that at about twelve o'clock on the night of May 5, 1922, the Chief of the Detachment in the Ebano Station, San Luis Potosí, received a telephone message from Mr. Eduardo F. Watts to the effect that, at that moment, there had appeared in front of his house, which is situated on the limits of a small village, a band of outlaws consisting of several men, mounted and armed; that the officer immediately left with the men under his orders to render assistance; that, upon arriving at the house he discovered several persons in hiding; that, having seen flashes of light and heard discharges from firearms, he ordered his men to return fire, whereupon the persons lying in ambush fled and succeeded in escaping due to their being mounted; that he picked up a dead man named Monte Michaels, who was suspected of being implicated in the blowing up of a train belonging to a petroleum company; that the officer also picked up a rifle having a burnt cartridge and an unused one in the breech, a saddled mule, and other things; and that Watts furnished the information that the fugitives were three Americans. It further appears that an examination of Watts' house disclosed the impacts of several shots fired at the premises; that on May 12th, Harry Roberts and two of his companions were apprehended in the neighborhood of Chamal, where they had fled and where forces had been sent to capture them; that upon their being arrested, their preliminary statements were taken, in which they did not deny that they were the persons who were surprised by the detachment from Ebano on the night of May 5th in front of Watts' house, although they asserted that they had not gone there with criminal purposes. It is further shown by the official Mexican records that on May 15th, the prisoners were placed at the disposition of the Agent of the Federal District Attorney, who immediately ordered a preliminary investigation; that from this time until the date when Roberts was placed at liberty judicial proceedings continued, first before the First District Court of Tampico, Tamaulipas, and afterwards before the Judge of First Instance of the District of Valles, San Luis Potosí; and that in the record of the proceedings instituted before those officials there are found statements of the accused and testimony of other persons

indicating that there were grounds for suspecting that Harry Roberts and his companions had committed a crime—grounds sufficient to warrant the authorities to proceed with the arrest and trial of the accused.

6. The Commission is not called upon to reach a conclusion whether Roberts committed the crime with which he was charged. The determination of that question rested with the Mexican judiciary, and it is distinct from the question whether the Mexican authorities had just cause to arrest Roberts and to bring him to trial. Aliens of course are obliged to submit to proceedings properly instituted against them in conformity with local laws. In the light of the evidence presented in the case the Commission is of the opinion that the Mexican authorities had ample grounds to suspect that Harry Roberts had committed a crime and to proceed against him as they did. The Commission therefore holds that the claim is not substantiated with respect to the charge of illegal arrest.

7. In order to pass upon the complaint with reference to an excessive period of imprisonment, it is necessary to consider whether the proceedings instituted against Roberts while he was incarcerated exceeded reasonable limits within which an alien charged with crime may be held in custody pending the investigation of the charge against him. Clearly there is no definite standard prescribed by international law by which such limits may be fixed. Doubtless an examination of local laws fixing a maximum length of time within which a person charged with crime may be held without being brought to trial may be useful in determining whether detention has been unreasonable in a given case. The Mexican Constitution of 1917, provides by its Article 20, section 8, that a person accused of crime "must be judged within four months if he is accused of a crime the maximum penalty for which may not exceed two years' imprisonment, and within one year if the maximum penalty is greater." From the judicial records presented by the Mexican Agent it clearly appears that there was a failure of compliance with this constitutional provision, since the proceedings were instituted on May 17, 1922, and that Roberts had not been brought to trial on December 16, 1923, the date when he was released. It was contended by the Mexican Agency that the delay was due to the fact that the accused repeatedly refused to name counsel to defend him, and that as a result of such refusal on his part proceedings were to his advantage suspended in order that he might obtain satisfactory counsel to defend him. We do not consider that this contention is sound. There is evidence in the record that Roberts constantly requested the American Consul at Tampico to take steps to expedite the trial. Several communications were addressed by American diplomatic and consular officers in Mexico to Mexican authorities with a view to hastening the trial. It was the duty of the Mexican Judge under Article 20, section 9, of the Mexican Constitution to appoint counsel to act for Roberts from the time of the institution of the proceedings against him. The Commission is of the opinion that preliminary proceedings could have been completed before the lapse of a year after the arrest of Roberts. Even though it may have been necessary to make use of rogatory letters to obtain the testimony of witnesses in different localities, it would seem that that could have been accomplished at least within six or seven months from the time of the arrest. In any event, it is evident in the light of provisions of Mexican law that Roberts was unlawfully held a prisoner without trial for at least seven months. With respect to this point of unreasonably long detention without trial, the Mexican Agency contended that Roberts was undoubtedly

guilty of the crime for which he was arrested; that therefore had he been tried he would have been sentenced to serve a term of imprisonment of more than nineteen months; and that, since, under Mexican law, the period of nineteen months would have been taken into account in fixing his sentence of imprisonment, it can not properly be considered that he was illegally detained for an unreasonable period of time. The Commission must reject this contention, since the Commission is not called upon to pass upon the guilt or innocence of Roberts but to determine whether the detention of the accused was of such an unreasonable duration as to warrant an award of indemnity under the principles of international law. Having in mind particularly that Roberts was held for several months without trial in contravention of Mexican law, the Commission holds that an indemnity is due on the ground of unreasonably long detention.

8. With respect to the charge of ill-treatment of Roberts, it appears from evidence submitted by the American Agency that the jail in which he was kept was a room thirty-five feet long and twenty feet wide with stone walls, earthen floor, straw roof, a single window, a single door and no sanitary accommodations, all the prisoners depositing their excrement in a barrel kept in a corner of the room; that thirty or forty men were at times thrown together in this single room; that the prisoners were given no facilities to clean themselves; that the room contained no furniture except that which the prisoners were able to obtain by their own means; that they were afforded no opportunity to take physical exercise; and that the food given them was scarce, unclean, and of the coarsest kind. The Mexican Agency did not present evidence disproving that such conditions existed in the jail. It was stated by the Agency that Roberts was accorded the same treatment as that given to all other persons, and with respect to the food Roberts received, it was observed in the Answer that he was given "the food that was believed necessary, and within the means of the municipality." All of the details given by Roberts in testimony which accompanies the Memorial with respect to the conditions of the jail are corroborated by a statement of the American Consul at Tampico who visited the jail. Facts with respect to equality of treatment of aliens and nationals may be important in determining the merits of a complaint of mistreatment of an alien. But such equality is not the ultimate test of the propriety of the acts of authorities in the light of international law. That test is, broadly speaking, whether aliens are treated in accordance with ordinary standards of civilization. We do not hesitate to say that the treatment of Roberts was such as to warrant an indemnity on the ground of cruel and inhumane imprisonment.

9. The respondent Government has not denied that, under the Convention of September 8, 1923, acts of authorities of San Luis Potosí may give rise to claims against the Government of Mexico. The Commission is of the opinion that claims can be predicated on such acts.

10. As has been stated, the Commission holds that damages may be assessed on two of the grounds asserted in the American Memorial, namely, (1) excessively long imprisonment—with which the Mexican Government is clearly chargeable for a period of seven months, and (2) cruel and inhumane treatment suffered by Roberts in jail during nineteen months. After careful consideration of the facts of the case and of similar cases decided by international tribunals, the Commission is of the opinion that a total sum of \$8,000.00 is a proper indemnity to be paid in satisfaction of this claim.

Decision

11. For the reasons stated above the Commission decides that the Government of the United Mexican States must pay to the Government of the United States of America on behalf of Harry Roberts \$8,000.00 (eight thousand dollars) without interest.

J. AND O. L. B. NASON AND AUBREY WILLIAMS (U.S.A.) *v.*
UNITED MEXICAN STATES.

(November 2, 1926. Pages 106-108.)

WRONGFUL DEATH.—RESPONSIBILITY FOR ACTS OF MINOR OFFICIALS.—
DIRECT RESPONSIBILITY. Evidence *held* not to establish that decedent was wrongfully killed by Mexican customs guards or that the respondent Government condoned wrongful acts on the part of such guards.

1. The same occurrences are the basis of these two claims, and the two Agencies expressed their intention to rely in their arguments on substantially the same evidence which was not filed with both records. The Commission therefore ordered the consolidation of the claims on October 29, 1926.

2. One of these claims is presented by the United States against the United Mexican States in behalf of James Nason and Ophelia Le Barre Nason, father and mother of Hilton Nason, who was killed on December 13, 1922, on the Mexican side of the Rio Grande near Boquillas, Coahuila. The other claim is made in behalf of Aubrey Williams, who was wounded at the same time and place. It is alleged in the Memorials that the two men went on a hunting expedition on the Mexican side of the river; that they obtained some kind of permit to carry arms, written with pencil by an armed Mexican river guard (or customs guard) who signed himself Antonio Flores; that about sunset they were halted by Flores and two or more other armed men and were ordered to throw up their hands; and that thereupon Nason was shot and Williams wounded. Claim is made in the Nason case for indemnity in the sum of \$25,000 and in the Williams case in the sum of \$15,000.

3. With respect to questions of nationality raised by the Mexican Government in each of these cases, the Commission calls attention to the principles asserted in paragraph 3 of its opinion rendered in the case of William A. Parker on March 31, 1926. On the record as presented the Commission holds that it is established that the claimants were by birth, and have since remained, American nationals.

4. From evidence in the somewhat meager records in these cases it appears that the two Americans crossed over to the Mexican side of the river to hunt; that they had no legal permit to do so; that they met some Mexicans, two of them being river guards; and that there was a quarrel and a fight in which Flores and Nason were killed and Williams slightly wounded.

5. From the Memorial filed in the Nason case it would appear that the claim is based on the theory that the Mexican Government is responsible for the acts of some official or officials who wrongfully killed Hilton Nason. But there is no evidence other than the affidavit of Williams that he and his