

**IN THE MATTER OF AN ARBITRATION UNDER THE  
NORTH AMERICAN FREE TRADE AGREEMENT**

**- and -**

**THE ARBITRATION RULES OF THE  
UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW (1976)**

**- between -**

**JOSHUA DEAN NELSON, IN HIS OWN RIGHT AND ON BEHALF OF TELE FÁCIL  
MÉXICO, S.A. DE C.V., AND JORGE LUIS BLANCO**

**(the “Claimants”)**

**and**

**THE UNITED MEXICAN STATES**

**(the “Respondent”)**

**ICSID Case No. UNCT/17/1**

---

**PROCEDURAL ORDER NO. 13**

---

*Tribunal*

Dr. Eduardo Zuleta (President)  
Mr. V.V. Veeder, QC (Arbitrator)  
Mr. Mariano Gomezperalta Casali (Arbitrator)

*Secretary of the Tribunal*

Ms. Sara Marzal Yetano

**17 April 2019**

**Introduction**

1. By letter dated 26 March 2019, Claimants' counsel informed Respondent and the Tribunal that Mr. Jorge Luis Blanco ("Mr. Blanco") filed for bankruptcy in 2011 under Chapter 7 of the U.S. Bankruptcy Code and that Mr. Blanco inadvertently failed to disclose his interests at the time in Tele Fácil Mexico, S.A. de C.V. ("Tele Fácil").
2. Claimants' counsel further informed that as a result of such filing and the circumstances surrounding it, Mr. Blanco is not presently the owner of his original shareholdings in Tele Fácil and that the steps required to remedy the situation created by the filing for bankruptcy cannot be completed during the time available before the hearing.
3. Claimants' counsel concluded that as a result of the foregoing, Mr. Blanco does not want to unnecessarily delay or complicate the arbitration and "*has instructed us to withdraw him as a claimant in this action. He will, however, continue to participate as a fact witness on behalf of Josh Nelson and Tele Fácil. Consequently, we wish to hereby notify you of his withdrawal as a claimant, and request that ICSID take appropriate administrative steps to reflect this change.*"
4. By letter dated 27 March 2017, Respondent posed various questions to Claimants regarding Mr. Blanco's bankruptcy filing. Claimants responded to such questions by letter dated 29 March 2019.
5. By letter of 3 April 2019, Respondent indicated that it was likely that Respondent would have to change its defense on jurisdiction based on the new facts that were only informed to the Tribunal and Respondent in Claimants' letter of 29 March 2019. Respondent also indicated that it may have to initiate judicial proceedings seeking the annulment of the transfer of shares of Tele Fácil to Mr. Joshua Dean Nelson (Mr. Nelson) made on 26 March 2016, unless Claimants were willing to accept that on the date of the Notice of Arbitration Mr. Nelson's participation as shareholder in the capital of Tele Fácil was 40%.
6. By letter dated 5 April 2019, Claimants counsel alleged, *inter alia*, that Mr. Blanco's withdrawal as claimant in this arbitration does not affect the status of Mr. Nelson's 60% shareholding because his share increase occurred through a transaction that did not involve Mr. Blanco and that was done in accordance with Tele Fácil's by-laws. Claimants' counsel further indicated that Mr. Blanco's withdrawal as claimant has no impact whatsoever on Mr. Nelson's standing to claim in this arbitration. Claimants' counsel concluded that there is no doubt that Mr. Blanco's withdrawal as claimant has no material impact on Respondent's position in the arbitration.
7. Respondent replied on 8 April 2019 to the letter mentioned under 6 above requesting authorization to amend its Statement of Reply to include new jurisdictional objections based on the new facts unknown to Respondent and requested that the Tribunal either postpone submissions on jurisdiction until after the hearing or postpone the hearing.
8. By letter of 9 April 2019, Claimants' counsel reiterated that Mr. Blanco's current status has no bearing on Mr. Nelson's standing to claim on his own behalf or on behalf of Tele Fácil and that the issue of whether or not additional briefings on the matter are required should be decided at the close of the scheduled hearing. Finally, Claimants' counsel indicated that Mr. Blanco withdrew as claimant in order to minimize any potential disruption to the scheduled hearing and that, to the

extent that the Tribunal permits Respondent to present a new defense, Claimants must reserve the right to have Mr. Blanco reinstated as a claimant if and when the bankruptcy court abandons Mr. Blanco's shares back to him.

9. On 11 April 2019, the Tribunal informed the Parties that it intended to issue an order for the termination of the proceedings with respect to Mr. Blanco, pursuant to Article 34.2 of the UNCITRAL Arbitration Rules.
10. Claimants' counsel replied on 11 April 2019. Claimants referred to the reservation of rights made in their letter of 9 April 2019 and requested that the Tribunal's order terminating the proceedings with respect to Mr. Blanco be made either conditionally or be delayed until the course of action with respect to the treatment of Mr. Blanco's bankruptcy is determined at the end of the hearing.
11. On 16 March 2019, Respondent reiterated the need to file additional jurisdictional objections and opposed to Claimants' proposal that the Tribunal's order terminating the proceedings with respect to Mr. Blanco be made conditionally or be delayed until Mr. Blanco's bankruptcy is resolved. Respondent added that the withdrawal of Mr. Blanco as a claimant was unconditional and must be treated as such. According to Respondent, if Mr. Blanco is no longer being withdrawn as a claimant, or is conditionally withdrawn or if the election to withdraw him as a claimant is deferred to the end of the hearing, this would cause serious prejudice to the Respondent. A fundamental right of Respondent is to know who is or are the claimant parties before the hearing. If the Claimants' request is granted, then the Respondent will be denied procedural fairness.
12. Respondent concluded that if the issue of Mr. Blanco's status as a claimant is not defined before the hearing, Respondent would not agree to proceed to the hearing on the merits prior to the determination of the Tribunal's jurisdiction. Respondent stressed that it categorically opposed to allowing Mr. Blanco's status as a claimant to continue as an outstanding issue to the detriment of Respondent's defense.

#### **Considerations of the Tribunal**

13. It is undisputed that Mr. Blanco has withdrawn as a co-claimant in this arbitration, as first made known to the Tribunal by Claimants' counsel letter dated 26 March 2019 and reiterated further in the various communications mentioned in the preceding paragraphs. It is also undisputed that Mr. Nelson has undertaken the payment of any adverse cost award in its entirety as reflected in Claimants' counsel letter dated 29 March 2019.
14. Respondent has not objected to the withdrawal of Mr. Blanco but rather seems to have accepted it, as reflected in the correspondence referred to in the above paragraphs.
15. Therefore, the withdrawal of Mr. Blanco as co-claimant is not in dispute, but rather the consequences of his withdrawal and the timing for the Parties and the Tribunal to discuss such consequences.

**Order**

16. Based on the above, the Tribunal decides:

- a. The withdrawal of Mr. Blanco as co-claimant in this arbitration is accepted and consequently, as from today, Mr. Blanco is no longer a party to this arbitration.
- b. The consequences of Mr. Blanco's withdrawal shall be addressed by the Tribunal with the Parties at the Hearing scheduled to start on 22 April 2019.
- c. All Parties' rights are otherwise fully preserved.

On behalf of the Tribunal,

[ *Signed* ]

---

Dr. Eduardo Zuleta  
Presiding Arbitrator  
Date: 17 April 2019