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West India Steamship Company (United States) v. Germany

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WEST INDIA STEAMSHIP COMPANY
(UNITED STATES) *v.* GERMANY
(May 14, 1926, pp. 687-689.)

WAR: DESTRUCTION OF CHARTERED VESSEL.—DAMAGE: CHARTERER'S INTEREST IN VESSEL, FREIGHT MONEY LOST, TANGIBLE PROPERTY LOST. Sinking by German submarine on June 5, 1918, of Norwegian vessel chartered by American corporation. Claim for freight money less amount received from insurer, and for value of lost coal. *Held* that claimant failed to prove that charter was asset in its hands (reference made to Administrative Decision No. VII and award in Sewall case, see pp. 203 and 311 *supra*). Award made for lost coal belonging to claimant.

Bibliography: Kiesselbach, *Probleme*, p. 111.

PARKER, *Umpire*, rendered the decision of the Commission.

This case is before the Umpire for decision on a certificate of disagreement of the National Commissioners.

On June 5, 1918, the Steamship *Vinland*, of Norwegian registry and ownership and operated by a Norwegian master and crew under the directions of the charterer, the West India Steamship Company, an American corporation, claimant herein, was stopped and sunk by a German submarine. The charter-party under which the *Vinland* was being operated was executed at New York January 29, 1918, on cable authority from the owner dated Bergen, Norway, January 28, 1918. She was delivered on March 16, 1918, under this charter-party, which by its terms became effective for a period of three calendar months from that date, and therefore by its terms would have expired on June 16 had the ship not been destroyed on June 5.

This claim is put forward for the net amount which the charterer would have earned from the carriage of freight under the charter had the ship not been destroyed, less \$11,000.00 war-risk insurance collected by the charterer carried by it to protect against the loss of freight moneys.

For the reasons set forth in Administrative Decision No. VII, handed down May 25, 1925 (Decisions and Opinions, pages 308-345), and in Docket No. 6070, Arthur Sewall and Company *et al.*, handed down April 21, 1926,^a the claim as so presented must be rejected.

There is no evidence in the record that the hire stipulated to be paid by the claimant for the use of the ship was less than the current market hire at which similar ships could have been chartered at the time the *Vinland* was destroyed, or that the charter operated as a burden or an encumbrance on the ship so as to affect the price which a purchaser desiring and able to buy would have paid for her subject to the charter at the time she was destroyed. It follows that under the record as presented the claimant herein has failed to discharge the burden resting upon it to prove that at the time the *Vinland* was destroyed the charter was an asset in its hands which operated as an encumbrance on the ship, and also the extent of such encumbrance and the value of such asset, so as to entitle it to recover under the rules laid down by this Commission in Administrative Decision No. VII.

There was destroyed with the ship coal belonging to the claimant of the value of \$336.00.

Applying the rules announced in Administrative Decision No. VII and other decisions of this Commission to the facts in this case as disclosed by the

^a *Note by the Secretariat*, this volume, pp. 203 and 311 *supra*, respectively.

record, the Commission decrees that under the Treaty of Berlin of August 25, 1921, and in accordance with its terms the Government of Germany is obligated to pay to the Government of the United States on behalf of the West India Steamship Company the sum of three hundred thirty-six dollars (\$336.00) with interest thereon at the rate of five per cent per annum from November 11, 1918.

Done at Washington May 14, 1926.

Edwin B. PARKER
Umpire

HOUSATONIC STEAMSHIP COMPANY, INC.
(UNITED STATES) *v.* GERMANY
(May 14, 1926, pp. 689-694.)

WAR: DESTRUCTION OF CHARTERED VESSEL.—DAMAGE: OWNER'S INTEREST IN VESSEL. TANGIBLE PROPERTY LOST.—DAMAGES: (1) REPLACEMENT VALUE, (2) FACTORS FOR DETERMINATION OF MARKET VALUE OF CHARTERED VESSELS.—EVIDENCE: AFFIDAVITS, NORWEGIAN SALES TABLE, EVIDENCE TAKEN FROM OTHER CASES. Sinking by German submarine on February 3, 1917, of American vessel chartered by British firm for term of war at less than one-fourth of current rate. Claim for replacement value of vessel less amount received from insurer, and for value of lost stores and supplies. *Held* that normally cost, age, physical condition and cost of replacement are important factors in arriving at market-value of vessel, but that at time of sinking availability for immediate use was of controlling importance; and that at that time owner's interest in vessel was highly speculative: vessel not available, but chartered at hire little if any in excess of operating costs; and that there is no evidence that claimant could have sold vessel on or about date of sinking for as much as collected insurance. Award made for lost stores and supplies. Evidence used: see *supra*.

Bibliography: Kiesselbach, *Probleme*, p. 120.

PARKER, *Umpire*, rendered the decision of the Commission.

This case is before the Umpire for decision on a certificate of the National Commissioners certifying their disagreement.

From the facts as disclosed by the record it appears that the Housatonic Steamship Company, Inc., was incorporated under the laws of the State of New York in March, 1915, with an authorized capital stock of \$125,000. It purchased from a German corporation the Steamship *Georgia*, of German registry, which had, following the outbreak of the war in 1914, sought an American port of refuge from which it was unable safely to issue. After the purchase this vessel was renamed the *Housatonic*. She was a single screw steamer built of steel at Glasgow in 1891, of 3,143 gross tons, 2,022 net tons, and about 4,880 deadweight tons. Her original cost of construction was \$210,000. Her German owner had from time to time written off for depreciation so that her book value was \$83,000 when her German owner sold her to the claimant herein for \$85,000. On February 23, 1916, the claimant entered into a charter-party with Brown, Jenkinson & Company, of London, British nationals, whereby the latter chartered the *Housatonic* "for the term of the present war" with a provision "that on the cessation of the present war, prompt redelivery of the steamer shall be given by the Charterers to the Owners".