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Housatonic Steamship Company, Inc. (United States) v. Germany

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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".

The charter also contained a clause reading:

“Charterers undertake to secure the Allied Governments’ guarantee that, notwithstanding the transfer of this steamer from the German to the American Register during the present war, the steamer shall be immune from warlike proceedings on the part of the British and Allied Governments.”

This charter was entered into during the period of American neutrality. At that time Great Britain and the other Allied Powers were asserting the right to capture and condemn vessels transferred subsequent to the outbreak of war from German to neutral registry. The existence of this condition at the time of entering into this charter made the *Housatonic* of little more value to the claimant than she had been to her previous German owner because, notwithstanding her change of ownership, name, registry and flag, she was still subject to the risk of capture and condemnation. Obviously it was for this reason that the claimant entered into a charter-party with a British firm at the stipulated hire of 11 shillings per gross ton or about 7 shillings per deadweight ton per calendar month at a time when the current charter rate was about 32 shillings per deadweight ton. The effect of this charter was to give to a British firm throughout the war period the exclusive right to use the former German vessel which had been transferred to American registry, at a rate of hire less than one-quarter of the then current rate. Manifestly one of the principal considerations moving the claimant to enter into this charter-party was the obligation of the British charterers to secure immunity against attack or seizure on the part of the British and Allied Governments. Those Governments were naturally anxious to secure for themselves or for their nationals the right to use ships transferred from German registry, and the guarantee stipulated for in the charter-party could be readily procured by a British national but not by an American or other neutral national.

With the exception of the special provisions above noted and others not material to note here, the charter was the ordinary form of time charter for the “term of the present war”. The owner (claimant herein) was obligated to provide and pay for provisions and wages of the captain, officers, engineers, firemen, and crew and to provide and pay for the necessary equipment and for insurance, save as otherwise specially stipulated. Marine insurance on hull and machinery for \$180,000, or its British equivalent, was to be carried, the premiums for which were to be borne by the owner except that any premiums in excess of stipulated rates were to be borne by the charterer. The premiums for war-risk insurance, “based on the valuation of £58,000”, were to be paid by the charterer.

This was the status of the *Housatonic* when she was sunk by a German submarine on February 3, 1917. The sole question here presented is, What was the reasonable market value of the claimant’s interest in the *Housatonic* on that date? The owners claim her replacement value was \$839,600.

Under normal conditions the cost of a vessel, her age and physical condition, and the cost of replacement are important factors in arriving at her market value. Even in February, 1917, these factors were given some weight in arriving at the value of a ship, but the great demand for tonnage at that time rendered availability for immediate use of controlling importance. Therefore, the affidavits in the record of two witnesses that the replacement value of the *Housatonic* at the time of her destruction was \$839,600 in the opinion of one and about \$900,000 in the opinion of the other, based in each instance both on “the cost of building a vessel” of the same type and on sales of similar vessels, are not very helpful in determining her reasonable market value at the time of her loss encumbered with the charter. However, substantially the

same result is obtained by using as a basis the Norwegian value of free ships during the first quarter of 1917. According to the Norwegian schedule the *Housatonic* had a value at that time of about \$855,839. But the *Housatonic* was not a free ship. She was under charter to a British firm until "the cessation of the present war", at a stipulated hire of about 7 shillings per month per deadweight ton, while at the time of her loss the current rate was 46 shillings 6 pence per month per deadweight ton. Since that charter had been entered into the cost of operation of the *Housatonic*, which was borne by the claimant herein, such as wages of the master and crew, the cost of provisions, stores, repairs, etc., had greatly increased but the income from the hire was stationary, fixed by a charter of uncertain duration at a rate of less than one-fourth of the current rate at the time the charter was entered into and less than one-sixth the current rate at the time the ship was destroyed. These abnormally high charter rates were caused by the abnormal demand for tonnage for immediate use far in excess of the available supply. While ordinarily the prevailing freight rates were a controlling factor in determining the reasonable value of a free ship, they had little influence in determining the value of the owner's interest in the *Housatonic*, which was not a free ship. The fact that she was not free, the fact that she was not available to the owner so that he might take advantage of the abnormally high freight rates and charter rates but must be operated exclusively in the interest of a British firm until the "cessation of the present war" at charter hire little if any in excess of the operating costs which must be borne by the owner, render the owner's interest in her of a highly speculative and doubtful value.

If, then, the claimant had been willing to sell the *Housatonic* encumbered with this charter on February 3, 1917, and had sought a purchaser willing to buy, where could it have found such purchaser and at what price could a sale have been made?

The claimant concedes that "at the charter rate * * *—11 - — per d. w. ton—the steamer could make very little profit in operation". As a matter of fact the stipulated charter hire was 11 shillings per *gross* ton or about 7 shillings per *deadweight* ton. From the evidence before this Commission in other cases it appears that the costs of operation had so increased between the year which had elapsed from the date of the making of the charter to the date of the loss of the ship that it is doubtful if the stipulated charter hire yielded any return to the owner above operating costs borne by it. It is certain that the net income, if any, which the *Housatonic* was yielding to her owner at the time of her loss did not amount to a reasonable interest return on \$273,353.30, the amount of the insurance actually collected by the claimant. The vessel had no or practically no net earning capacity during the continuance of the war. At the time of her loss the United States was still neutral. The issue of the great conflict was doubtful. No one could foreshadow how long the war would last. The speculators were willing to speculate on the purchase of tonnage when they could procure immediate or early delivery. But even the speculators would have hesitated to invest a substantial sum in a vessel the possession of which could not be delivered them, which would have yielded them no returns during the war, and the value of which after the war was dependent on numerous uncertain factors.

In view of the conditions existing on February 3, 1917, it may well be doubted if the claimant could have realized on the *Housatonic*, encumbered with her charter, any substantial amount. Doubtless there were in America and in other countries many adventurers willing to take great risks for the chance of reaping large rewards. But all such as a rule confined their activities to garnering war profits where large and quick returns were promised; they

were not interested in tying up their cash resources without any return during the war, where the after-war profits were at best uncertain and highly speculative. As heretofore noted, the charter provided that the charterer should pay the premiums for war-risk insurance on a valuation of £58,000 (which, converted into dollars at the prevailing rate of exchange, equaled \$275,772.60), and from this insurance the claimant received \$273,353.30, the proceeds after deducting the 1% commission of the insurance broker. Considering the transaction as a whole, it seems reasonably apparent that the chance of collecting this insurance, amounting to approximately \$190,000.00 in excess of the purchase price, was at least one of the factors influencing the claimant to purchase and let the vessel. However this may be, there is no evidence in the record to justify the conclusion that the claimant could probably have sold the *Housatonic* encumbered by her charter on or about February 3, 1917, for as much as the insurance which it collected. It follows that the claimant has failed to discharge the burden resting upon it to establish a net loss suffered by it resulting from Germany's act in destroying the *Housatonic*.

It appears from the record that the claimant had upon the *Housatonic* at the time of her loss stores and supplies of the value of \$4,500.00 for which it has not been reimbursed by insurance or otherwise.

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 record, the Commission decrees that under the terms of 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 Housatonic Steamship Company, Inc., the sum of four thousand five hundred dollars (\$4,500.00) with interest thereon at the rate of five per cent per annum from February 3, 1917.

Done at Washington May 14, 1926.

Edwin B. PARKER
Umpire

HARBY STEAMSHIP COMPANY, INC.
(UNITED STATES) v. GERMANY
(May 14, 1926, pp. 694-697.)

WAR: DESTRUCTION OF VESSEL.—DAMAGES: MARKET-VALUE.—EVIDENCE: AFFIDAVITS, INTERESTED PARTY, BRITISH SHIPPING PERIODICAL, NORWEGIAN SALES TABLE, EVIDENCE TAKEN FROM OTHER CASES. Sinking by German submarine on November 26, 1916, of American vessel. Claim for value of vessel less amount received from insurer, and for value of lost stores and supplies. *Held* that there is no evidence that at date of loss, vessel had reasonable market-value in excess of insurance collected. Evidence used: see *supra*. Award made for lost stores and supplies.

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 November 26, 1916, the Steamship *Chemung*, of American registry, owned by the Harby Steamship Company, Inc., an American corporation, claimant herein, while engaged in private commerce was sunk in the Mediterranean by a German submarine. She was bound for Genoa and