

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

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

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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

Naples with a cargo of electrical and other machinery, machine tools, blasting caps, cotton, foodstuffs, etc.

Germany admits liability under the Treaty of Berlin for the net loss, if any, which the claimant has sustained resulting from the destruction of the *Chemung*. The sole question here presented is the value of the property destroyed at the time of its destruction.

The only evidence offered by the claimant of the value of the *Chemung* at the time she was destroyed consists of two affidavits, one that of a principal stockholder in and the president of the claimant corporation, who testified: "In my opinion the said Steamship *Chemung* had a market value at New York of \$814,650 on November 27, 1916." This witness—an interested party—does not proffer any explanation whatever of his method of reaching this estimate but contents himself with the meager statement quoted. He has not qualified as an expert and from the records in another case before this Commission it appears that he is a cotton broker and exporter.

The second witness does not go into much greater detail, but gives his opinion of the reasonable market value of the *Chemung* on November 26, 1915, exactly one year prior to her destruction. This date is repeated three times in his short affidavit. The value which he placed upon the ship is exactly the figure given by the president of the claimant company. The date may be explained as a clerical error, but it suggests a want of accuracy on the part of this witness and does not stimulate confidence in his testimony as an expert, especially in the absence of any suggestion as to how he reached this estimate.

By bill of sale dated April 22, 1916, executed in pursuance of an assignment dated March 7, 1916, of a contract entered into on February 11, 1916, the claimant acquired from the Erie Railroad Company through Charles W. Morse the Steamship *Chemung* for a cash consideration of \$400,000.00. This vessel of 3061 gross and 1848 net tons was built of steel in 1888 at Buffalo, New York, where she was registered, and had been engaged in lake trade by the Erie Railroad Company. After her purchase by claimant she was transferred to New York registry and engaged in trans-Atlantic trade. At the time of her loss she was 28 years old. The record is silent with respect to her condition both at the time of her purchase by claimant and at the time of her loss. Claimant contracted for her purchase on March 7, 1916, for \$400,000 and the purchase was consummated in accordance with the contract and delivery effected on or about April 22, 1916. There is no suggestion in the record that the purchase price paid by claimant was under the market and it may be safely assumed that this price represented not less than the fair market value of the vessel in her condition at that time, especially when the experience and business acumen of the veteran dealer in shipping from whom claimant purchased are taken into account. This price was at the rate of approximately \$131 per gross ton. The records of this Commission in other cases disclose the sale of one ship made in January, 1916, at \$115 per gross ton; another in February, 1916, at \$124 per gross ton; one in March, 1916, at \$123 per gross ton; and one in April, 1916, at \$128 per gross ton. None of these vessels was as old as the *Chemung*. Those sales tend to indicate that the price paid by the claimant was slightly above the market at the time of the contract of purchase.

Following the loss of the *Chemung* the claimant collected war-risk insurance, partly from American and partly from French underwriters, which aggregated \$584,650, at the rate of nearly \$191 per gross ton. The insurance collected was equivalent to an increase of practically 46% over the purchase price paid by claimant. During the eight months and 19 days which intervened between the claimant's contract to purchase this vessel and the date of her loss there

had been a substantial increase in the market value of tonnage, but no testimony has been brought to the attention of this Commission indicating that during this period the percentage of increase in value of vessels of the class to which the *Chemung* belonged was as great as 46%.

"Fairplay", a British shipping periodical published weekly, gives statistical data purporting to show the fluctuations in the price of tonnage based on actual sales of cargo steamers of 7,500 deadweight tons, new, available, and ready for use, a type much larger and of a higher class than that of the 28-year-old *Chemung*. Such a steamer, according to "Fairplay" (January 3, 1924) sold in March, 1916, at £160,000, and it is estimated that by the middle of December, 1916, such a vessel was worth £187,500, or an increase of 17+ %.

From the table compiled from actual sales in Norway of free ships in a free market, which was used by Great Britain as the basis of her shipping reparation claim against Germany, it appears that ships of the age of the *Chemung* increased in value the last half of 1916 over the first half of that year approximately 26%.

In view of the meager and wholly unsatisfactory evidence presented by the claimant on the issue of value, the Umpire has been forced to take into account evidence before this Commission in other cases which, taken as a whole, does not justify a finding that at the date of her loss the *Chemung* had a reasonable market value in excess of the insurance collected by the claimant. It follows that, on the record as presented, the claimant has failed to discharge the burden resting on it to establish a net loss suffered by it resulting from the destruction of the *Chemung*.

A claim is put forward for the value of fuel, food, and other stores and supplies claimed to have been lost with the ship. The only evidence offered in support of this claim is a statement signed by the New York port captain of the claimant that he caused to be placed on board the *Chemung* at the port of New York for her last voyage beginning November 8, 1916, stores and supplies of the value of \$5,102.33. The principal items in this statement are 300 tons of coal of the value of \$2,400 and groceries, meats, vegetables, etc., of the value of approximately \$2,000. These had all been drawn upon during the 19 or 20 days elapsing between the date on which the *Chemung* cleared the port of New York and the date of her destruction when she was nearing her destinations in Italy, where presumably she was planning to take on fresh supplies for her return trip. Two affidavits of the master of the *Chemung* are in the record but no reference is made by him or anyone else to the amount of the stores and supplies remaining unconsumed at the time of her destruction. In this state of the record the Umpire would be justified in holding that the claimant had failed to discharge the burden resting on it to prove its case. However, the Umpire will assume that practically one-fifth in value of the supplies taken on at New York remained unconsumed when the *Chemung* went down, and with respect to this item an award will be entered on behalf of the claimant for \$1,000.00 and interest.

Applying the rules announced in previous decisions of this Commission to the facts disclosed by the record herein, 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 Harby Steamship Company, Inc., the sum of one thousand dollars (\$1,000.00) with interest thereon at the rate of five per cent per annum from November 26, 1916.

Done at Washington May 14, 1926.

Edwin B. PARKER
Umpire