

# **REPORTS OF INTERNATIONAL ARBITRAL AWARDS**

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## **RECUEIL DES SENTENCES ARBITRALES**

**Universal Transportation Company (United States) v. Germany**

14 May 1926

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UNIVERSAL TRANSPORTATION COMPANY  
(UNITED STATES) v. GERMANY

(May 14, 1926, pp. 698-701.)

EVIDENCE: WITNESS, DIARY OF GERMAN CRUISER, FAILURE TO CO-OPERATE IN COLLECTING EVIDENCE. Loss of American vessel after departure on December 24, 1915 from New York to Algiers. *Held* that there is no evidence that vessel destroyed by act of Germany or her agents. Evidence: see *supra*; failure to comply with Commission's request to furnish information.

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.

From the record it appears that the claimant herein, the Universal Transportation Company, Inc., an American corporation, acquired the American Steamship *Orleanian* by purchase on or about November 30, 1915, paying therefor the sum of \$150,000. She was an iron vessel built at Glasgow in 1880, rebuilt and re-engined in 1892, of 2293 gross and 1482 net tons. On December 10, 1915, the claimant entered into a trip charter-party with the agent of an Italian petroleum society under which the *Orleanian* sailed from the port of New York on December 24, 1915, bound for Algiers and Malta, with a full cargo of case oil and naphtha. So far as appears from the record she has not been heard from since. The secretary and treasurer of the claimant testified September 1, 1925, that "he has had no advice of the steamer, and is of the opinion that she was sunk 'without trace' by Germany".

The record is absolutely barren of evidence to support this opinion unless certain testimony of a master mariner with 37 years varied experience at sea be considered such. This sea captain, Barlow by name, testified in 1925 that he had been a licensed master since 1912 and had made at least 12 trips as master of steamers sailing from the port of New York to Mediterranean ports at all seasons, had been in command of ships traveling the war zones from 1914 to 1918, and had been master of vessels similar to the *Orleanian*. In the light of his experience and his knowledge of weather and other conditions to be encountered on such a voyage, he expressed the opinion that a steamship of the type of the *Orleanian* making such a voyage in the latter part of December or the first part of January would have followed a course on the latitude of 36° N.; that on this course the steamer would have encountered less of the easterly gales prevailing in the winter, although the distance would have been increased and a slight negative current would have been encountered; and that some of the ships of this type seeking better weather would have taken an even more southerly course, thus increasing the distance. This witness expresses the opinion that the *Orleanian* "would have been in latitude 36°, Longitude 10° about January 14th, 1916". He incorporates in his testimony a schedule of the reported operations of the German Cruiser *Moewe* from January 11 to January 16, 1916, inclusive, from which it appears that the *Moewe* was very active during this period in capturing and in most instances destroying British ships and their cargoes, operating between latitude 43° 40' N., longitude 12° 30' W., on January 11, and latitude 30° 40' N., longitude 17° 15' W., on January 16. This schedule does not record the activities of the *Moewe* on January 14, but on January 12 and 13 she was operating in approximately latitude 38° 44' N., longitude 13° 58' W., and on January 15 she was operating in latitude 33° 7' N., longitude 14° 9' W. From this claimant deduces that the

*Moewe* was probably in the vicinity of latitude 36° N., longitude 10° W., about January 14, 1916, where she might have encountered the *Orleanian* had the latter followed the course suggested by Captain Barlow and not encountered any other marine risks or war-risks after sailing from New York 21 days earlier.

As against these highly speculative and inconclusive conjectures, it appears that the *Orleanian* was a neutral vessel, of American registry, flying the American flag, a ship 35 years old, with a cargo of petroleum oils; and from the record of the *Moewe* it appears that throughout her war activities she never sunk a merchant vessel without identifying such vessel by name and without first taking therefrom the officers and crew. From her record as incorporated in part in Captain Barlow's testimony it appears that on January 16, 1916, the *Moewe* transferred members of crews of captured vessels which she then had on board to the British Steamship *Appam*, which, in charge of a prize crew, was later sent to Newport News, Virginia, where it arrived safely on February 1, 1916.

In view of the record of the *Moewe* it may fairly be assumed that had she encountered the neutral *Orleanian* on January 14, she would not have captured or sunk her; and even if she had done so she would, as was her custom, have ascertained the name of the ship, taken the crew on board, and transferred them with the members of the other crews of captured vessels to the *Appam*. It is highly improbable that the raider *Moewe* would have taken such pains to preserve the lives of her British enemies and then have ruthlessly destroyed a neutral American ship without rescuing any member of her crew.

But this Commission is not left to speculate with respect to a possible encounter between the *Moewe* and the *Orleanian*. The war diary of the *Moewe* covering the period of January 4 to January 16, 1916, has been submitted to the Commission by the German Agent and there is no record of the *Moewe* ever having sighted the *Orleanian*. The German Admiralty certified that in all of the adventures of the *Moewe* no ship was captured and sunk by her without the accurate establishment of the name and nationality thereof, and that "The American ship *Orleanian* was not sunk by the *Moewe*". The German Admiralty further certifies that "During December [1915] and January 1916 there were no German U-boats operating in the Atlantic or in the western Mediterranean" and that no American ship was destroyed by Germany in December, 1915, or in January, 1916.

There is in the record a letter from claimant's private counsel addressed to the American Secretary of State, dated January 11, 1919, referring to the loss of the *Orleanian*, in which this statement occurs:

" \* \* \* It is believed that she was sunk off Gibraltar as the submarines were very active at that point at the time the vessel was due there. The company has received no report whatsoever of the vessel since her sailing. Would it be possible to ascertain from the German records whether or not the vessel was sunk by one of their submarines?"

This was written two months after the Armistice and more than three years after the *Orleanian* was last heard from. It seems that it had not occurred to the claimant at that time to attribute the loss of the *Orleanian* to the German raider *Moewe*.

It is also significant that this same counsel appeared before the American courts in 1916 on behalf of the British owner and master of the *Appam* and presumably had ample opportunity to learn of the activities of the *Moewe* from the 150 officers and members of the crews of certain vessels captured by the *Moewe*, who were transferred to the *Appam* on or about January 16, 1916, and landed at Newport News, Virginia, some of whom were on the *Moewe* on

January 14, 1916, and for several days prior and subsequent thereto. Yet apparently it did not occur to the claimant or its counsel to attribute the loss of the *Orleanian* to the *Moewe* until several years thereafter.

From this same communication from claimant's counsel dated January 11, 1919, it appears that the owner collected insurance for the loss of the *Orleanian* in the amount of \$100,000. The proof of loss upon which such insurance was paid to the claimant should throw some light on the time and place and cause of the loss and whether it was due to the ordinary marine risks or to risks of war. Though requested so to do, the claimant has failed to furnish full information with respect to the nature and amount of this insurance and the evidence upon which \$100,000 was paid. Excepting that letter, there is no word in the record about the *Orleanian* having been insured.

In this state of the record the Umpire finds that the claimant has failed to discharge the burden resting upon it to prove that the *Orleanian* was destroyed by an act or acts of Germany or her agents in the prosecution of the war.

Wherefore the Commission decrees that under the Treaty of Berlin of August 25, 1921, the Government of Germany is not obligated to pay to the Government of the United States any amount on behalf of the claimant herein because of any loss or damage alleged to have been sustained by it connected with or growing at of the destruction of the Steamship *Orleanian*.

Done at Washington May 14, 1926.

Edwin B. PARKER  
Umpire

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ROBERT E. O'ROURKE, AS RECEIVER OF THE  
MISSISSIPPI VALLEY, SOUTH AMERICAN & ORIENT  
STEAMSHIP COMPANY (UNITED STATES) *v.* GERMANY

(May 25, 1926, pp. 702-704.)

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PROCEDURE: PRELIMINARY QUESTION.—JURISDICTION: DEBTS, TORT. *Held* that claim based upon alleged wrongful acts of German nationals, outside of Germany and prior to war, falls outside terms of Treaty of Berlin.

BY THE COMMISSION:

This claim has been submitted to the Commission for the determination, as a preliminary question, of whether or not on the facts alleged in this case it comes within the jurisdiction of the Commission as a debt for which the Government of Germany is financially obligated under the terms of the Treaty of Berlin.

The essential facts alleged, as presented in an agreed statement signed by the Agents of the two Governments, are as follows:

"The Mississippi Valley, South American and Orient Steamship Company is an American corporation organized under the laws of the State of Louisiana (Exhibit 1). The claimant, Robert E. O'Rourke, is receiver of said Company, appointed such receiver by the United States District Court for the Southern District of New York (Exhibit 2). This claim is based upon the allegation that the Hamburg-American Line, and the North German Lloyd Lines, German nationals, with nationals of other countries, did some time in 1911, contrary to the provisions of the law of the United States known as the Sherman Anti-Trust Act of July 2,