

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

Gans Steamship Line (United States) v. Germany

13 August 1926

VOLUME VII pp. 348-350



NATIONS UNIES - UNITED NATIONS
Copyright (c) 2006

course of their business at current rates. Before the time arrived when they could be delivered for loading in the usual course of shipping practice the charters were terminated through the destruction of the ships. In what way did these charters constitute encumbrances on these ships? The evidence before the Commission indicates that the freight stipulated to be paid by the claimant was in each case fully equal to or perhaps a little in advance of the average net charter rates in effect during January, 1917; that there was no very material change in these rates between January and March; and that the stipulated freight was equal to that in effect in March when the ships were destroyed.

It follows that under the principles announced by this Commission in Administrative Decisions No. VII and No. VII-A the claimant had no such interest in the *Ashjorn* or in the *Fairmand* at the times they were destroyed as to render Germany pecuniarily liable under the terms of the Treaty of Berlin.

Wherefore the Commission decrees that under the Treaty of Berlin of August 25, 1921, and in accordance with its terms the Government of Germany is not obligated to pay to the Government of the United States any amount on behalf of the Gulf Export Company, claimant herein.

Done at Washington August 13, 1926.

Edwin B. PARKER
Umpire

GANS STEAMSHIP LINE (UNITED STATES)

v. GERMANY

(August 13, 1926, pp. 730-733.)

WAR: DESTRUCTION OF CHARTERED VESSEL.—DAMAGE: VALUE OF CHARTERER'S INTEREST IN VESSEL, LOST PROFITS. Destruction on February 7, 1918 by act of war of Swedish vessel chartered by claimant. Claim for value of claimant's interest in vessel. Application of rules announced in Administrative Decisions Nos. VII and VII-A, see pp. 203 and 330 *supra*. *Held* that lost profits are of incidental value only in determining claimant's interest in ship. No damages allowed in excess of insurance collected.

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, Gans Steamship Line, an American corporation, on August 8, 1913, entered into a charter-party with the Swedish owners of the Steamship *Fridland*, 8,175 deadweight tons, covering five consecutive winter seasons from October of each year to May of each succeeding year beginning with October, 1913. The stipulated charter hire was £1,669.1.3 per month.

The operations of the *Fridland* under this charter are not disclosed by the record, but it does appear that prior to November, 1917, the claimant had sued the owners of the *Fridland* for \$200,000 for the owners' alleged breach in failing to deliver the ship to the claimant on time during that and the preceding season. The owners had given bond in this suit for \$200,000. After cable negotiations an agreement was arrived at so amending the original charter, which would have terminated in May, 1918, that: (a) the charter was so extended as to enable the charterer to make five grain voyages for the Commission for Relief in Belgium or similar business from an Atlantic port

to Rotterdam; (b) the owners agreed to arrange for Swedish Government license for the entire period; (c) the charterer agreed to pay the owners a total monthly hire of \$12,000; (d) it was stipulated that if the five grain voyages were not completed within 10 months from date of delivery of the ship under this amended charter the charterer should pay the current market hire for any time in excess of 10 months; (e) the charterer agreed to pay the owners a lump sum of 250,000 kroner on each voyage prior to sailing from loading port on account of war-risk insurance; and (f) the charterer agreed to cancel its litigated claims of \$200,000 against the owners for which the latter had given bond.

It is assumed by both parties, and the assumption seems justified, that the five grain voyages could have been completed within 10 months. The *Fridland* was delivered to the Gans Steamship Line under the amended charter-party at Rotterdam on December 1, 1917, so that if the assumption with respect to the time required to complete the five grain voyages is correct the charter would have terminated on September 30, 1918. On this assumption the payments which the claimant had made and contracted to make for the use of the vessel for the 10-month term were:

	s
(a) \$12,000 per month, or	120,000
(b) A lump-sum payment of 250,000 kroner on sailing from loading port on each of the five voyages, or 1,250,000 kroner, at 35 cents (the rate in effect at the time of amendment of charter)	437,500
(c) Cancellation of claim	200,000
TOTAL	757,500

The *Fridland* was destroyed by an act of war on February 7, 1918, leaving an unexpired charter term of seven and three-fourths months. The claimant carried on its own account \$500,000 war-risk insurance on its valued interest in the ship, which amount it collected in full.

Much stress is laid by the claimant's witnesses on the fact that the *Fridland* was engaged in the carriage of cargo for the Belgian Relief Commission which "was safer than practically any other trade to continental ports". However, the claimant was so much alive to the fact that there was a very substantial war risk involved in operating the *Fridland* in that trade that on her last voyage it paid nearly \$40,000 in premiums for war-risk insurance (which was at the rate of approximately eight per cent on the amount of insurance written) on the claimant's valued interest of \$500,000 in the ship. That insurance was placed in 15 different companies, the largest participation being \$85,000, the smallest \$5,000. This unusually high insurance rate in itself, apart from the other evidence before the Commission, indicates that the risk of operating the *Fridland* in that trade was great.

Much testimony is offered with respect to claimant's anticipated profits under this charter had it run its full term. The claimant's president frankly puts forward a claim for loss of total net profit. His statement is that "The total net profit which would have been made by the Gans Steamship Line, had the four voyages in question been performed, would have amounted * * * to \$1,456,202.98". For the reasons pointed out in Administrative Decisions No. VII and No. VII-A such testimony is of incidental value only in determining the extent of claimant's interest in the ship.

The highest rate at which time charters were fixed near the date of loss of the *Fridland* was 45s. 2d. (equal to \$10.75) per deadweight ton per month. Entirely ignoring the cancellation by the Gans Steamship Line of the claim

of \$200,000, which was a part of the consideration paid by it for the amended charter, and also ignoring the lump-sum payments made and contracted to be made by it for war-risk insurance for the owner's account, which were approximately three and one-half times the stipulated hire, and considering only the stipulated hire of \$12,000 per month, the hire of the *Fridland* at the maximum going rate above-mentioned would amount to \$75,959 per month in excess of the stipulated hire. Estimating the risk of loss on the basis of the United States Government war-risk insurance rates then in effect, 4% per voyage (although the claimants paid double this rate on the risk which it covered on this particular trip), making proper deduction on account of this risk, and reducing the balance to its present value as of the date of the loss, the result, representing the charterer's interest in the ship, is \$489,495.

As the claimant collected \$500,000 covering its valued interest in the *Fridland*, it sustained no loss for which Germany is liable under the Treaty of Berlin.

Wherefore the Commission decrees that under the Treaty of Berlin of August 25, 1921, and in accordance with its terms the Government of Germany is not obligated to pay to the Government of the United States any amount on behalf of the claimant herein.

Done at Washington August 13, 1926.

Edwin B. PARKER
Umpire

AMERICAN UNION LINE, INC.
(UNITED STATES) v. GERMANY
(August 13, 1926, pp. 733-737.)

WAR: DESTRUCTION OF CHARTERED VESSEL.—DAMAGE: VALUE OF CHARTERER'S INTEREST IN VESSEL, CONSIDERATION PAID FOR ASSIGNMENT OF CHARTER. Destruction on July 7, 1917, by act of war, of Japanese vessel chartered by American corporation, which subsequently assigned charter to claimant. Claim for value of claimant's interest in vessel. Application of rules announced in Administrative Decisions Nos. VII and VII-A, see pp. 203 and 330 *supra*. Held that, in determining cost to claimant of use of vessel, consideration paid by claimant to original charterer for assignment of charter must be spread over and amortized during that part of charter period for which claimant had actual use of vessel; but that amount paid for assignment is not to be taken into account in determining to what extent charter was burden or encumbrance on vessel. No damages allowed in excess of insurance collected.

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.

It is put forward on behalf of the American Union Line, Inc., an American corporation, to recover its interest as charterer in the *Shigisan Maru*, which was destroyed by an act of war on July 7, 1917, under circumstances rendering Germany liable under the Treaty of Berlin to the extent of the American interest in the ship at the time of her loss.

The *Shigisan Maru* was of Japanese registry and ownership, operated by a Japanese master and crew. She had a total deadweight capacity of 4,050 tons.