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American Union Line, Inc. (United States) v. Germany

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

On November 22, 1916, the owner entered into a time charter-party, for a term of about 12 months from date of delivery, with the Templeman Steamship Company, an American corporation, for a stipulated charter hire of £7,500 per month, equivalent to approximately 37s. per deadweight ton per month. The original charterer by agreement in writing dated December 21, 1916, amended January 12, 1917, assigned this charter to the claimant herein, American Union Line, Inc., for a consideration of \$37,000. The effect of the transactions between the Templeman Steamship Company and this claimant was to substitute the latter for the former as the charterer of the *Shigizan Maru* under the charter of November 22, 1916, without, however, releasing the Templeman Company from its obligations to the owner of the steamship.

The *Shigizan Maru* was delivered by the owner directly to the claimant herein on January 27, 1917, from which date the charter period of 12 months began to run. She was destroyed July 7, 1917, leaving an unexpired charter period of 6 months and 20 days. While the charter contained some territorial restrictions of minor importance and a provision that "Any detention caused by Warlike operations to be for account of Charterers", it nevertheless gave the charterer very great freedom in trading throughout the world so long as the cargo shipped or voyage undertaken did not "involve risk of seizure, Capture, or penalty by British or Allied Rulers or Governments".

In addition to the charter hire of £7,500 per month stipulated to be paid to the owner, the charterer was obligated to provide and pay for war-risk insurance on the hull and machinery for account of the owner in the sum of £100,000. This furnished to the owner at the charterer's expense substantial protection against the destruction of his vessel. It will be recalled that the intensive submarine campaign instituted by Germany in February, 1917, resulted in the destruction of a far greater amount of tonnage in each of the ensuing seven months than was destroyed during any month of the war not embraced in that period. The resultant increase in war-risk insurance premiums imposed a heavy burden on the charterer, a burden which it perhaps could not have reasonably foreseen at the time the charter was entered into; a burden which it could only cover voyage by voyage, so that its liabilities under the charter were uncertain and could not be ascertained until the charter was at an end. The cost to it of carrying the war-risk insurance of £100,000 on behalf of the owner reached the considerable sum of \$52,500 per month while the charter hire amounted to only \$35,700 per month.

In addition to the charter hire and the cost to the claimant of the owner's war-risk insurance, the claimant had invested in the charter the \$37,000 which it had paid to the Templeman Shipping Company. This amount is treated by one of the experts testifying before this Commission as additional charter hire. In one sense it was such; but it was something more. It was the purchase price for the charter—the out-of-pocket payment made by the claimant to the Templeman Company for the assignment of the charter, a sum which could not be recovered whether the claimant ever enjoyed the use of the vessel or not. In this sense it was the value of the charter at the time of its acquisition by claimant as expressed in the agreement reached between it and the Templeman Company. It differed materially from an ordinary subchartering operation where the subcharterer pays only if, when, and as the ship is available for his use. While the claimant assumed the payment of the charter hire due the owner this was not due and would not be paid unless the ship was available for use, but the amount which the claimant paid to the Templeman Company was paid as the consideration for the assignment

of the charter at that time—the agreed value of the charter at that time—the claimant taking the risk of the ship living out the charter period. This purchase price can, therefore, be amortized as a part of the cost of the use of the ship only when and as the vessel was actually used, and as the claimant had the use of the *Shigizan Maru* for a period of five months and ten days only this \$37,000 must be spread over and amortized during that period in determining the cost to the claimant of the use of the ship.

On the other hand, the owner was in no way interested in the payment of the \$37,000 by the claimant in the purchase of the charter from the Templeman Company, and this outlay by claimant is not a factor to be taken into account in determining to what extent if at all the charter operated as a burden or encumbrance on the *Shigizan Maru* when she was destroyed on July 7, 1917. The owner was accustomed to let his ship under time charters. In pursuance of this practice the charter acquired by claimant was entered into on November 22, 1916. Thereafter time-charter hire advanced steadily until about July 1, 1917, when the rate of approximately 57s. per deadweight ton per month on the average was reached. This was the peak for all time up to that date of average time-charter rates. Soon thereafter, due to the stringent control of chartering exerted by the Allied and Associated Powers over their own and Scandinavian tonnage as well, the rates declined steadily for approximately one year, when a sharp increase began.

Had the *Shigizan Maru* been on July 7, 1917, unencumbered with any charter the owner could have sold her as a free ship or chartered her at rates then procurable substantially in advance of the instant charter hire. Both purchasing and chartering were then controlled by the Allied and Associated Powers, and his selling and chartering markets were therefore restricted. But there is a record of time charters fixed during June and July of 1917 in the Pacific and the Far East, beyond the control which was in practice exercised by the Allied and Associated Powers, at rates from 63s. to 67s. per deadweight ton per month. Whether in addition to those extraordinary rates the charterers assumed the payment of war-risk insurance premiums is not disclosed, but it will be assumed that they did. It is believed that 67s. per deadweight ton per month is the highest known rate paid as time-charter hire in any trade during this period.

Comparing this extraordinary rate of 67s. with the rate fixed by the claimant's charter of 37s. per deadweight ton per month discloses a difference of 30s. per deadweight ton per month on this ship of 4,050 deadweight tons. The unexpired charter period was six months and 20 days. The risk that the ship would not live through this charter period was very great, as evidenced by the premium of 10% on the war-risk insurance paid by the claimant on the last voyage of the *Shigizan Maru*. But ignoring that risk, and assuming without deciding and for the purpose of this opinion only and in order to give the claimant the benefit of every doubt, (a) that the difference between the charter hire and the going timecharter hire was 30s. per deadweight ton per month and (b) that the *Shigizan Maru* would have survived her charter term, and applying the rules announced in Administrative Decisions No. VII and No. VII-A, it results that the charter worked an encumbrance on the vessel at the time of her loss representing the claimant's interest therein to the amount of approximately \$190,000.00.

This amount was fully covered by the war-risk insurance in the amount of \$200,000 collected by the claimant. It follows that the claimant has been fully reimbursed for its interest in the ship that was lost.

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 American Union Line, Inc., claimant herein.

Done at Washington August 13, 1926.

Edwin B. PARKER
Umpire

GANS STEAMSHIP LINE (UNITED STATES)
v. GERMANY

(August 13, 1926, pp. 737-741.)

WAR: DESTRUCTION OF CHARTERED VESSEL.—DAMAGE: VALUE OF CHARTERER'S INTEREST IN VESSEL, TWO COMPLEMENTARY CHARTER-PARTIES, GERMAN STOCKHOLDING INTEREST IN CHARTERER.—EVIDENCE: EXPERT WITNESSES. Destruction on October 12, 1917, by act of war, of Norwegian vessel chartered by Nova Scotia company for nine consecutive summer seasons beginning 1911, and by claimant for nine corresponding winter seasons. 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*. Twenty per cent German stockholding interest in claimant. Damages allowed. Evidence: see *supra*.

Bibliography: Kiesselbach, *Probleme*, pp. 111-112.

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 Steamship *Themis* was built in Great Britain and completed in 1911. She was owned by a Norwegian corporation, of which Wilhelm Wilhelmsen appears to have been the principal executive and is sometimes treated as owner. She had a deadweight capacity of 12,500 tons. While she was under construction in 1910 her owners entered into two charter-parties which were obviously complementary and taken together covered a period of nine years. The first of these was entered into on March 21, 1910, with the Nova Scotia Steel & Coal Company, Ltd., (hereinafter called the Nova Scotia company) for nine consecutive summer seasons beginning with 1911 at a charter hire of £2,031.5 per calendar month. The second was entered into three days later with the Gans Steamship Line, claimant herein, for nine consecutive winter seasons commencing with the season 1911-1912 for a charter hire of £1,562.10 per calendar month (at the rate of 2s. 6d. per deadweight ton). In practice the two charters with their overlap provided for the use of the steamer throughout the year, giving the owner only a sufficient margin for the westbound voyage to make delivery to the Gans Steamship Line (hereinafter called claimant) within the time stipulated for in its charter. The president of the claimant points out that the Nova Scotia company intended to use the *Themis* in the transportation of steel and coal on the St. Lawrence River; that navigation on that river was closed for three winter months and hence the Nova Scotia company could not use the steamer during those months and (to quote his language) "It was not easy to find a charterer who would take a vessel for the winter season, for so many years, and the owners therefore had to make the charter for the winter seasons attractive, to compensate the charterer for the risks involved in so long a commitment."