

REPORTS OF INTERNATIONAL ARBITRAL AWARDS

RECUEIL DES SENTENCES ARBITRALES

The Interocean Oil Company (United States) v. Germany

13 August 1926

VOLUME VII pp.356-357



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with interest thereon at the rate of five per cent per annum from November 11, 1918.

Done at Washington August 13, 1926.

Edwin B. PARKER
Umpire

THE INTEROCEAN OIL COMPANY
(UNITED STATES) *v.* GERMANY
(August 13, 1926, pp. 741-743.)

WAR: DESTRUCTION OF CHARTERED VESSEL; RESPONSIBILITY UNDER GENERAL INTERNATIONAL LAW, TREATY OF BERLIN.—NEUTRALITY, ABSOLUTE CONTRABAND.—DAMAGE: VALUE OF CHARTERER'S INTEREST IN VESSEL. Sinking by German submarine on October 8, 1916, of Norwegian vessel chartered by claimant and carrying cargo of gas oil, declared absolute contraband by Germany. 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 Commission not concerned with legality or illegality (under general international law) of destruction of vessel under neutral flag. Damages allowed.

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 Interocean Oil Company, an American corporation, on July 18, 1912, entered into a charter-party with the Norwegian owners of the Steamship *Christian Knudsen*. This charter was amended on July 14, 1913, and again on June 20, 1916, so that under its final terms the claimant herein chartered the said ship for a period of eight years with certain territorial restrictions as to use, including a restriction that (after the European voyage of October, 1916, on which she was lost) the ship should not during the war be used generally in European trade. The claimant agreed to pay as charter hire £2,350 per month with the privilege of the unrestricted use of the ship in European trade on the payment of an additional £1,000 per month. This practically gave to the charterer the option to remove all territorial restrictions on the payment of a total charter hire of £3,350 per month. The original charter, which, it will be noted, was entered into long prior to the war, provided that "In the event of a country to which Steamer trades being at war with any other country, Charterers agree to insure the steamer against all war risks for the value of not above £42,000". This provision was retained, but the amendment of June 20, 1916, obligated the charterer to carry at its cost on the ill-starred voyage of October, 1916, and it did in fact carry, war-risk insurance of £100,000 on behalf of the owner.

The *Christian Knudsen* was built in England in 1905. Originally she was a steel tank ship; she was converted in 1912, after the chartering, into a tanker of 6,700 tons deadweight. She was delivered to the charterer on November 11, 1912. She cleared the port of New York on October 7, 1916, bound for London

with a full cargo of gas oil in bulk consigned to the Anglo-American Oil Company, Ltd. At that time this cargo fell within the terms of the decrees promulgated by the German Government purporting to define absolute contraband. The ship was sunk off Nantucket by a German submarine on October 8, 1916. By its terms the claimant's charter had at that time slightly over four years to run.

The war demand for tankers was great and the supply comparatively limited. Approximately 50% of this supply was British-owned and pressed into service by Great Britain for war uses. The *Christian Knudsen* was of Norwegian registry and ownership. The charter hire, which was then far below the current rate, made the charter a valuable one. While the war demand for tankers available for immediate use in transporting oils to the war zone increased the value of the charter, it correspondingly increased the risk of destruction of the ship and the consequent termination of the charter. As Germany had declared petroleum and its products absolute contraband, a tanker conveying such a cargo to Great Britain, as was the *Christian Knudsen* at the time of her destruction, was not in practice protected by a neutral flag. This Commission is not concerned with the legality or illegality of such practice. It is dealing with the realities rather than with juridical abstractions.

The owner of the *Christian Knudsen* was protected by war-risk insurance paid for by the charterer in the amount of £100,000 while the charterer was protected by insurance in the amount of \$100,000.

So far as concerned the immediate future the charter was a valuable one, but the more distant development of charter rates for tankers was uncertain and this charter had yet more than four years to run. The testimony before this Commission indicates that during the summer of 1916 tank steamers then building were being offered on long-term charters for approximately 12 shillings per deadweight ton per month. While it is true that these were not then available and could not be made available for a considerable time, the offerings of long-term tanker charters and those actually entered into during that period for future delivery at comparatively low rates illustrate the uncertainty then prevailing with respect to the duration of the war and to the probable course of charter rates after its termination.

Notwithstanding these uncertainties the claimant's charter undoubtedly operated as a burden and an encumbrance on the ship, vesting in the claimant an interest therein. Weighing all of the facts and applying thereto the principles announced in Administrative Decisions No. VII and No. VII-A, the Umpire finds that at the date of her destruction the claimant's interest in the *Christian Knudsen*, less the insurance of \$100,000 collected by it, was of the value of \$447,000.00.

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 obligated to pay to the Government of the United States on behalf of The InterOcean Oil Company the sum of four hundred forty-seven thousand dollars (\$447,000.00) with interest thereon at the rate of five per cent per annum from October 8, 1916.

Done at Washington August 13, 1926.

Edwin B. PARKER
Umpire