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Timandra Shipping Company (United States) v. Germany

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ance with its terms the Government of Germany is obligated to pay to the Government of the United States on behalf of American-Hawaiian Steamship Company the sum of nine hundred fifty thousand dollars (\$950,000.00) with interest thereon at the rate of five per cent per annum from November 11, 1918.

Done at Washington September 30, 1926.

Edwin B. PARKER
Umpire

TIMANDRA SHIPPING COMPANY
(UNITED STATES) *v.* GERMANY
(*January 5, 1927, pp. 859-860.*)

EVIDENCE: CIRCUMSTANTIAL EVIDENCE, REBUTTAL THROUGH DIARY OF GERMAN RAIDER, TESTIMONY. — WAR: "SINKING WITHOUT TRACE". Loss of American vessel after departure on March 6, 1917, from Norfolk (Virginia) to Campana, Argentina. Alleged "sinking without trace" by German raider. *Held* that there is no evidence that vessel was destroyed through act of war. Evidence: see *supra*.

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 Timandra Shipping Company, which was on all material dates an American corporation. The claim is impressed with American nationality. A recovery is sought against Germany for the value of the American Ship *Timandra*, an iron sailing vessel, without auxiliary power, constructed at Glasgow in 1885, which on March 6, 1917, cleared from the port of Norfolk, Virginia, for the port of Campana (Buenos Aires), Argentine Republic, with a cargo of coal and so far as appears from this record has never since been heard from.

The claimant has sought to prove that the loss of the *Timandra* with all hands on board did not result from ordinary marine perils. To that end evidence has been offered tending to prove, and the Umpire finds, that the *Timandra* was staunch, well-found, and seaworthy, navigated by a competent and experienced master, and manned by a capable and adequate crew. Evidence in the form of weather reports tends to indicate that the *Timandra* on this particular voyage, had she pursued the usual route to her destination, would have encountered no unusual storms. The claimant contends that the *Timandra* was due to reach the equator about April 1 and that the strong probabilities are that about that time and place she encountered the German raider *Seeadler* and was sunk by the latter with all hands without trace.

In response to the highly speculative evidence offered in support of this contention the German Agent has pointed out that a state of war between the United States and Germany was not declared to exist until April 6, 1917, and that the *Timandra*, being neutral, would not have been molested had the *Seeadler* actually encountered her on or about April 1; that the German orders for prosecuting an unrestricted submarine warfare had no application to German cruisers operating outside of the "prohibited zones"; and that the record of the *Seeadler* affirmatively establishes the fact that she scrupulously observed the prize ordinances and never destroyed a ship and her crew without a trace.

But, quite independent of these contentions, the German Agent has produced a translation of the war diary of the *Seeadler* covering a period from March 6 to April 26, 1917, and has accounted for her position, movements, and activities during that entire period. From this it appears that from March 6 to 10, 1917, inclusive, the *Seeadler* was operating in the vicinity of the equator between a longitude of 25° 14' and 28° 2' W.; that on and after March 10 the *Seeadler* took a generally southerly and southwesterly course and rounded Cape Horn on April 18; that on the morning of April 1 the *Seeadler* was in the vicinity of latitude 39° 58' S. and longitude 36° 35' W., and that at no time after leaving the equator on March 10 did she return thereto but held to a general southerly and southwesterly course.

Her commander, Count von Luckner, testifies unequivocally that the *Seeadler* did not encounter and did not sink the *Timandra*, and his testimony is unequivocally corroborated by that of a wireless apprentice on the *Seeadler*. By these full disclosures the circumstantial evidence relied upon by the claimant to establish the destruction of the *Timandra* by the *Seeadler* has been fully met and rebutted. Weighing the evidence as a whole, the Umpire finds that the claimant has failed to discharge the burden resting upon it to prove that the *Timandra* was destroyed by Germany's act or was lost through an act of war.

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 *Timandra* Shipping Company, claimant herein.

Done at Washington January 5, 1927.

Edwin B. PARKER
Umpire

SAMUEL ROSENFELD AND BERTHA ROSENFELD
(UNITED STATES) v. GERMANY
(January 5, 1927, pp. 861-862.)

WAR: CIVILIANS AND CIVILIAN POPULATION AS DISTINCT FROM PERSONS WITH MILITARY STATUS. *Held* that applicant for enlistment in U.S. Marine Corps who, on May 1, 1918, after preliminary examination, went down with American vessel, still was "civilian" within meaning of Treaty of Berlin.

Bibliography: Kiesselbach, *Probleme*, p. 140.

PARKER, *Umpire*, on a certificate of disagreement of the National Commissioners rendered the decision of the Commission.

This claim is put forward on behalf of the parents of Harry Rosenfeld, who, according to the agreed statement of the American and German Agents filed herein, went down and was lost with the American Steamship *City of Athens*, which was sunk on May 1, 1918. The sole question presented by the agreed statement of the Agents is, At the time of his death was the deceased a "civilian" within the meaning of that term as found in the applicable provisions of the Treaty of Berlin?

The German Agent contends that this inquiry must be answered in the negative, from which it would follow that under that Treaty Germany is not financially obligated to compensate the claimants for the pecuniary damages, if any, which they sustained as a result of their son's death. He invokes the