

# **REPORTS OF INTERNATIONAL ARBITRAL AWARDS**

---

## **RECUEIL DES SENTENCES ARBITRALES**

**Samuel Rosenfield and Bertha Rosenfield (United States) v. Germany**

5 January 1927

VOLUME VIII pp. 31-32



NATIONS UNIES - UNITED NATIONS  
Copyright (c) 2006

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

principles announced by this Commission in the Hungerford case, Docket No. 5950, and in the Damson case, Docket No. 4259.<sup>1</sup> But the application of these principles to the facts in the case presented by this record does not produce the result contended for by the German Agent.

The deceased had applied at New York on April 30, 1918, for enlistment in the United States Marine Corps and had passed a preliminary examination. He was on the *City of Athens* en route from New York to the marine barracks at Parris Island, South Carolina, for further examination, after which if accepted he might have completed his enlistment by taking the prescribed oath. But he was subject to rejection by the military authorities and he remained free to enlist or not at his election. He was not engaged in the direct furtherance of the military effort against Germany but continued to belong to the civilian population of the United States.

Wherefore the Commission holds that at the time he came to his death Harry Rosenfield was a "civilian" as that term is used in Article 232 and in paragraph (1) of Annex I to Section I of Part VIII of the Treaty of Versailles, carried into the Treaty of Berlin.

Done at Washington January 5, 1927.

Edwin B. PARKER  
*Umpire*

---

LESLIE H. CRABTREE  
(UNITED STATES) v. GERMANY  
(January 14, 1927, pp. 863-866.)

---

DAMAGES: PERSONAL INJURIES, PERSONAL PROPERTY TAKEN AND NOT RETURNED. — WAR: TREATMENT OF PRISONERS OF WAR, RESPONSIBILITY UNDER LAW OF WAR, TREATY OF BERLIN; MEANING OF "MALTREATMENT": CIRCUMSTANCES, CONDITIONS, SITUATION. — DAMAGE: RULE OF PROXIMATE CAUSE, REASONABLY FORESEEABLE RESULT. Claim for personal injuries (permanent partial disability) suffered by American private from July 15, 1918, when taken prisoner, until December 7, 1918, when repatriated, and for loss of personal property. *Held* that under Treaty of Berlin (Part VIII, Section I, Annex I, para. 4, Treaty of Versailles, as carried into Treaty of Berlin) "maltreatment" dependent on circumstances, conditions, situation of parties: (1) privations resulting from exhaustion of warfare and borne alike by captured and captors do not constitute maltreatment; (2) neither do hardships of war on battlefield; (3) but heavy manual labour under working command fell short of treatment to which claimant, weakened by gas absorption in combat, was entitled by law of war even under prevailing conditions: permanent impairment of health reasonably foreseeable. Damages allowed for personal injuries, personal property.

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.

Leslie H. Crabtree, an American national, was inducted into the military service of the United States on April 2, 1918, and on May 3, 1918, as a private

---

<sup>1</sup> Decisions and Opinions, pages 766 and 258 respectively. (*Note by the Secretariat*, Vol. VII, pp. 368 and 184.)