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Munson Steamship Line (United States) v. Germany

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From other testimony before this Commission, including the compilations mentioned in Administrative Decision No. VII-A,³ it appears that from shortly after August 1, 1912, when the claimant herein entered into the charter-party involved in this case, charter rates began steadily to go down and continued to decline until the middle of 1914. In August the tide turned but the advance in rates was slight. In September there was a further advance but scarcely to the point of regaining the ground lost after the claimant's charter was entered into in August, 1912. The demand for charters, however, was steadily growing and the rates increasing. Notwithstanding the unsettled conditions of the time and the uncertainties with respect to the supply and demand of tonnage and of charters, the Umpire finds that the claimant's charter was an asset to it and constituted an encumbrance on the free ship vesting claimant with an interest therein.

Applying the rules announced by this Commission in Administrative Decisions No. VII and No. VII-A to the facts as disclosed by the record herein, the Umpire finds that when the *Elsinore* was destroyed the claimant had an interest in her of the value of \$75,000. The Umpire further finds that gear and other personal property belonging to the claimant to the value of \$2,685 was lost with the *Elsinore*.

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 Union Oil Company of California the sum of seventy-seven thousand six hundred eighty-five dollars (\$77,685.00) with interest thereon at the rate of five per cent per annum from September 11, 1914.

Done at Washington August 13, 1926.

Edwin B. PARKER
Umpire

MUNSON STEAMSHIP LINE (UNITED STATES)
v. GERMANY

(August 13, 1926, pp. 719-725.)

WAR: DESTRUCTION OF CHARTERED VESSEL.—DAMAGE: VALUE OF CHARTERER'S INTEREST IN VESSEL, LOSS TO CHARTERER THROUGH REQUISITION.—EVIDENCE: EXPERT WITNESSES. Loss after departure from Brest for Penzance, on or about April 14, 1918, of British vessel chartered by claimant for five years from March 23, 1916, and requisitioned by British Government on January 26, 1917. Continuation of charter notwithstanding requisition: claimant paid to owner charter hire, owner to charterer requisition hire received from British Government. Claim for value of claimant's interest in vessel. Application of rules announced in Administrative Decision Nos. VII and VII-A, see pp. 203 and 330 *supra*. Held that, under Treaty of Berlin, Germany not liable for loss (difference between charter hire and requisition hire) sustained by claimant through requisition. Held also that vessel lost by act of war so as to render Germany liable to extent of American interest; evidence: expert witnesses. Damages allowed.

³ Decisions and Opinions, at pages 711-712. (*Note by the Secretariat*, this volume, pp. 335-336 *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 Munson Steamship Line, an American corporation, for the alleged value of its interest as charterer of the British Steamship *Lodaner*, alleged to have been destroyed by a German submarine on or about April 14, 1918. The *Lodaner*, which was of 5,700 deadweight tons, was chartered by her British owner to the claimant on September 21, 1915, for a period of five years from March 23, 1916. The charter hire stipulated to be paid by the charterer, expressed in British sterling per calendar month, was as follows:

- (a) March 23, 1916, to March 23, 1917, £2,850, being 10s. per deadweight ton.
- (b) March 24, 1917, to March 23, 1918, £2,280, being 8s. per deadweight ton.
- (c) March 24, 1918, to March 23, 1919, £1,710, being 6s. per deadweight ton.
- (d) March 24, 1919, to March 23, 1921, £1,425, being 5s. per deadweight ton.

It will be noted that the time-charter hire stipulated for during the fourth and fifth years was only one-half that for the first year.

The experienced and able president of the claimant in his testimony filed herein explains this decreasing schedule thus:

“ * * * In 1915 owners and charterers thought that the War could not go on more than a year or so because of the exhaustion of the gigantic forces and finances involved. The owner preferred to take a higher rate for the beginning of the charter and the second year of the charter because of the belief that the War would be over by the time that the second year had expired and that thereafter the market would go back to more normal rates.”

The average of the rates for this five-year charter was 6s. 9-3/5d. per deadweight ton per month, which was approximately the average time-charter hire for the year 1900 and the year 1912, which were the peak years of the 15-year period just preceding the World War. This average charter rate was substantially above the average for the 15-year period, 1900-1914, inclusive, and approximately 2s. 5d. above the average for the year 1914.

The charterer was territorially restricted in the use of the *Lodaner* and was prohibited from using it in European trade (to quote the language of the charter) “during present War but Charterers agree to send steamer to the United Kingdom during 1917 and 1919 for survey, overhaul etc.” This language clearly indicates that while, as testified by claimant’s president, at the time of entering into this charter-party both the “owners and charterers thought the War could not go on more than a year or so”, the duration of the war was, in the opinion of the parties, so uncertain that it was expressly stipulated that the ship should be sent to the United Kingdom for survey and overhaul during 1917 and 1919 if the war should last so long. Mr. Munson’s further reference to “the belief that the War would be over by the time that the second year had expired and that thereafter the market would go back to more normal rates” reflects the opinion then generally accepted (apparently abundantly justified by the decline in tonnage values and time-charter rates following the Boer War) that after the termination of the “present war” British time-charter rates would decline to approximately what they had been during the fifteen years preceding the World War. It will be recalled that in fact the average time-charter hire per deadweight ton per month did drop from approximately 58s. at the time of the signing of the Armistice to approximately 29s. toward the end of the first half of 1919, when there was a recovery, and that by the end of 1919 the rate was approximately 47s., after

which time-charter rates steadily declined to approximately 17s. at the end of 1920 and to approximately 7s. at the end of 1921. The claimant's charter by its terms would normally have expired with March 23, 1921. These dates and rates and the prevailing opinions with respect to the development of charter rates following the termination of the war, which influenced the parties in fixing the rates named in the charter under examination, must also be borne in mind in determining the value of the claimant's interest in the *Lodaner* at the time of her loss, April 14, 1918.

The restriction preventing the charterer using the ship in European trade "during [the] present war" operated to reduce the risk of loss of the vessel to both the owner and the charterer, but also operated to reduce the value of the charter, as the highest freight rates and the highest time-charter hire was commanded by ships which were free to engage in European trade. The stipulated charter hire, therefore, cannot properly be compared with the hire stipulated for in charters containing no such restriction.

At the time this charter was entered into, the latter part of September, 1915, the current unrestricted time-charter rates for British steamers for a term of 12 months (very few charters were then entered into for a longer term) was approximately 14s. per deadweight ton per month. The market was a rising one but so uncertain that most charterers hesitated to commit themselves for even as long a term as 12 months. It was on this market that the charter under examination was entered into. The considerable difference between the then current rate of 14s. for a 12-month time charter and the average rate of hire of 6s. 9-3/5d. under this five-year charter can be accounted for in part by the territorial restrictions in this charter and in part by the binding obligation of the charterer to pay rates which it was then believed would yield the owner a fair return on his investment while his ship was engaged in a safe trade, covering a long period, at a time when the future development of charter rates was very uncertain.

The *Lodaner* was a British ship. As such, notwithstanding she was not within the territorial jurisdiction of the British Government, she was in practice subject at any moment to requisition by that Government for direct or indirect war uses. The requisitioning power was in fact exercised by the British Government on the *Lodaner* on January 26, 1917, after the claimant had used the vessel for a period of approximately ten months in the West Indies trade. The effect was to subject to the use of the sovereign the entire ship and every estate and interest therein. The charter contained the usual "restraint of princes" clause. To the extent that claimant sustained a loss through the exercise by Great Britain of the sovereign right of requisition of a British bottom Germany cannot be held liable under the Treaty of Berlin. As testified by Mr. Munson, the British Government did not directly or indirectly have any dealing with the claimant or recognize its interest, if any, in the *Lodaner*. That Government dealt with the owner—its own national—to whom it paid the requisition hire of 11s. per gross register ton per month. As early as March 26, 1917, the claimant's London representative advised it that the "Owners were told that they might take it as quite definite that the steamer would not be released from requisition until after the end of the War, but of course as to how long after it is impossible to say". In these circumstances the owner or the charterer, either or both, might well have treated the charter as frustrated and at an end.

However, the owner and the charterer elected not to treat the requisitioning of the *Lodaner* by the British Government as a frustration of the charter, and, notwithstanding the fact that the charter hire then in effect exceeded the requisition hire paid by the British Government, the charterer paid each month to the owner the stipulated charter hire and received from the owner

the requisition hire. The difference in favor of the owner up to February 26, 1918, (when remittances by the owner ceased) was approximately \$30,500.00.

It will be noted, however, that beginning with March 23, 1918, the requisition hire exceeded the charter hire and that the ship was lost on April 14, 1918. Had she lived to the expiration of the charter term on March 23, 1921, and continued under requisition by the British Government at the same rate, the charterer would, under the arrangement in effect between it and the owner, have somewhat more than recouped the balance against it. The charterer, therefore, seems to have been justified in its belief that it was to its interest to continue the charter in effect and not to treat the requisition as a frustration thereof but to continue to pay the charter hire, notwithstanding that for practically a year it was in excess of the requisition hire, and to take the risk of the ship being destroyed before released from requisition or before the decline in charter hire had worked an absorption of the first year's balance against the charterer.

The British Government subchartered the *Lodaner* to Sota and Anzar, who loaded her with a cargo of iron from Salta Caballo, Spain, for Glasgow and she proceeded to Brest to take up a convoy as far as Land's End. She proceeded with convoy from Brest for Penzance on the night of April 14-15, 1918. When she left the convoy is not clear. The statement in the record is that she "was never heard of again after sailing". There was a controversy, settled by arbitration, between the British Government on the one part and the owners and marine-risk underwriters of the *Lodaner* on the other part, with respect to the cause of her loss. The arbitrator found that "the '*Lodaner*' is to be treated as wholly lost by warlike perils, and * * * that the said loss shall be wholly borne by the Government under the provisions of T. 99, and shall not to any extent or at all be borne by the Marine Underwriters".

By a process of elimination of other possible causes of loss the claimant herein seeks to establish by expert testimony that the *Lodaner* was destroyed by a German submarine. The principal of these witnesses, a salvage expert and marine surveyor, testifying with respect to conditions existing in April, 1918, says:

"Enemy submarine activity was very pronounced during this period. The actual number of merchant vessels lost by this cause during the first six months of the year 1918 was 379 involving a sacrifice of 2826 lives.

"During the month of April 1918 (i. e.) the period in which the '*Lodaner*' was proceeding towards Glasgow, fourteen merchant ships in the Irish Channel, seven in the St. Georges Channel, and four in the Bristol Channel, were sunk by enemy submarines."

On the record here presented the Umpire finds that the *Lodaner* was lost by an act of war under circumstances rendering Germany liable to the extent of the American interest therein.

It is manifest that the risk of destruction existing just prior to the loss of the *Lodaner* was very great and that the value of the claimant's charter interest in her, which would terminate with her loss, was correspondingly reduced. At that time both groups of belligerents had mobilized and were using to the full all of their resources in men, materials, and money in a desperate struggle for their very existence. What the issue would be could not be forecast with certainty. When the end would come was highly speculative. The Allied and Associated Powers were going forward with preparations for an increased supply of war shipping for future use. It was about this time that the negotiations between the United States and the Allied Powers on the one part and the Government of the Netherlands on the other were consummated under which a large amount of Dutch tonnage was requisitioned. It was also about

this time that the agreement was entered into between Japan and the United States by which the former agreed to deliver to the latter 150,000 tons of Japanese shipping between May and December, 1918, in exchange for steel plates for shipbuilding operations. It was also about this time, with the current time-charter hire at approximately 44s. per deadweight ton per month, that a few steamers were chartered for delivery "after the war" at 25s. per deadweight ton per month for a period of three years.

At that time the *Lodaner* was not a free ship but a requisitioned ship. Her value as a requisitioned ship, as legally ascertained under the laws of Great Britain, to which she was subject, was £95,000, and that amount was paid by the British Government to her owner. From a statement of the British Admiralty found in the record it appears that "In April 1918 there was no intention of releasing this vessel [*Lodaner*], and as the war was still proceeding it could not be known when she would be returned to the owners". As Great Britain was sorely in need of shipping to meet her direct and indirect war needs and to furnish supplies for her civilian population, it is safe to assume that a British vessel under charter precluding her use in European trade would be among the last to be released from requisition.

To what extent, then, did the claimant's charter work a burden or an encumbrance on this requisitioned ship so as to affect the price which a purchaser desiring and able to buy would have paid on the market for her, subject to the charter, at the time she was destroyed?

The risk of her destruction was great; but, even assuming that this risk would continue unabated and that she would continue under requisition throughout the charter term, then, under the law of averages, the *Lodaner* had somewhat less than an even chance of outliving the charter period. During her life under requisition the claimant would reap the benefit of the excess of requisition hire over charter hire. On the other hand, there was a strong probability that the war would terminate long before the expiration of the charter period, in which event the risk of the destruction of the ship during the period of the duration of the war less than the charter period would be substantially reduced, and the claimant's chance to profit by the extremely low charter rate of 5s. per deadweight ton per month correspondingly increased. On the whole the Umpire finds that the charter was an encumbrance on the *Lodaner*, subject to the government requisition in existence at the time, and that the claimant had an interest in the ship within the rule announced in Administrative Decision No. VII.

Applying the rules announced in Administrative Decisions No. VII and No. VII-A, the Umpire finds that on April 14, 1918, when the *Lodaner* was destroyed, claimant had an interest in her of the value of \$145,000.00.

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 Munson Steamship Line the sum of one hundred forty-five thousand dollars (\$145,000.00) 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