

UNION OIL COMPANY OF CALIFORNIA
(UNITED STATES) v. GERMANY

(August 13, 1926, pp. 715-718.)

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 Union Oil Company of California, an American corporation, on August 1, 1912, entered into a charter-party by the terms of which it chartered from a British national for a term of seven years, commencing from the date of delivery, a "good British Tank Steamer, to be built * * * and estimated to have a total deadweight carrying capacity of about 9,700 tons". The charter was the ordinary form of time charter, the charterer agreeing to pay £2,850 per calendar month commencing on date of delivery of the ship, which was accomplished on March 12, 1914. She was named *Elsinore* and put by the claimant with its fleet of 14 other tankers in its service of transporting oil from California ports to other California ports and ports in Oregon, Washington, British Columbia, Hawaii, and Central and South America. The *Elsinore* sailed from San Luis Obispo, California, on August 24, 1914, bound for Corinto, Nicaragua, arrived at that port on September 4, discharged a cargo of crude oil, and sailed for San Luis Obispo in water ballast on September 6. That was her fifth voyage carrying fuel oil from California to Central American ports. On September 11, 1914, the *Elsinore* was captured in the Gulf of California and sunk by the German Cruiser *Leipzig*. She carried no war-risk insurance for account of either the owner or the charterer. Her value as a free ship is estimated at from £117,500 to £119,609.

The sole question presented to the Umpire for decision is the value, if any, of the charterer's interest in the vessel at the time she was destroyed. She was a British ship, manned by a British master and crew, sailing under the British flag, and Great Britain was at war. She was therefore subject to requisition by Great Britain¹ and also subject to capture and condemnation by her

¹ As pointed out in Administrative Decision No. VII-A, the fact that ships of British registry were operating under American charters during American neutrality outside of British waters presented no obstacle to Great Britain's exercising its war powers for the purpose of requisitioning them.

enemies. The charter contained the usual restraint of princes, rulers, and people clause and expressly provided that it should terminate with the loss of the ship.

Following the outbreak of the World War and during August and September, 1914, shipping conditions in the United States were so demoralized that there was no ready market for either ships or charters. It was not until the establishment of the Bureau of War Risk Insurance in pursuance of the Act of the Congress of the United States of September 2, 1914, that war-risk insurance on American vessels and cargoes could be obtained at rates which were not practically prohibitive. The uncertainties as to the boundaries and the extent and the duration of the conflict rendered it impossible in those early days of the war to make any intelligent forecast with respect to the probable future demand for tankers, and hence at that time the value of a charter with a considerable time to run was highly speculative.²

As heretofore held by this Commission, the chief factor to be taken into account in measuring the extent, if any, of a charterer's interest in a ship is the relation of the stipulated hire to the current market hire at the material time. In undertaking to apply that measure in this case several affidavits of shipping experts have been offered on behalf of the claimant. None of them, however, has undertaken to testify with special reference to the charter rates in effect during September, 1914, the month in which the *Elsinore* was lost. One of these experts stated his conclusions with respect to the charter rates in effect during "the last two months of 1914"; another stated his conclusions with respect to the rates in effect from September to December, 1914, without attempting to segregate the rates in effect during each of those four months. None of them stated the facts upon which he based his conclusions or referred to any charter or charters actually entered into. When requested so to do by the American Agent on behalf of the Commission, one of those experts replied, without further explanation, "I regret I cannot furnish same". In these circumstances such expert testimony cannot be blindly accepted but must be carefully examined.

² See the opinion of United States District Judge Rose in the *Isle of Mull* case, 257 Federal Reporter, at page 810, where, in commenting on the offer made on September 3, 1914, by the charterer of the *Isle of Mull* to consent to a cancellation of the charter, Judge Rose observed: "It is needless to say that freight conditions were then very different from what they became a few months later. The offer of cancellation was declined." This aptly illustrates how impossible it was for men experienced in shipping, as were the owner and the charterer of the *Isle of Mull*, to forecast in September, 1914, the relative demand and supply of vessels and charters and their consequent value. It was not many months before the charterer was demanding through the courts heavy damages from the owner for a breach of this same charter.

In another case before this Commission (Docket No. 6627, Munson Steamship Line, claimant, for loss of Steamship *Lodaner*) it appears that as late as September 21, 1915, a charter was entered into for a period of five years to begin March 23, 1916, the charter hire for the first year being fixed somewhat below the then current charter hire for 12-month periods and providing for a reduction each year until the fourth year, when for a two-year period it should be one-half that of the first year. That charterer's experienced president, Frank C. Munson, testified: "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."

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
