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PERMANENT COURT OF ARBITRATION

NORWEGIAN SHIPOWNERS' CLAIMS

NORWAY v. UNITED STATES OF AMERICA

AWARD OF THE TRIBUNAL

Arbitrators: Chandler P. Anderson, Benjamin Vogt, James Valloton

The Hague, 13 October 1922

[309]¹

Special Agreement, June 30th, 1921

AWARD OF THE TRIBUNAL

Award of the tribunal of arbitration between the United States of America and the Kingdom of Norway under the special agreement of June 30, 1921. The Hague, October, 13, 1922.²

WHEREAS the United States and the Kingdom of Norway are Parties to the Convention for the Pacific Settlement of International Disputes signed at The Hague, on October 18, 1907, which replaced by virtue of Article 91 thereof as between the contracting powers the original Hague Convention of July 29, 1899;

WHEREAS the United States and Norway signed on April 4, 1908, a general Arbitration Convention in which it was agreed:³

"Article II.

In each individual case, the High Contracting Parties, before appealing to the Permanent Court of Arbitration, shall conclude a special Agreement defining clearly the matter in dispute, the scope of the powers of the Arbitrators, and the periods to be fixed for the formation of the Arbitral Tribunal and the several stages of the procedure. It is understood that on the part of the United States such special agreements will be made by the President of the United States by and with the advice and consent of the Senators thereof";
WHEREAS it is common ground that this general Arbitration Convention is still in full force and effect;

WHEREAS in pursuance of all the foregoing, by a special Agreement concluded on the 30th of June 1921, and ratified on the 22nd of August 1921:

the United States of America and His Majesty the King of Norway

“desiring to settle amicably certain claims of Norwegian subjects against the United States arising, according to contentions of the Government of Norway, out of certain requisitions by the United States Shipping Board Emergency Fleet Corporation;

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“Considering that these claims have been presented to the United States Shipping Board Emergency Fleet Corporation and that the said Corporation and the claimants have failed to reach an agreement for the settlement thereof;

“Considering, therefore, that the claims should be submitted to arbitration conformably to the Convention of the 18th of October, 1907, for the pacific settlement of international disputes and the Arbitration Convention concluded by the two Governments April 4, 1908, and renewed by agreements dated June 16, 1913 and March 30, 1918 respectively;

“Have appointed as their plenipotentiaries, for the purpose of concluding the following Special Agreement:

“The President of the United States of America: CHARLES E. HUGHES, Secretary of State of the United States; and

“His Majesty the King of Norway: Mr. HELMER H. BRYN, His Envoy Extraordinary and Minister Plenipotentiary at Washington;

“Who, after having communicated to each other their respective full powers, found to be in good and due form, have agreed on the following articles”

Article I.

“The Arbitral Tribunal shall be constituted in accordance with Article 87 (Chapter IV) and Article 59 (Chapter III) of the said Convention of October 18, 1907, except as hereinafter provided, to wit:

“One Arbitrator shall be appointed by the President of the United States, one by His Majesty the King of Norway, and the third, who shall preside over the Tribunal, shall be selected by mutual agreement between the two Governments. If the two Governments shall not agree within one month from the date of the exchange of ratifications of the present agreement in naming such third Arbitrator, then he shall be named by the President of the Swiss Confederation, if he is willing.

“The Tribunal shall examine and decide the aforesaid claims in accordance with the principles of law and equity and determine what sum if any shall be paid in settlement of each claim.

“The Tribunal shall also examine any claim of PAGE BROTHERS, American citizens, against any Norwegian subject in whose behalf a claim is presented under the present Agreement, arising out of a transaction on which such claim is based, and shall determine what portion of any sum that may be awarded to such claimant shall be paid to such American citizens in accordance with the principles of law and equity.

Article II.

“As soon as possible, and within five months from the date of the exchange of ratifications of the present Agreement, each Party shall present to the Agent of the other Party, two printed copies of its case (and additional copies that may be agreed upon) together with the documentary evidence upon which it relies. It shall be sufficient for this purpose if such copies and documents are delivered at the Norwegian Legation at Washington or at the American Legation at
Christiania, as the case may be, for transmission.

“Within twenty days thereafter, each Party shall deliver two printed copies of its case and accompanying documentary evidence to each member of the Arbitral Tribunal and such delivery may be made by depositing these copies within the stated period with the International Bureau at The Hague for transmission to the Arbitrators.

“After the delivery on both sides of such printed case, either Party may present, within three months after the expiration of the period above fixed for the delivery of the case to the Agent of the other Party, a printed counter-case (and additional copies that may be agreed upon) with documentary evidence, in answer to the case and documentary evidence of the other Party, and within fifteen days thereafter shall, as above provided, deliver in duplicate such counter-case and accompanying evidence to each of the Arbitrators. [311]

“As soon as possible and within one month after the expiration of the period above fixed for the delivery to the Agents of the counter-case, each Party shall deliver in duplicate to each of the Arbitrators and to the Agent of the other Party a printed argument (and additional copies that may be agreed upon) showing the points relied upon in the case and counter-case, and referring to the documentary evidence upon which it is based. Delivery in each case may be made in the manner provided for the delivery of the case and counter-case to the Arbitrators and to the Agents.

“The time fixed by this Agreement for the delivery of the case, counter-case, or argument, and for the meeting of the Tribunal, may be extended by mutual consent of the Parties.

Article III.

“The Tribunal shall meet at The Hague within one month after the expiration of the period fixed for the delivery of the printed argument as provided for in Article II.

“The Agents and Counsel of each Party may present in support of its case oral arguments to the Tribunal, and additional written arguments, copies of which shall be delivered by each Party in duplicate to the Arbitrators and to the Agents and Counsel of the other Party.

“The Tribunal may demand oral explanations from the Agents of the two Parties as well as from experts and witnesses whose appearance before the Tribunal it may consider useful.

Article IV.

“The decision of the Tribunal shall be made within two months from the close of the arguments on both sides, unless on the request of the Tribunal the Parties shall agree to extend the period. The decision shall be in writing.

“The decision of the majority of the members of the Tribunal shall be the decision of the Tribunal.

“The language in which the proceedings shall be conducted shall be English.

“The decision shall be accepted as final and binding upon the two Governments.

“Any amount granted by the award rendered shall bear interest at the rate of six per centum per annum from the date of the rendition of the decision until the date of payment.

Article V.

“Each Government shall pay the expenses of the presentation and conduct of its case before the Tribunal; all other expenses which by their nature are a charge on both Governments, including the honorarium for each Arbitrator shall be borne by the two Governments in equal moieties.

Article VI.

“This Special Agreement shall be ratified in accordance with the constitutional [312] forms of the contracting Parties and shall take effect immediately upon the exchange of ratifications, which shall take place as soon as possible at
WHEREAS, for the purpose of carrying out this Agreement, the two Governments have respectively appointed as Arbitrators:

The Government of the United States:
The Government of the Kingdom of Norway:

WHEREAS at the request of the two Governments, the President of the Swiss Confederation has named as third Arbitrator and President of the Tribunal:

Mr. JAMES VALLOTTON, Docteur en droit, Member of the Bar of Lausanne, Associate of the Institut de Droit International;
WHEREAS the two Governments have appointed as Agents:

The Honorable WILLIAM C. DENNIS, for the United States;
Captain C. FRÖLICH HANSSEN, for the Kingdom of Norway, assisted by the following Counsel:
for the United States:
The Honorable GEORGE SUTHERLAND, formerly United States Senator, Counsel,
for the Kingdom of Norway:
The Honorable WALTER L. FISHER, formerly Secretary of Interior of the United States, Counsel,
WHEREAS the Agents of the Parties to the said Agreement of June 30, 1921 have duly and in accordance with the terms of the Agreement communicated to the Tribunal their cases, counter-cases, printed arguments and other documents;

WHEREAS Counsel and Agents for the Parties have fully presented to this Tribunal their oral arguments in the sittings held between the first assembling of the Tribunal on July 22nd and September 1st, 1922.

And WHEREAS the two Parties have agreed on September 1st, 1922 to an extension until February 1st, 1923 of the period of two months provided for by Article IV of the Special Agreement for rendering the Award;

WHEREAS the arguments have been closed on the 11th of October, 1922,

And WHEREAS according to Article I of the Special Agreement the Tribunal shall “determine what sum if any shall be paid in settlement of each claim of Norwegian subjects against the United States” and shall also “examine any claim of PAGE BROTHERS, American citizens, against any Norwegian subject in whose behalf a claim is presented under the present Agreement, arising out of a transaction in which such claim is based, and shall determine what portion of any sum that may be awarded to such claimant shall be paid to such American citizens”;

WHEREAS, generally speaking, the principal facts and contentions of the Parties with regard to the fifteen Norwegian claims being the same, it is possible and advisable to embrace these several independent claims in one arbitral award (while pronouncing separately on the points at issue);

Now, THEREFORE, this Tribunal (having carefully considered the said Conventions, Agreement, cases, counter-cases, printed and oral arguments, and the documents presented by either side) after due deliberation pronounces as follows:

The amount of the claims.

The details of the claims, both as originally presented in the Case of the Kingdom of Norway and as finally presented in the course of the oral argument, are as follows:

[Please note: table not inserted]
such amended claims approximated $18,000,000.

In reply the United States declared its willingness and desire to make just compensation for the property taken and recognized its liability to make compensation in the following amounts: [314]

The claim made by the United States in reference to PAGE BROTHERS amounted to $22,800. The validity of this claim was totally denied by the Kingdom of Norway.

I. Introduction.

It is common ground between the Parties to this arbitration that the fifteen claims against the United States are presented by the Government of the Kingdom of Norway, which Government, and not the individual claimants, “is the sole claimant before this Tribunal”. [7]

The claims arise out of certain actions of the United States of America in relation to ships which were building in the United States for Norwegian subjects at a time, during the recent Great War, when the demand for ships was enormous, owing to the needs of the armies and to the losses of mercantile ships.

For some time before the United States declared war, the shortage of shipping was serious both in European countries and in the United States. In these circumstances, Norwegian subjects, amongst others, directed their attention to the possibilities of shipbuilding in the United States. From July 1915 onwards, various contracts were placed by Norwegian subjects with shipyards in the United States. Meanwhile, from the summer of 1916 onwards, the United States Government took a series of steps for the protection of its interests and these steps made possible the later “mobilisation for war purposes of the commercial and industrial resources of the United States”. [8] Into most of these measures it is not necessary to enter in any detail, as they do not directly affect the merits of the claims. [315]

The United States declared war against Germany on April 6th, 1917. Already by the United States Shipping Act of September 1916 the United States Shipping Board had been established "for the purpose of encouraging, developing and creating a naval auxiliary and naval reserve and a merchant marine to meet the requirements of the commerce of the United States with its territories and possessions and with foreign countries". [9] This Board was empowered by section 5 of the Act:

"to have constructed and equipped in American shipyards and Navy yards or elsewhere, giving preference, other things being equal, to domestic yards, or to purchase, lease, or Charter, vessels suitable, as far as the commercial requirements of the marine trade of the United States may permit, for use as naval auxiliaries or Army transports, or for other naval or military purposes, and to make necessary repairs on and alterations of such vessels, Provided: That neither the board nor any Corporation formed under section eleven in which the United States is then a stockholder shall purchase, lease, or Charter any vessel

(a) Which is then engaged in the foreign or domestic commerce of the United States, unless it is about to be withdrawn from such commerce without any intention on the part of the owner to return it thereto within a reasonable time;
(b) Which is under the registry or flag of a foreign country which is then engaged in war;
(c) Which is not adapted, or can not by reasonable alterations and repairs be adapted to the purpose specified in this section;
(d) Which, upon expert examination made under the direction of the board, a written report of such examination being filed as a public record, is not without alteration or repair found to be at least seventy-five per centum as efficient as at the time it was originally put in commission as a seaworthy vessel".

Section 7 of the Act provided:

“That the board, upon terms and conditions prescribed by it and approved by the President, may charter, lease, or sell to any person, a citizen of the United States, any vessel so purchased, constructed, or transferred.”

Section 9 of the Act gave the Board certain additional powers “when the United States is at war or during any national emergency the existence of which is declared by proclamation of the President.” These additional powers were:
Referring Principles:

- VII.6 - Duty to pay interest
- XI.1 - Compensation for expropriation