

Calendar No. 529

69TH CONGRESS }
1st Session }

SENATE

{ REPORT
No. 528

OWNERS OF CARGO ABOARD THE STEAMSHIP "BOXLEY"

APRIL 2, 1926.—Ordered to be printed

Mr. MEANS, from the Committee on Claims, submitted the following

REPORT

[To accompany S. 537]

The Committee on Claims, to whom was referred the bill (S. 537) for the relief of owners of cargo aboard the steamship *Boxley*, having considered the same, report favorably thereon with the recommendation that the bill do pass without amendment.

The sole purpose of the bill is to allow W. R. Grace & Co., owner of various shipments of merchandise which were laden on board of the steamship *Boxley*, to bring suit in the District Court of the United States for the Southern District of New York, sitting as a court of admiralty, for damages alleged to have been caused by the unseaworthiness and negligence of the said steamship *Boxley* on her voyage from Iquique, Chile, to New Orleans, La., between the dates of January 5, 1920, and February 14, 1920.

The facts are set forth in the following letter from the United States Shipping Board, which is appended hereto and made a part of this report.

UNITED STATES SHIPPING BOARD,
Washington, March 18, 1926.

Hon. RICE W. MEANS,
*Chairman Committee on Claims,
United States Senate, Washington, D. C.*

MY DEAR SENATOR: We beg to submit the following information taken from the records of the United States Shipping Board relative to the claim which is the subject of Senate bill 537, and in respect to which you have requested a report from the Shipping Board:

This bill relates to a claim of W. R. Grace & Co., owner of various shipments of merchandise which were laden on board the steamship *Boxley*, against the United States of America for damages alleged to have been caused by the unseaworthiness and negligence of the said steamship *Boxley* on her voyage from Iquique, Chile, to New Orleans, La., between the dates January 5, to February 14, 1920.

The steamship *Boxley* was a wooden vessel of about 3,500 tons, built for the Shipping Board by the Grant Smith Porter Ship Co., Seattle, Wash., and delivered to the board September 7, 1918. On June 12, 1919, she was delivered to the New Orleans & South American Steamship Co. at New Orleans for management and operation for the Shipping Board, and on April 3, 1920, she was redelivered to the Shipping Board for operation, the New Orleans & South American Steamship Co. still continuing as manager.

It appears from the records that on the voyage in question the vessel was stranded at the Panama Canal, due to the fact that the red flash buoy on the west end of the breakwater entrance to Colon Harbor was flashing dimly and irregularly and could not be perceived and that after the stranding the radio operator on the ship intercepted a broadcast message sent from the Canal Zone which so stated. The buoy in question, it appears, was located at the entrance to Colon Harbor and was maintained by the Government as an aid to navigation generally, as the Lighthouse Service is, and it has been stated by our admiralty counsel that there was no legal liability for failure to keep same in proper condition.

There were considerable general average sacrifices and expenses incurred in connection with the stranding of the *Boxley*, and a statement of the general average adjusters completed about two years ago showed a net balance of general average due from the board of \$4,027.68. The statement also showed that the damages to the cargo incident to relieving the vessel from the strand, forced handling of cargo when it was discharged in order to effect repairs, and other expenses of a general average nature, amounting to \$13,086.95, which, together with interest allowed, amounted to \$15,173.69. Therefore, the net losses to cargo of a general average nature, with interest up to adjustment, are about \$11,146.01. It is to be noted that this damage to cargo does not include damages to the cargo, if any, incident to the stranding itself or other items of particular average and does not include alleged damages to the cargo due to wetting, which is supposed to have taken place between the Panama Canal and New Orleans.

There is no evidence in our records that would indicate that the *Boxley* was unseaworthy when the cargo was loaded or to show that there was any negligence in the care and the custody of the cargo during the voyage; there is no evidence that the master or crew was negligent in connection with the stranding, and even if there was such negligence, the board is relieved from such liability by the bills of lading. Therefore there is nothing to indicate that the board is legally liable for the damages to the cargo in this case, except for general average contribution, which has already been paid.

As to the alleged damage to the cargo incident to wetting on the voyage from Panama to New Orleans: We have very little information in regard to this matter and a careful search of our records fails to disclose that a claim has ever been presented to us. From the meager information we have on this subject it would appear that there was a shortage in a shipment of nitrate of soda due to wetting apparently caused by an excess of water which was allowed to accumulate in the bilges before being pumped out. The report which contains this information concludes with the statement that "if this be the fact and the vessel damaged this cargo on the voyage from Panama to New Orleans, we feel that it is a cause of damage which falls definitely within the terms of the Harter Act of 1893, and for which the vessel and/or owners would not be responsible."

As stated above, the information in our files on the matter of the damage to cargo is very meager, and this is undoubtedly due to the fact that no claim has been presented and it has not been necessary to consider the facts and render a decision on the merits of the case.

I am sending herewith a copy of a resolution of the United States Shipping Board, dated May 20, 1924, setting forth its attitude to the general question of seeking the privilege of enforcing claims by special authority through private bills.

If we can be of further assistance to you in this matter, please advise us.

Sincerely yours,

JOHN NICOLSON,
Counsel to Committee on Legislation.