

IN THE HIGH COURT OF AUSTRALIA.

NAVINE BOARD OF LAUNCESTON

v.

MINISTER OF STATE FOR THE NAVY

REASONS FOR JUDGMENT.

Judgment delivered at MELBOURNE
on TUESDAY, 19TH JUNE, 1945.

MARINE BOARD OF LAUNCESTON

V.

MINISTER OF STATE FOR THE NAVY

JUDGMENT

STARKE J.

Applications for reviews of assessments of compensation by a Compensation Board made pursuant to the National Security (General) Regulations (See reg. 60G). The parties agreed to the reviews being heard before this Court although there is some question whether it is a competent Court within the meaning of reg. 60(8). Several reviews have been heard by this Court and I was informed that a new regulation is now under consideration dealing with the matter. Under the circumstances the reviews may proceed.

On 20th July 1942 the Treasurer in pursuance of reg. 57 of the regulations requisitioned and took a lighter or barge called the "Wombat" and two other lighters or barges, and on 10th September 1942 the Minister of State for Commerce, also in pursuance of the same regulation, requisitioned and took a tug known as the "James Wallace" all belonging to the Marine Board of Launceston.

The Marine Board pursuant to the regulations made a claim in writing for compensation in respect of these lighters or barges and the tug as follows:-

"Wombat"	£ 8,000
2 Barges, each £7,500	£15,000
Tug	<u>£26,000</u>
	<u>£49,000</u>

Ultimately the claims were referred to a Compensation Board duly appointed pursuant to the regulations which assessed the compensation as follows:-

"Wombat"	£ 5,000
2 Barges	£12,544. 17. 0
Tug	£18,000

Interest at the rate of 4% was also awarded from

date of acquisition to date of payment. And it is from these assessments that the Marine Board of Launceston has applied to this Court for a review.

The material adduced before the Compensation Board was placed before the Court and also the decision of the Board. This material was not treated as in evidence on these reviews unless specially tendered and admitted. Both parties conducted their case as on the trial of a cause in the original jurisdiction of this Court and gave in evidence considerable material that had not been placed before the Compensation Board.

The tug "James Wallace" was built in Glasgow in 1924. It was purchased by the Marine Board of Launceston in 1933 for the sum of £17,050 - (Cash £14,800 and Exchange Value of Tug "Wybia" £2,250). The Board also expended on new equipment £604. 11. 6. And the Board also claims to have expended a sum of about £2,500 on the tug, within two or three years after purchase, on a special overhaul which increased her cost to the Board and her value to about the sum of £19,000.

Before the Compensation Board, M.A. Ellerker, an experienced ship-broker and valuer called by the Marine Board, deposed that at the time of the requisition of the tug she was worth £18,000; he regarded that as a fair price for a willing vendor to sell to a willing purchaser. And the Board taking all the circumstances into account considered that sum a fair price on just terms for the acquisition of the tug. Ellerker was not called as a witness on the proceedings before me, but a shorthand note of his deposition was tendered by the Minister for the Navy and admitted in evidence. It was admitted because it was material before the Board, and also because the evidence had been tendered and relied upon by the Marine Board before the Compensation Board (See Richards v. Morgan 4 B. & S. 641; Taylor on Evidence 10th ed. Sec. 763 p. 545).

There is no doubt, I think, that purchasers might

have been found for tugs at and about the time of the requisition of the "James Wallace" if the Marine Board had been willing to sell and the war had not intervened. But the price that would have been paid is another matter; tugs were not sold like ordinary commodities.

Now the Marine Board has adduced before me a considerable body of evidence of the replacement cost of a tug such as the "James Wallace" at the time of her requisition, which was not before the Compensation Board, and claims that this evidence makes it clear that the value of the tug to the Marine Board ought to be assessed at a much higher value than £18,000. Thus one witness estimated the cost of replacement of a tug such as the "James Wallace" at a sum of no less than £70,312 and another at a sum of £65,486. But both these estimates must be considerably discounted for they provide for triple expansion engines, independent pumps, a working pressure on boiler of 200lbs per square inch, whereas the tug "James Wallace" had two cylinder engines, and pumps driven by the main engine, and a low pressure boiler working at 135lbs per square inch. And there were also differences in the thrust blocks. All this involved extra cost, which a Lloyds surveyor, whose evidence I regard as trustworthy, estimated at about £2,050 sterling, and consequent increases in exchange, primage, customs duties and sales tax. And these differences also involved increased cost in installation, which the Lloyds surveyor also estimated at about £1,000 sterling. True it is that the witness for the Board who estimated the replacement cost at £70,312 was of opinion that these differences would not reduce his estimate by more than £2,000. But I think that estimate is too low, and estimating as best I can, the reduction that must be made in both estimates of replacement cost, I think that those estimates must each be reduced by a sum of not less than £5,000. Taking the lower estimate, £65,486, (which I regard as the more reliable) that estimate would be reduced to £60,500

in round figures. And even this involves costs of material and labour, overhead expenses and other allowances which I have no means of verifying or checking. According to the evidence the tug "James Wallace" had a working life of 50 years at the time of requisition. She was 18 years old. Assuming the figure £60,500, and allowing for depreciation at an even rate, the value of the tug at the time of requisition would be ³²18/50ths of £60,500 or ^{£ 38,720}£22,000 in round figures. But we have other estimates as well. Thus taking 1939 standards, the witness Ellerker estimated the replacement value of the tug at £45,000 and allowing for an increase of 25% in cost to the time of requisition in 1942 the replacement cost would be about £56,250. And Lloyds surveyor estimated that a tug such as the "James Wallace" might have been built in Australia in 1939 for say £32,000 to £33,000 and allowing for an increase of 25% in costs to the time of requisition in 1942, say £42,000. These figures are subject to the same deduction for depreciation as already indicated. Then we know that in 1942 the Marine Board insured the tug for £26,000 when an arrangement was made with the Navy for towing barges from Launceston to Sydney. And we also know that the claim of the Marine Board in October 1942 for compensation in respect of the requisition of the tug "James Wallace" was also £26,000. It was suggested that there would be a slump in the value of tugs at the close of the war and that this probability would affect the value of tugs in 1942. I daresay that is true but it is so uncertain and speculative that I cannot act upon it in assessing the value of the tug "James Wallace".

The fundamental principle in assessing compensation is to discover what the Marine Board has lost in having its tug taken from it - the value of the tug to the owner. Ordinarily the market value is the best criterion of the amount that should be paid but if there be no market or if the market value is uncertain there are other methods of estimating or of assisting in the estimation of the compen-

sation e.g., ascertaining the replacement cost and allowing for depreciation. Examining the evidence which has been placed before the Court, much of which, as I said before, was not before the Compensation Board, and estimating as best I can, the compensation to which the Board is entitled for the tug should, I think be ~~slightly~~ ^{£24,000} higher than the amount assessed by the Compensation Board, namely the sum of £18,000. In my judgment that sum should be £20,000 and accordingly I so determine. It has been suggested that 10% should be added to the latter sum for compulsory acquisition. But I am not prepared to make any such addition. It could only be justified as part of the valuation of the thing taken and not as an addition thereto (Cripps on Compensation 7th ed. p. 198-9; Geita Sehen v. Territory of Papua 67 C.L.R. 544, at pp. 555 & 559). And I have allowed in my assessment the full value of the tug taken and know of no incidental charges or costs to which the Marine Board would be subject that are not covered by the assessment. The compensation payable in respect of the barge "Wombat" and the other two lighters or barges must also be assessed. The Board has awarded the sum of £5,000 for the "Wombat". She was an old vessel built in 1915 as a sloop, converted into a dredge, then into a lighter. She had a probable life of 50 years from the time she was built. The Board purchased her cheaply in 1936 and converted her from a dredge into a lighter. All told the Board spent upon or in connection with her a sum of £5,757. But the evidence of her value in 1942 is somewhat scanty. Her replacement cost as a lighter, has been estimated at from £10,000 to £15,000 plus sales tax. But no detailed estimate has been put before me and I do not place much reliance upon that estimate. But we do know that the other two lighters or barges were built in 1937/1938 at an average cost to the Board of £6,168. The "Wombat" was more solidly constructed and of greater dimensions. No doubt she would have cost more to build as a lighter but then she was 27 years old in 1942 when she was requisitioned.

On the evidence before me I find that the sum of £5,000 (which was also the Compensation Board's assessment) was the fair value of the "Wombat" at the time of her acquisition and a just compensation for her taking.

The Board has assessed and awarded the sum of £12,544. 17. 0 as the value of the other two lighters or barges to the Marine Board at the time of their acquisition. And with that assessment I agree. I observe that the Board allowed depreciation on a reducing balance over four years and not on the fixed instalment basis. But the method used depends upon the circumstances of the case and to some extent upon the individual assessor.

Interest has been awarded at the rate of 4% on the balances owing from time to time. The Minister contends that no interest is payable and as the Justices have differed upon that question I shall reserve it for the opinion of the Full Court pursuant to the Judiciary Act.

Costs are also reserved.