

In the Matter of Merchant Mariner's Document No. Z-736002-D1 and
all other Seaman Documents
Issued to: EDWARD HEDIA MOMOHARA

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1387

EDWARD HEDIA MOMOHARA

This appeal has been taken in accordance with Title 46 United States 239(g) and Title 46 code of Federal Regulations 137.30-1.

By order dated 30 October 1962, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's seaman documents for 3 months upon finding him guilty of negligence. The specification found proved alleges that while serving as a deck maintenance man on board the United States SS GUAM BEAR under authority of the document above described, on or about 18 March 1962, Appellant negligently left his assigned post at a winch which was accidentally activated, thereby causing an accident to occur in which a fellow seaman lost his life.

At the hearing, Appellant elected to act as his own counsel and entered a plea of not guilty.

The following findings are based on the record of the Coast Guard investigation of this incident which was stipulated in evidence.

FINDINGS OF FACT

On the afternoon of 18 March 1962 while the vessel was at Kwajalein, Marshall Islands, the deck force was topping the number one cargo booms in preparation for sea. In order to top the starboard boom evenly with the port boom, the port cargo runner was to be made fast to the starboard topping lift wire. The person charged was assigned by the bosun to be the winch driver. He slacked the port cargo runner sufficiently for making fast to the starboard topping lift, and then he left winch controls with the master switch in an "on" position and was talking to another seaman, Edward S. Fenton, and a third man, Brookman, who were approximately ten feet behind the winch controls. The port cargo runner led across the after end of the hatch and over the winch controls. While being prepared for making fast to the starboard topping lift, the port runner knocked the starboard winch control handle thereby starting the winch.

The bitter end of the starboard cargo runner was made fast to a pad eye on deck between the winch controls. This runner then passed through the gin block at the head of the boom and was secured on the winch drum in the direction which caused a strain on the starboard runner when the winch was accidentally started. Under this pressure, which was accentuated by the sharp angle of the runner at the gin block, the pad eye holding the gin block broke loose with that part of the boom to which the pad eye was welded. The block struck Fenton and killed him almost instantly.

This cargo boom was in good condition when it was tested just before the voyage commenced on 18 January 1962.

Appellant has a reputation as a very competent and reliable seaman. He has no prior disciplinary record.

BASIS OF APPEAL

It is urged that Appellant was not negligent since the accident was caused by a peculiar combination of circumstances. The same result would have occurred if Appellant had been standing by the winch controls.

It is requested that the order be set aside or that Appellant be placed on probation.

OPINION

Negligence, in its ordinary sense, may be defined as the failure of a person, either by omission or by action, to exercise that degree of care, vigilance and forethought which, in the discharge of duty then resting upon him, a person of ordinary caution and prudence ought to exercise under the circumstances.

Appellant's assigned duty as winch driver involved the important responsibility of controlling heavy gear while the "topping up" process on the vessel was in progress. Appellant was required to take reasonable precautions, in the performance of this important duty, to insure that the "topping up" process was carried out safely. That he could do this only by remaining at the winch controls, when the master switch was on, is evident from the location of the port cargo runner over the winch controls and the ease with which the winch was activated when the control handle was hit by this runner. Hence, it is my opinion that Appellant was negligent by leaving his assigned place at the winch controls without turning off the master switch. This conduct permitted a chain of events to follow which culminated in the death of a seaman.

I do not agree with the contention that the accident would have occurred if Appellant had been standing by the winch controls. If there, he could have stopped the winch immediately by moving the starboard winch control handle or turning the master switch off. Although there is no attempt to show that Appellant's conduct was the proximate cause of the seaman's death, his negligence was, as stated by the Examiner, "a motivating factor in the chain of causation resulting in the death."

Except for the admittedly unusual circumstances of this accident, the order would have been more severe despite the fact that Appellant has been commended as a very competent seaman. Consequently, the order will not be set aside or modified.

ORDER

The order of the Examiner dated at San Francisco, California,

on 30 October 1962, is

AFFIRMED.

D. MCG. MORRISON
Vice Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 24th day of April 1963.

***** END OF DECISION NO. 1387 *****

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