

IN THE MATTER OF LICENSE NO. 406702
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Hudnall H. Haynie

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1944

Hudnall H. Haynie

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

By order dated 30 November 1971, an Administrative Law Judge of the United States Coast Guard at Portsmouth, Virginia suspended Appellant's license for 2 months on 6 months' probation upon finding him guilty of violation of a statute and misconduct. The specifications found proved allege that while serving as Master on board the United States Fishing Vessel ALLEN W. HAYNIE under authority of the license above captioned, on or about 7 January 1970, Appellant wrongfully violated Title 46, U. S. Code, Section 391a(4) in that the vessel carried onboard while underway a combustible liquid cargo in bulk; to wit, about 580 long tons of fish oil without a valid U. S. Coast Guard Certificate of Inspection having been issued to said vessel, and wrongfully violated Title 46, U. S. Code, Section 325, in that the vessel was employed in a trade other than that for which she was licensed; to wit, transporting a cargo of bulk liquid fish oil from North Carolina to New Jersey.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to each charge and each specification.

The Investigating Officer introduced in evidence documents pertaining to the vessel, a report of vessel casualty or accident, and an analysis report of crude Menhaden oil.

In defense, Appellant offered in evidence his own testimony and that of several witnesses and an analysis report on crude Menhaden oil.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charges and specifications had been proved. The Administrative Law Judge then served a written order on Appellant suspending all documents issued to him for a period of 2 months on 6 months' probation.

The entire decision and order was served on 2 December 1971. Appeal was timely filed on 30 December 1971. A brief in support of appeal was filed on 2 February 1972.

FINDINGS OF FACT

On 7 January 1970, Appellant was serving as Master on the F/V ALLEN W. HAYNIE and acting under authority of his license.

On the date alleged Appellant Hudnall H. Haynie was the regular holder of Coast Guard License No. 406702. Said license, issued at Baltimore, Maryland, on 17 June 1969, qualifies Appellant to serve in the capacity of MASTER OF FISHING VESSELS OF ANY GROSS TONS UPON OCEANS NOT TO EXCEED 250 MILES OFFSHORE AND TRIBUTARY WATERS FROM EASTPORT, MAINE TO PORT ISABEL, TEXAS; CHIEF MATE OF COASTWISE VESSELS OF NOT OVER 750 GROSS TONS; THIRD MATE OF STEAM AND MOTOR VESSELS OF UNLIMITED TONNAGE UPON OCEANS.

The oil screw fishing vessel ALLEN W. HAYNIE, ON 513004, is of steel construction with a registered length of 162.0 feet and a registered breadth of 34.0 feet. Her registered gross tonnage is 524.32 tons and her registered net tonnage is 356 tons. She is described on her "Consolidated Certificate of Enrollment and

License" as being constructed in 1968 and her allowable service is shown as "fishing." Her license, issued at Pascagoula, Mississippi, on 20 March 1968, is for employment in carrying on the mackerel fishery.

On 25 February 1969 and again on 11 March 1970 Appellant executed a "Master's Oath for Renewal of License for Vessel" at Reedville, Virginia. Each oath for renewal of license is for the vessel ALLEN W. HAYNIE and on each is indicated that no passengers or freight are to be carried. No indication is made as to whether owner's property was to be carried as freight.

On 7 January 1970 the fishing vessel ALLEN W. HAYNIE did not possess a "Certificate of Inspection" and the United States Coast Guard had not issued one to her. On that date the vessel was bound from Morehead City, North Carolina, to Bayway, New Jersey, with a cargo of approximately 580 long tons of crude fish oil on board. The oil, produced at a plant owned by the owners of the vessel, was being transported to the plant of the purchaser of the oil. During the course of the voyage, the vessel ALLEN W. HAYNIE was involved in a collision with an oil barge. The casualty was reported to the Coast Guard by the vice president of her owners on Form CG-2692, "Report of Vessel Casualty or Accident."

The cargo of crude fish oil aboard ALLEN W. HAYNIE at the time of the vessel casualty on 7 January 1970 had a flash point of approximately 565 degrees Fahrenheit and fire point of approximately 620 degrees Fahrenheit. This cargo is by definition in 46 CFR 30.10-15(b) a combustible liquid of Grade E.

Since the time of her construction in 1968 until 7 January 1970, the ALLEN W. HAYNIE has regularly transported raw fish from the fishing grounds to reduction facilities. While carrying such loads of raw fish, some impure crude fish oil is exuded from the fish by reason of the total weight of the load. Although not certificated for the carriage of bulk combustible liquid cargo, the vessel has that capability. During the same period the vessel has been used to transport cargoes of crude fish oil between her owner's plants or to plants of purchasers. Such use amounted to less than four percent of the total days of her operation from her construction to 7 January 1970. The Appellant has served as Master of the ALLEN W. HAYNIE on approximately six or eight such voyages

during this period. This use of the vessel normally occurs between 1 January and 10 March of any given year while she is in a reconditioning period.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Although the Appellant listed numerous errors and exceptions in his notice of appeal, these were not elaborated upon by his brief and will not be discussed individually herein. The basic position of Appellant is that the carriage of fish oil in bulk on board ship does not present a safety hazard; hence, the regulations which classify this and other such cargoes as Grade E combustible liquids (46 CFR 30.10-15) are invalid as being beyond the scope and intent of 46 U.S.C. 391a which is to promote safety at sea. In the event said regulations are not found invalid, Appellant urges that they should be so construed as to exclude the transportation of such cargoes as crude fish oil from the act and the regulations. As to the second charge, Appellant contends that the occasional carriage of fish oil is not the sort of trade proscribed by Section 325 of Title 46 U. S. Code .

APPEARANCE: Dunton, Simmons & Dunton, White Stone, Virginia by
Ammon G. Dunton, Jr., Esq.

OPINION

I

At the outset, I note, as did the Administrative Law Judge, that the two charges in this case are technical in nature. Each arises from the operation and use of the fishing vessel ALLEN W. HAYNIE on 7 January 1970 and each raises a question of alleged violation of the provisions of a specific section of Title 46 United States Code.

I also agree with the Administrative Law Judge that the evidence as to the actual circumstances and operation of ALLEN W. HAYNIE on the date in question is clear and uncontroverted. I quote directly from the Administrative Law Judge's summation of the evidence:

"On that date (7 January 1970) she was enroute from Morehead City, North Carolina, to Bayway, New Jersey, with a cargo of 580 tons of bulk fish oil on board. At that time she was licensed for the mackerel fishery only. (Appellant) Hundall H. Haynie was serving as her master. She did not have and, according to a vessel casualty report filed for that day, was not required to have a certificate of inspection. On 7 January 1970 she was in collision with an oil barge but neither vessel suffered any appreciable damage. The previously mentioned vessel casualty report was properly filed as a result of the collision and gave rise to the further interest of the Coast Guard which resulted in the two charges herein."

Prior to consideration of the points raised by Appellant, it is to be noted that no finding of service under the authority of his Coast Guard license is necessary in order to sustain jurisdiction under the first charge of violation of a statute. Since the statute alleged to have been violated, 46 U.S.C. 391a, is a provision of title 52 of the Revised Statutes, jurisdiction is granted without more under 46 U.S.C. 239(b). Such finding by the Administrative Law Judge is not erroneous, however, since it is appropriate in connection with the second charge.

II

Appellant first argues that the carriage of fish oil in bulk on board ship does not present a safety hazard. He points to the testimony of several witnesses to the effect that it would be extremely difficult if not impossible to elevate the temperature of a full cargo of fish oil to the flash point assuming that it was in a vessel immersed in sea water. He also points to the testimony of persons experienced in the fish oil business that they had never known of an accidental fire resulting from the carriage of fish oil at sea. This evidence, it is argued, clearly establishes that the carriage of fish oil in bulk is not in fact a safety hazard; therefore, the regulations purporting to define this substance as a combustible liquid are not furthering the purposes of the statute which is to promote safety at sea and are invalid.

Appellant's argument cannot be sustained. The statutory language is clear and unambiguous:

"All vessels . . . that shall have on board any inflammable or combustible liquid cargo in bulk, . . . shall be considered steam vessels for the purposes of title 52 of the Revised Statutes and shall be subject to the provisions thereof . . . " 46 U.S.C. 391a(1).

The provisions of 46 U.S.C. 391a(4) are equally clear:

"No vessel subject to the provisions of this section shall, after the effective date of the rules and regulations established hereunder, have on board such liquid cargo, until a certificate of inspection has been issued to such vessel . . ."

Clearly Congress was interested in promoting safety at sea by requiring that the carriage of combustible liquids be in vessels inspected and certificated as suitable for that purpose. It could have prevented the carriage of only hazardous liquids, but chose instead to reach the broader range of combustible liquids.

To carry out the purposes of Section 391a, Congress gave broad regulatory authority to define those liquids which were combustible and to prescribe the conditions for their carriage. In furtherance of this statutory mandate, 46 CFR 30.10-15 was promulgated by the Coast Guard. This regulation defines a combustible liquid as any liquid having a flash point above 80° F. Then in further recognition that there are different categories of combustible liquids, they are further classified into Grades D and E, the latter being liquids with flash points above 150° F. (46 CFR 30.10-15(b)). There can be no doubt but that crude fish oil falls within this regulatory definition. Uncontroverted evidence established a flash point for fish oil of 565° F., clearly a flash point above 80° F. Even the testimony of experts called by the Appellant admitted that it was a combustible liquid of Grade E and one classified it as slightly hazardous (R-71).

The argument that it would be extremely difficult or impossible to raise a full cargo of fish oil to 565° F. does not alter the fact that it is a combustible liquid. As a combustible liquid, its carriage has been determined by Congress to be a possible safety hazard. The regulations here in question are in

furtherance of the statute and I hold them to be controlling in this case.

III

Appellant next argues that the Commandant of the Coast Guard has the authority to amend the regulation and urges that an upper limit of combustibility be established by regulation or that the Coast Guard should determine on a case by case basis those situations where there was no safety hazard involved in the carriage of a particular substance.

Clearly regulations promulgated by the Coast Guard can be revoked or amended when it is necessary to do so, but this is not the proper forum. So long as regulations are properly promulgated and are properly within the ambit of the governing statutory authority, they will be in force and effect in these proceedings. Appellant's alternative proposal would result in a fragmented policy of enforcement and would be unworkable for effective regulation as envisioned by 46 U.S.C. 391a.

It having been established that crude fish oil is a combustible liquid under 46 CFR 30.10-15 and that such a cargo was carried by the ALLEN W. HAYNIE on M January 1970, the vessel is within the category of vessels set forth in 46 U.S.C. 391a(1) and, therefore, subject to the provisions of 46 U.S.C. 391a(4). As Master of that vessel on that date, Appellant has violated the statute.

IV

As to the charge of misconduct supported by the specification alleging a violation of 46 U.S.C. 325, employment in a trade other than that for which the vessel was licensed, the Appellant asserts that the occasional carriage of fish oil is not the sort of trade proscribed by the statute. Appellant relies here, as he did at the hearing, on the case of *The Snapper King*, 127 F.2d 490 (5th Cir. 1942), for the proposition that trade is synonymous with business and implies the regular occupation and not a temporary turning aside from some other trade. The case is distinguishable on the facts and not controlling herein. There the court was dealing with the question of forfeiture of the vessel; here I am concerned only with the license held by the Appellant.

Here the facts clearly establish reliable and probative evidence that ALLEN W. HAYNIE was at the time in question employed in a trade other than that for which she was licensed. It is not disputed that the vessel was licensed only for the mackerel fishery, or that crude fish oil is sometimes carried in the vessel when exuded from the fish by their sheer weight. The determining factor here is that at the time in question the vessel was not engaged in the fishing trade, but was in fact in a reconditioning status due to the termination of the fishing season. This carriage of crude fish oil from her owner's plant to that of a purchaser was not at all incidental to the fishing trade, but was in fact a different business altogether unrelated to the mackerel fishery. The Appellant knew by his "Master's Oath of Renewal of License for Vessel" what was to be carried by the vessel and is to be held responsible therefore.

CONCLUSION

Appellant raises the matter of an "absolutely spotless record" and implores that his record not be marred by convictions of "technical charges arising out of practices that neither he nor his employer knew to be contrary to any rule, regulation or statute." As I suggested at the outset of this opinion, the charges are technical in nature, nevertheless, they are violations of provisions of Title 46 United States Code and cannot be completely ignored. I therefore, hold that the order of the Administrative Law Judge is appropriate under all the facts and circumstances and it is hereby affirmed.

ORDER

The order of the Administrative Law Judge dated at Portsmouth, Virginia on 30 November 1971, is AFFIRMED.

C. R. BENDER
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 13th day of June 1973.

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