

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. Z-1194691
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: WENDELL OLIVER LEBOEUF

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1998

WENDELL OLIVER LEBOEUF

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 11 September 1973, an Administrative Law Judge of the United States Coast Guard at Port Arthur, Texas suspended Appellant's seaman document for 3 months outright upon finding him guilty of inattention to duty. The specification found proved alleges that while serving as a tankerman on board the United States Tank Barge GEORGE under authority of the document above captioned, on 2 September 1973, Appellant allowed approximately one (1) barrel of decant oil to overflow out of number 5S cargo tank and enter the Calcasieu River at Citgo Docks, Lake Charles, Louisiana.

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

The Investigating Officer introduced in evidence the testimony of two witnesses and two exhibits.

In defense, Appellant offered in evidence his own testimony and a letter of recommendation.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant suspending all documents, issued to Appellant, for a period of 3 months outright.

The entire decision and order was served on 22 September 1973. Appeal was timely filed.

FINDINGS OF FACT

On 2 September 1973, Appellant was serving as a TANKERMAN on board the United States Tank Barge GEORGE and acting under authority of his document while the vessel was being loaded with decant oil at the Citgo Docks, Lakes Charles, Louisiana on the Calcasieu River. On this date Appellant was the tankerman who was the senior deck officer on duty, as required by 46 CFR 35.35-20, in charge of the loading of two tank barges, simultaneously, one of which was the GEORGE. While Appellant was checking and topping off the other barge he heard oil spilling from the number five starboard tank of the GEORGE. He then ran back to the GEORGE but slipped on spilled oil and was not able to secure the valve until approximately one minute after the spill. The overflow spilled on deck and about one barrel of decant oil went overboard polluting the Calcasieu River.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that the order is excessively harsh and is not warranted by the size of the spill.

APPEARANCE: Appellant pro se.

OPINION

There is no dispute as to the facts and they are substantially as I have indicated. Appellant readily admits that there was an overflow, that he was loading two barges at one time and that he can not explain the cause of the overflow. He only disagrees with the amount of oil alleged to have entered the river and claims it was less than one gallon. Therefore, the suspension order is too severe.

II

Concern has been and continues to be expressed over the requirement to maintain the chemical, physical and biological integrity of our waters and the amount of pollutant oil is of relative significance. However, of primary concern is the positive action required to reduce or minimize personnel error which is the vehicle which causes pollution incidents. Such action has been and will continue to be appropriate remedial action, under the suspension and revocation proceedings, against licenses and merchant mariner's documents held by persons involved in pollution incidents. In this case the suspension order should have a singularly therapeutic impact on Appellant and persons similarly situated.

CONCLUSION

It is well established that the degree of severity of an order is a matter peculiarly within the discretion of the Administrative Law Judge and will normally not be modified on appeal. However, in this case the factual circumstances coupled with a comparative analysis of similar pollution cases permits me to conclude that I should exercise my administrative discretion and modify the order. I also note that the order of the Judge is predicated upon a presumption that Appellant would deposit or surrender his document on 11 September 1973.

ORDER

The order is therefore modified to read that said outright suspension shall be for one (1) month plus two (2) months on twelve (12) months probation with the suspension taking effect upon deposit of his merchant mariner's document and all other seaman's

documents with the Coast Guard with consideration for days served, if any. The order of the Administrative Law Judge dated at Port Arthur, Texas on 11 September 1973, as modified herein is AFFIRMED.

C. R. Bender
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C., this 18th day of April 1974.

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