

In the Matter of License No. 14478
Issued to: GEORGE O'BRIEN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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GEORGE O'BRIEN

This case comes before me by virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations 137.11-1.

On January 10, 1949, a hearing was held before an Examiner, United States Coast Guard, New York, New York, on a charge of misconduct, supported by three specifications, preferred against George O'Brien, License No. 14478 (hereinafter referred to as the appellant) Master of the SS REICHERT LINE.

The appellant appeared as his own counsel and entered a plea of "not guilty" to the charge of misconduct, as well as to the three specifications alleging (1) wilful maneuvering of the Tug REICHERT LINE so as to strike the Tug JAMES P. MCGUIRL; (2) wilful maneuvering of the Tug REICHERT LINE so as to hinder navigation of the Tug JAMES P. MCGUIRL for 13 minutes; and (3) threatening the Master of the Tug JAMES P. MCGUIRL with bodily harm.

The investigating officer, after summarizing the results of his investigation, called Gavin Cunningham MacTaggart, Master of the Tug JAMES P. MCGUIRL on December 31, 1948. Captain MacTaggart testified as to the circumstances surrounding the collision of his vessel with the Tug REICHERT LINE on December 31, 1948. This

testimony, which was unimpeached on cross-examination, indicated that the Tug JAMES P. McGUIRL was overtaken at 7:55 p.m. by the Tug REICHERT LINE; that the Tug REICHERT LINE was in contact with the JAMES P. McGUIRL on the starboard side aft of amidships; that the Master of the Tug REICHERT LINE used abusive language to Captain MacTaggart; that the Tug REICHERT LINE attempted to push the Tug JAMES P. McGUIRL on the rocks at Governors Island; that the contact between vessels was maintained until 8:08 p.m. at which time the Tug REICHERT LINE backed off.

The investigating officer called as witnesses, Joseph P. Lynch and Vincent Sylvester Raine, members of the crew of the Tug JAMES P. McGUIRL, and both of these witnesses substantiated the testimony given by Captain MacTaggart. No other witnesses were called by the investigating officer and when he rested his case the appellant called Francis James Reichert, Secretary, REICHERT TOWING LINES, as his first witness. Mr. Reichert's testimony was directed solely to whether or not at 4:30 p.m. on December 31, 1948, the appellant was under the influence of intoxicating liquor.

The appellant then called as witnesses Earl Osmond, John Leechan, Jr., Svend Troelsen, and Bernard Harnen, members of the crew of the REICHERT LINE. The testimony of these four witnesses indicated that only Osmond was in a position to notice the position of both vessels immediately before and during contact.

The appellant took the stand on his own behalf and testified on December 31, 1948, his vessel while under way on North River was overtaken by the Tug JAMES P. McGUIRL and that when the JAMES P. McGUIRL was alongside of his vessel it sheered toward his vessel and struck it on the port bow. The appellant further testified when he protested to the captain of the JAMES P. McGUIRL, the Master of that vessel kept pushing his vessel on the port bow and that to prevent the REICHERT LINE from being pushed into the RUSSELL and her tow he put his helm hard to port and pushed toward the JAMES P. McGUIRL. The appellant stated that the vessels continued into contact until about 500 feet off of Governors Island where he backed his vessel away from the contact with the JAMES P. McGUIRL and proceeded up the East River. No other witnesses were called by the appellant. At the conclusion of the taking of testimony the Examiner found the charge and three supporting

specifications proved. He then issued an order suspending for six months license number 14478 and all other valid licenses and certificates held by the appellant.

From that order, this appeal has been taken and it is contended that:

- (a) the findings of the Examiner are not based upon any reasonable interpretation of the creditable testimony adduced at the hearing; and
- (b) that the penalty imposed is not commensurate with the violation charged.

OPINION

In the instant case, the Examiner, after hearing the witnesses, determining their credibility, and drawing inferences from the evidence adduced found that the charge of misconduct and the three supporting specifications had been proven against the appellant. As to contention (a) of the appellant, I feel that I am bound to attach to the testimony of a witness the full weight and quality of credibility which the Examiner gave it.

Belm Co. v. Landy, 113 F. 2d 897; *Atlas Beverage Co. v. Minneapolis Brewing Co.*, 113 F. 2d 672; *Webb v. Frisch*, 111 F. 2d 887; *National Mutual Casualty Co. v. Eisenhower*, 116 F. 2d 891, 895; *Camden Woolen Co. v. Eastern S.S. Lines*, 12 F. 2d 917, 919; *Flack v. Holtegel*, 93 F. 2d 512, 515; *Kincaid v. Mikles*, 144 F. 2d 784, 787; *Columbus Outdoor Advertising Co. v. Harris*, 127 F. 2d 38, 42; *Limbach v. Yellow Cab Co.*, 45 F. 2d 386, 387; *United States v. Gamble-Skogmo*, 91 F. 2d 372, 374; *Continental Petroleum Co. v. United States*, 87 F. 2d 91, 95; *Bradley v. Smith*, 114 F. 2d 161, 165; *Walling v. Rutherford Food Corp.*, 156 F. 2d 513.

To warrant a setting aside of the decision of the Examiner on the basis of contention (a) it would be necessary for me to find that such decision was clearly erroneous because it was not supported by substantial evidence. The substantial evidence rule is aptly set forth in the case of *National Relations Board v.*

Union Pacific Stages, 99 F. 2d 153, 177, in which the court stated:

"`Substantial evidence' means more than a mere scintilla. It means that the one weighing the evidence takes into consideration all the facts presented to him and all reasonable inferences, deductions and conclusions to be drawn therefrom, and, considering them in their entirety and relation to each other, arrives at a fixed conclusion."

I have carefully reviewed the entire record in the case before me and am of the opinion that the Examiner's decision was supported by substantial evidence as that term has been defined in the case cited above. It is not for me, as an appellate authority to retry the facts. *Essenwein v. Commonwealth*, 325 U.S. 279. It is simply my duty to review the action of an Examiner to ascertain the existence of substantial evidence sufficient to support the finding. *Knapp v. U.S.*, 110 F. 2d 420.

With respect to contention (b) it is my considered opinion that the order of the Examiner in this case was exceedingly temperate in view of the serious nature of the appellant's actions. Despite the allegations as to the appellant's unblemished record of long standing his conduct in the matter under consideration reveals serious doubt as to whether or not he possesses the requisite temperament to hold a license as Master of tug boats operating in the crowded New York Harbor.

CONCLUSION AND ORDER

Having found nothing to warrant my intervening in this case, it is ordered and directed that the decision of the Coast Guard Examiner dated January 14, 1949, should be, and it is AFFIRMED.

J.F. FARLEY
Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 23rd day of May 1949.

***** END OF DECISION NO. 329 *****

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