

In the Matter of License No. 117409
Issued to: VICTOR G. DIAZ

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

597

VICTOR G. DIAZ

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 23 April, 1952, an Examiner of the United States Coast Guard at Portland, Maine, suspended License No. 117409 issued to Victor G. Diaz upon finding him guilty of negligence based upon three specifications alleging in substance that while serving as Master on board the American MV TAGALAM under authority of the document above described, on or about 10 February, 1952, 3 March, 1952, and 27 March, 1952, he permitted his vessel to depart from three different foreign ports without the required lifeboats on board.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own selection and he entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and evidence was introduced by both parties. Appellant

testified in his own behalf.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the three specifications. He then entered the order suspending Appellant's License No. 117409 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of two months on nine months' probation.

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

- A. Every possible effort was made by Appellant to obtain the required lifeboat.
- B. The actions of Appellant constituted an honest mistake of judgment and not negligence.
- C. In consideration of the extenuating circumstances and Appellant's clear record, the order is unreasonably harsh.

APPEARANCES: Thomas H. Walsh, Esquire, of Boston, Massachusetts.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

From 9 February to 6 April, 1952, Appellant was serving as Master on board the American tanker MV TAGALAM and acting under authority of his License No. 117409.

On 8 January, 1952, the lifeboat on the port side amidships was lost in a heavy storm while the vessel was on a foreign voyage. This was one of the four boats on board in accordance with the vessel's certificate of inspection. A replacement boat had been ordered but because the vessel was diverted to Trinidad instead of returning to the United States as originally scheduled, the boat was not on board when Appellant assumed command at Trinidad on 9

February, 1952.

Since the capacity of each one of the three remaining lifeboats was greater than the total number of personnel on board at any time while the vessel was subsequently at sea, Appellant was satisfied that there was no danger caused by the shortage. Nevertheless, Appellant obtained the verbal permission of the American Consul at Trinidad before departing from there on 10 February, 1952, enroute to England, without replacing the lost lifeboat. Appellant attempted to obtain a boat in England but the proper type could not be located and he sailed from Walksend, England, without a replacement on 3 March, 1952. Appellant consulted with the American Consul at Newcastle, England, and was given the same advice as he had received from the Trinidad Consul. From England, the vessel went to Venezuela and departed from there on 27 March, 1952, with the status of her lifeboats remaining the same.

The vessel returned to the United States on 4 April, 1952, for the first time since the loss of the boat and on 6 April, 1952, the replacement boat which had been ordered was installed.

Appellant has been going to sea since 1930 and there is no record of any prior disciplinary action having been taken against him.

OPINION

Although this was a violation of the requirements set forth in the vessel's certificate of inspection, I feel that this was a purely technical breach which did not involve any negligent disregard for the safety of life and property. Since Appellant took advantage of every opportunity to attempt to replace the boat and because he had a reasonable belief that the safety of the crew was not endangered by going to sea with only three lifeboats, it would be unfair to spoil his record which has remained perfect for so many years. Apparently, the newly ordered lifeboat would have been on board much sooner if the vessel had not been diverted to Trinidad; and, in fact, the boat was installed when the vessel first returned to the United States. For these reasons, the charge and specifications are hereby dismissed.

ORDER

The Order of the Examiner dated at Boston, Massachusetts, on 1 May, 1952, is VACATED, SET ASIDE and REVERSED.

A. C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 17th day of October, 1952.

***** END OF DECISION NO. 597 *****

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