

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

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UNITED STATES COAST GUARD
COMPLAINANT,

vs.

License No. 868019

Issued to:
KENNETH J. PICHOFF
Respondent

Docket No. 00-0207
PA No. 00000537

DECISION AND ORDER

Before: Archie R. Boggs
Administrative Law Judge

PRELIMINARY STATEMENT

This proceeding is brought pursuant to the authority contained in 5 USC 551-559; 46 USC Chapter 77; 46 Code of Federal Regulations, Parts 5 and 16; and 33 CFR Parts 20 and 95.

Kenneth J. Pichoff was served originally with a Complaint dated 20 March 2000. That Complaint alleged statutory authority as "46 USC 7704 (c)" "Use of or Addiction to the Use of Dangerous Drugs" and regulatory authority as 46 CFR 5.35.

The factual allegations read as follows:

"Use of or Addiction to the Use of Dangerous Drugs"

"1. The Coast Guard alleges that on March 4, 2000 the Respondent refused to submit a post accident urine sample to L&L Marine Transportation personnel in violation of company policy."

On 13 June 2000 the Investigating Officer amended the Complaint, adding a Misconduct allegation with statutory authority listed as "46 USC 7703" and regulatory authority as "46 CFR 5.27."

For the Use of or Addiction to the Use of Dangerous Drugs Complaint the Coast Guard "alleges that on March 4, 2000 the Respondent refused to submit a post accident urine sample to L&L Marine Transportation personnel in violation of company policy."

The Misconduct allegation is that "on March 4, 2000 the Respondent wrongfully deserted the towboat Jeanne Marine."

LCDR Andrew Norris presented the case for the Coast Guard. Robert K. Lansden, attorney at law, 153 W. Pine Street, Suite 2, Pontchatoula, LA 70454, represented the Respondent.

The Respondent, through his attorney filed an answer in which he denied the jurisdictional and factual allegations, and he requested a hearing.

A hearing was held at the Marine Safety Office, 1615 Poydras Street, New Orleans, LA 70130, on 12 and 19 July and 13 and 27 September 2000.

In support of the Complaint the Investigating Officer introduced into evidence the testimony of Michael Hebert, who is with operations for L&L Marine Transportation, Inc., 1300 Peters Road, Harvey, LA.

The Investigating Officer also introduced five (5) exhibits.

I.O. Exhibit No. 1 – a copy of a page from the daily boat log of the Lillie Louise for 3 March 2000.

I.O. Exhibit No. 2 – a copy of a notice to employees of L&L Marine Transportation, Inc., which list seven (7) company rules together with a signed employee statement by Mr. Pichoff on 6 March 1997, acknowledging receipt of the rules.

I.O. Exhibit No. 3 - a completed application for employment with L&L Marine Transportation, Inc., which was executed by Mr. Pichoff on 6 March 1997.

I.O. Exhibit No. 4 – a detail of telephone charges to L&L Marine Transportation, telephone number 416-1181, for usage from 28 February through 9 March 2000.

I.O. Exhibit No. 5 – additional lists of charges for usage of the same telephone for numerous days.

After Mr. Hebert testified the Respondent moved for a dismissal of both charges contending that a prima facie case had not been established in connection with either of the allegations. The Administrative Law Judge took the matter under advisement and subsequently notified the parties that a defense would be required only in connection with the desertion charge – a prima facie case not having been made with regard to the use of or addiction to the use of dangerous drugs.

Mr. Pichoff testified in his own defense. He called two witnesses; (1) Arlene Edge, a friend of his for over 40 years, and (2) Milton Francis Spencer, who also holds a towboat Captain's license. He introduced twelve (12) exhibits.

Respondent Exhibit A – a blank Coast Guard form, CG 2692B, (1-91), "Report of required chemical drug and alcohol testing following a serious marine incident."

Respondent Exhibit B – a one page letter addressed to LT Keene, U.S. Coast Guard, New Orleans, dated 9 March 2000 from Mike Hebert "Re-incident M/V Jeanne Marie and M/T Crudesun D/A: March 4, 2000" together with a completed report of accident form, CG 2692, which was filed by Mr. Hebert at an Investigating Officer's direction on 9 March 2000.

Respondent Exhibit C – copies of six pages from the daily boat log of the Jeanne Marie.

Respondent Exhibit D – a "Policy Letter" from Commandant, U.S. Coast Guard, dated September 1, 2000 with the subject "Watchkeeping and Work Hour Limitations on Towing Vessels, Offshore Supply Vessels (OSV) and Crew Boats Utilizing the Two Watch System. (5 pages).

Respondent Exhibit E – a letter dated August 4, 1999 addressed to the Officer in Charge, Marine Inspection, New Orleans, signed by Carl LeBouef.

Respondent Exhibit F – two documents from the Louisiana Secretary of State entitled “selective business detail data,” for L&L Marine Transportation, Inc.

Respondent Exhibit G – a one page letter from the Marine Safety Office, Morgan City, entitled “12 in 24 rules clarified.”

Respondent Exhibit H – a chart of the Mississippi River, No. 11370, from New Orleans to Baton Rouge, Louisiana.

Respondent Exhibit I - copies of 3 more pages from the logbook of the Jeanne Marie.

Respondent Exhibit J – a copy of a AMA Launch Service record showing that a Coast Guard person boarded the M/V Crudesun at 0900 on 4 March 2000 and departed the vessel at 1140 on the same day.

Respondent Exhibit K - a publication entitled “Mariners Speak Out on Violation of the 12 hour workday,” which is a compilation of numerous letters from mariners alleging violations of the 12 hour work rule.

In rebuttal, the Investigating Officer called Gary Lerille, who is also an employee of L&L Marine.

FINDINGS OF FACT

1. At approximately 0724 on 4 March 2000 the tugboat Jeanne Marie was upbound on the Mississippi River in the vicinity of INCP, St. Rose, LA, pushing two loaded hopper barges ahead.
2. Kenneth Pichoff, the Respondent, was the operator in charge of the tow.
3. A coupling broke on the tow causing one of the barges to slide alongside the M/V Crudesun, which was at anchorage.
4. As a result of sliding against the tanker paint scrapings were left on the hull of the Crudesun.

5. Captain Pichoff notified Michael Hebert, who was on duty at L&L Marine, of the incident.
6. Mr. Hebert asked Captain Pichoff if the Coast Guard had been notified and he replied in the negative stating that after surveying the M/V Crudesun with the pilot of that vessel they decided that there was nothing to report so they went on about their business.
7. Mr. Hebert instructed Captain Pichoff to “log it in his book and wait for his tug service.”
8. Mr. Hebert and the Respondent spoke to each other by telephone later on that morning at which time Mr. Hebert told Mr. Pichoff to “go back up to the fleet light boat and I’ll meet you there and assist you in filling out the incident report and we are going to take a drug screen.”
9. Mr. Hebert testified that he informed Mr. Pichoff about the drug screen because “the incident that led up to that a lot of things just didn’t sound right. There was some apprehension on my part. Things just weren’t being coherent the way I would have expected them to be and a lot of things didn’t add up.” (There is no explanation by Mr. Hebert as to what he meant by this testimony.)
10. Captain Pichoff then took his vessel to the upper St. Rose Fleet.
11. He (Pichoff) had been on duty since 1800 on 3 March 2000 and he was scheduled to have been relieved at 0600 on the day of the allision. He had been on duty more than 13 hours.
12. When he arrived at upper St. Rose Fleet he secured the vessel and left, after more than 15 hours of duty.
13. Two deckhands were on board.

OPINION

There are two sets of regulations governing Coast Guard procedures for drug testing: (1) 46 CFR Part 16 entitled “Chemical Testings” and (2) 33 CFR Subchapter F, Part 95, entitled “Operating a Vessel while Intoxicated.” (N.B.) While 33 CFR, Part 95, is primarily

directed to intoxication due to excessive use of alcohol as the title indicates, some reference in this Part is made to chemical testing for evidence of use of prohibited drugs.

46 CFR Part 16, which empowers the Coast Guard to conduct chemical testing of personnel, lists five (5) different categories for drug testing as follows:

- 1) Pre-employment (46 CFR 16.210)
- 2) Periodic (46 CFR 16.220)
- 3) Random (46 CFR 16.230)
- 4) Serious Marine Incident (46 CFR 16.240 and
- 5) Reasonable Cause Testing (46 CFR 16.250)

Both the Respondent's counsel and the Investigating Officer acknowledged, and the Administrative Law Judge agreed, that the incident involving Mr. Pichoff's operation of the Jeanne Marie on 4 March 2000 was not a "serious marine incident" as defined in 46 CFR 16.240. Mr. Hebert testified that he did not complete form CG 2692 until directed to do so by the Coast Guard on 9 March 2000 because there was no "serious marine incident."

46 CFR 16.240 provides as follows:

"16.240 Serious marine incident testing requirements.
The marine employer shall ensure that all persons directly involved in a serious marine incident are chemically tested for evidence of dangerous drugs and alcohol in accordance with the requirements of 46 CFR 4.06."

A serious marine incident" is defined in 46 CFR 4.03-2 as follows:

"The term serious marine incident includes the following events involving a vessel in commercial service:

- (a) Any marine casualty or accident as defined in 4.03-1 which is required by 4.05-1 to be reported to the Coast Guard and which results in any of the following:
 - (1) One or more deaths;
 - (2) An injury to a crewmember, passenger, or other person which requires professional medical treatment beyond first aid, and, in the case of a person employed on board a vessel in commercial service, which renders the individual unfit to perform routine vessel duties;
 - (3) Damage to property, as defined in 4.05-1(a)(7) of this part, in excess of \$100,000;

- (4) Actual or constructive total loss of any vessel subject to inspection under 46 USC 3301; or
- (5) Actual or constructive total loss of any self-propelled vessel, not subject to inspection under 46 USC 3301, of 100 gross tons or more.
- (b) A discharge of oil of 10,000 gallons or more into the navigable waters of the United States, as defined in 33 USC 1321, whether or not resulting from a marine casualty.
- (c) A discharge of a reportable quantity of a hazardous substance into the navigable waters of the United States, or a release of a reportable quantity of a hazardous substance into the environment of the United States, whether or not resulting from a marine casualty.” (emphasis supplied)

It was the Investigating Officer’s contention that although there was no “serious marine incident,” Mr. Pichoff was required to submit to a “reasonable cause” drug test under the provisions of 33 CFR 95.035.

There are two “reasonable cause” definitions in the regulations.

- (1) 46 CFR 16.250 provides as follows:

Reasonable cause testing requirements.

- (a) The marine employer shall require any crewmember engaged or employed on board a vessel owned in the United States that is required by law or regulation to engage, employ or be operated by an individual holding a license, certificate of registry, or merchant mariner’s document issued under this subchapter, who is reasonably suspected of using a dangerous drug to be chemically tested for dangerous drugs.
- (b) The marine employer’s decision to test must be based on a reasonable and articulate belief that the individual has used a dangerous drug based on direct observation of specific, contemporaneous physical, behavioral, or performance indicators of probable use. Where practicable, this belief should be based on the observation of the individual by two persons in supervisory positions.
- (c) When the marine employer requires testing of an individual under the provisions of this section, the individual must be informed of that fact and directed to provide a urine specimen as soon as practicable. This fact shall be entered in the vessel’s official log book, if one is required.
- (d) If an individual refuses to provide a urine specimen when directed to do so by the employer under the provisions of this section, this fact shall be entered in the vessel’s official log book, if one is required.

(2) 33 CFR 95.035(a)(1) provides as follows:

“(a) Only a law enforcement officer or a marine employer may direct an individual operating a vessel to undergo chemical test when reasonable cause exists. Reasonable cause exists when:

(1) The individual was directly involved in the occurrence of a marine casualty as defined in Chapter 61 of Title 46, United States Code,”

46 USC 6101 does not define a “marine casualty.” That section provides for “marine casualties and reporting.”

46 USC 6101 (a) and (b) read as follows:

“(a) The Secretary shall prescribe regulations on the marine casualties to be reported and the manner of reporting. The regulations shall require reporting the following marine casualties:

- (1) death of an individual
- (2) serious injury to an individual
- (3) material loss of property
- (4) material damage affecting the seaworthiness or efficiency of the vessel
- (5) significant harm to the environment

(b) A marine casualty shall be reported within 5 days as provided in this part and regulations prescribed under this part. Each report filed under this section shall include information as to whether the use of alcohol contributed to the casualty.”

The incident in which Mr. Pichoff was involved on 4 March 2000 does not fall within any one of the categories listed above to be reported. Furthermore, a question arises as to which “reasonable cause” definition should apply.

It was not until 9 March 2000 – 5 days after the incident -- did Mr. Hebert submit a completed form CG 2692 at the direction of a Coast Guard Investigating Officer. He had five days to investigate the matter and inspect any damage that may have existed to the vessels involved. On the form he described the “damage to barge” as “2 to 4 foot of red paint from rubbing against the M/V Crudesun.” (Block 26k). He listed the damage amount to the barge as

“N/A” (Block 26j). Mr. Hebert testified that several days after the incident he got word from a company representative that the damage was insignificant. (Tr. Page 67)

In section IV number 44 in answer to the instruction “describe how accident occurred, damages, information on alcohol/drug involvement and recommendations for corrective safety measures,” Mr. Hebert’s entry is “coupling broke while topping around on barge CC97522 which laid against the M/V Crudesun (port side).”

As heretofore stated, a prima facie case was not established and the Complaint with regard to Use of or Addiction to the Use of Dangerous Drugs was dismissed when the Investigating Officer rested his case.

It is important that the federal government’s drug testing program be administered so as to eradicate the use of drugs in the American workplace. However, it goes without saying, the program must be administered with justice and fairness to each person tested, or directed to be tested.

The employer’s function in the drug testing procedure is a vital link. The collector’s function is a vital link. The laboratory’s function is a vital link. The medical review officer’s function is a vital link. All of the persons involved in the procedure must strictly abide by the regulations.

Mr. Pichoff holds a sixth issue of a license which he received at the time the Coast Guard first required tow boat operators to be licensed. He was “grandfathered in.” Obviously, he must have taken numerous drug tests during his years of operating tow boats.

With regard to the misconduct Complaint, alleging desertion of the Lillie Louise on 5 March 2000, both of the Investigating Officer’s witnesses testified that they did not consider Mr. Pichoff deserted the vessel, because he had completed his 12 hour watch and the vessel was safely secured with a deckhand remaining on board. Both Mr. Hebert and Mr. Lerille

testified that it is permissible for operators to leave their vessels after completion of 12 hour watches.

In his application for employment with L&L Marine Transportation, Inc., on 7 March 1997 (Investigating Officer Exhibit No. 7) the following provision is made. "I understand that if employed, my employment will be for an indefinite period of time, and that I may terminate my employment at any time for any reason, and the company may do likewise. I further understand that no representative of the company has authority to enter into any agreement to the contrary unless such agreement is in writing and is signed by the President of the company." (This may not be good policy-but that is the company's decision.)

ORDER

The Complaint alleging use of or addiction to the use of dangerous drugs and the desertion of the M/V Lillie Louise on 5 March 2000 is dismissed.

RULINGS ON THE COAST GUARD'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW

ACCEPTED

1. Respondent, Mr. Kenneth Pichoff, is the holder of Coast Guard license number 868019 (Respond. A).

ACCEPTED, but both of the Investigating Officer's
witnesses testified that they did not consider
Respondent deserted the vessel.

2. On March 6, 1997 Respondent signed a L&L Marine Transportation "Notice to Employees" in which he acknowledged that leaving an assigned vessel at any time during a voyage and/or hitch for any reason whatsoever without permission from the office is strictly prohibited. This policy applies to the on and off watch. L&L Marine Transportation considers adherence to those rules as mandatory and essential for the safety of their employees and the safe operation of the vessel to which they are assigned. (Govt. 2).\

ACCEPTED

3. Respondent began working a 14 day on / 7 day off hitch onboard the Jeanne Marie on February 22, 2000 (KP).

ACCEPTED

4. Respondent worked days (the 0600 – 1800 watch) from February 22-28. Respondent worked nights (the 1800 – 0600 watch) from February 29 – March 4 (KP).

ACCEPTED

5. Respondent was twelve days into his fourteen-day hitch by March 4, 2000 (KP).

ACCEPTED

6. Respondent claims that he worked beyond twelve hours during three of the five days preceding March 4, 2000 and on numerous other occasions while employed by L&L Marine Transportation (KP).

ACCEPTED

7. Respondent had never quit working for L&L Marine Transportation before, despite being forced to work more than twelve hours in a 24-hour period on numerous occasions (KP).

ACCEPTED

8. The entire crew of the Jeanne Marie quit on March 3, including the captain Respondent relieved and who in turn was supposed to have relieved Respondent at 0600 on March 4, 2000.

ACCEPTED

9. Respondent knew that the previous crew, including the captain who was supposed to have relieved him at 0600 on March 4, 2000 had quit when he assumed his duties aboard the Jeanne Marie on March 3, 2000 – 1800 (Govt. 1, T105-106).

Mr. Mike Hebert

ACCEPTED

1. Mr. Mike Hebert works in operations at L&L Marine and his duties include “hiring and firing of crews, physicals, and drug screens” (T6).

ACCEPTED

2. Mr. Mike Hebert stands "duty" for L&L Marine every third weekend (T107, GL).

ACCEPTED

3. Mr. Mike Hebert was on duty on March 4, 2000 (T7).

ACCEPTED

4. During duty weekends, Mr. Hebert is not only authorized, but also expected to handle all crises that arise (T107).

Mr. Gary Lerille~~ACCEPTED~~

1. Mr. Gary Lerille did not have a title for his position with L&L Marine Transportation but stated that he did "everything" from ensuring towboats were adequately crewed to dispatching vessels and payroll.

ACCEPTED

2. Mr. Gary Lerille stands duty for L&L Marine Transportation every third weekend (GL).

ACCEPTED

3. Mr. Gary Lerille was on vacation in Disneyland – Orlando, Florida, from March 2-7, 2000 (GL).

ACCEPTED

4. Mr. Gary Lerille did not initiate or receive any work related phone calls while he was on vacation (GL).

ACCEPTED

5. Mr. Gary Lerille did not make any phone calls at all from his mobile phone on March 4, 2000 (Govt. 4).

ACCEPTED

6. Mr. Gary Lerille did not speak with Respondent at all while he was on vacation from March 2-7, 2000.

Jeanne Marie

ACCEPTED

1. The Jeanne Marie is a 55-ft., 98 gross ton towboat owned by L&L Marine Transportation (Resp. B).

ACCEPTED

2. The Jeanne Marie is equipped with NEXTEL radio/cellular phone set (GL).

ACCEPTED

3. The radio function is the preferred method to communicate to or from the Jeanne Marie since L&L Marine pays a flat rate for this function (GL).

ACCEPTED

4. The effective range of the NEXTEL radio function from L&L Marine Transportation's dispatch office is to Pascagoula, Mississippi (GL).

ACCEPTED

5. The cellular phone function must be used whenever the Jeanne Marie, or its intended recipient is further east than Pascagoula, MS (GL).

ACCEPTED

6. The cellular phone records from the Jeanne Marie confirmed that no phone calls were made from the Jeanne Marie to Mr. Gary Lerille while he was on vacation at Disneyland – Orlando, Florida, from March 2-7 (Govt.5).

March 4, 2000

ACCEPTED

1. On March 4, 2000 Respondent worked for L&L Marine Transportation Incorporated under the authority of his license as a relief pilot onboard the towboat Jeanne Marie (Resp. A, Govt. 1).

ACCEPTED

2. On March 4, 2000 at approximately 0724, the Respondent was at the helm of the towboat Jeanne Marie and pushing two barges headlong, in the vicinity of IMTT St. Rose (Lower Mississippi River M118.5), when a coupling broke on the barge 97522 9Govt. 1).

ACCEPTED. However the Investigating Officer's principal witness, Mr. Hebert did not categorize the incident as a collision. He described it as "coupling broke while topping around on Barge CC97522 which laid against The M/V Crudeson (port side)."

3. The broken coupling caused the barges to "top around" out of Respondent's control and collide with the T/S Crudeson (Govt. 1, KP).

ACCEPTED as to (1) and (2) with regard to (3) Mr. Hebert's words were "we are going to take a drug screen."

4. Respondent and Mr. Hebert spoke about the collision between the tow of the Jeanne Marie and the T/S Crudeson between 1000-1030 the morning of March 4th. During the conversation, Mr. Hebert told Respondent to do the following three things.
- (1) drop off the barges 95522 and the 9555B at GNOTS Fleet as-planned.
 - (2) Take the Jeanne Marie lightboat to the Upper St. Rose Fleet and
 - (3) Wait for him there so he can assist him in filling out an accident report and be administered a drug test (T10).

NOT ACCEPTED. Mr. Hebert didn't see the log until long after the conversation

5. Mr. Hebert ordered Respondent to be drug tested in good faith based upon his:
- (1) understanding of the incident as related by Respondent, who with his own hand logged "damaged tie mark on" Crudeson in the official log (Govt. 1), and
 - (2) general uncertainty about the actual extent of damage done as a result of this collision (T18, 64-65).

ACCEPTED, but Mr. Hebert made no effort on his own to ascertain if there was any damage.

6. Mr. Hebert did not know the true extent of the damage to the Crudeson until several days later (T67).

ACCEPTED

7. Respondent delivered the barges 97522 and the 9555B to GNOTS Fleet as he was directed to do by Mr. Hebert (KP).

ACCEPTED

8. Respondent departed GNOTS Fleet at 1000 the morning of March 4th (KP).
- 9.

ACCEPTED

10. The Upper St. Rose Fleet is located at Lower Mississippi River M127, eight miles upriver from GNOTS Fleet (Resp. G).

ACCEPTED

11. Respondent arrived at the Upper St. Rose Fleet, as he was directed to do by Mr. Hebert, some time before 1200 on March 4th (T14-16).

ACCEPTED

12. Mr. Hebert arrived at the Upper St. Rose Fleet at approximately 1200 the morning of March 4th (T14-16).

ACCEPTED

13. Mr. Hebert did not find Respondent at the Upper St. Rose Fleet when he arrived (T14-16).

ACCEPTED in part. Paragraph (1) not accepted.

14. Mr. Hebert fully expected to meet Respondent at the Upper St. Rose Fleet since Respondent
- (1) agreed to wait for him there and be drug tested (T17).
 - (2) Lived aboard the Jeanne Marie during his hitch, both on and off duty (T14-15).
 - (3) Never informed him that he intended to quit the service of the Jeanne Marie (T105) and
 - (4) Was never granted permission to leave the Jeanne Marie (T104).

ACCEPTED

15. Mr. Hebert searched the Jeanne Marie and discovered that Respondent took his belongings with him (T12).

ACCEPTED

16. Mr. Mike Hebert called Respondent numerous times on March 4, 2000 in an effort to determine his whereabouts. Respondent did not answer any of these calls (T12-14).

ACCEPTED

17. Mr. Mike Hebert continued attempting to contact Respondent through March 9, 2000 with no success (T12-14).

ACCEPTED

18. Respondent departed his home for Texas early in the morning of March 5th and signed on as captain of the towboat Big Jo at 1200 (KP).

ACCEPTED

19. Respondent never returned to work at L&L Marine Transportation after March 4, 2000 (KP).

ACCEPTED that he didn't take a drug test

19. Respondent never took the drug test as ordered as a result of this incident (KP).

RULINGS ON RESPONDENT'S
PROPOSED FINDINGS OF FACT
AND
CONCLUSIONS OF LAW

ACCEPTED

46 U.S.C. §7703 under the regulatory authority 46 C.F.R. 5.27 Misconduct.

The Coast Guard alleges that on March 4, 2000, the wrongfully deserted the towboat Jeanne Marie.

ACCEPTED

At the hearing, the Investigating Officer presented the witness, Mike Herbert, an employee of L&L Marine. After Respondent presented his case, a rebuttal witness, Gary Lerille, was presented. The hearing was completed on 27 September 2000. During the course of several hours of testimony, both employees confirmed the following:

Testimony of Mike Hebert on July 19, 2000, while under oath.

ACCEPTED

1. Page 16, Line 5

Administrative Law Judge:

Q. Do licensed officers ordinarily leave the vessel when they're not on duty?

A. We have a policy with out(r) captains. As long as they have dependable transportation.

ACCEPTED

2. Page 90, Line 22

Mr. Lansden:

Q. When a man has worked past his 12 hours, which was the case for Mr. Pichoff on March 3 and March 4, what is your company policy?

A. Well the fact that Mr. Pichoff didn't actually go to work until 10:30 that night, I didn't consider it --

Q. I'm confused. You earlier stated that he went to work --

A. He came on watch at 6:00 that afternoon.

Q. Are you contending to the Court that from 1800 to 10:30 a man on watch is not work?

A. When the vessel's tied up, no, sir, I don't consider that work.

Q. So, isn't it true, then, that if the vessel is safely tied up, that man doesn't need to be aboard the vessel?

A. Yes, sir.

ACCEPTED

3. Page 133, Line 17

Administrative Law Judge:

Mr. Hebert, getting back to the Application for Employment, second to last paragraph, it states that I -- this is the employee talking. "I may terminate my employment at any time for any reason, and the company may do likewise." What does that mean?

The Witness:

It means he can quit anytime he wants.

ACCEPTED

4. From the USCG Exhibit No. 3:

I understand that if employed, my employment will be for an indefinite period of time, and that I may terminate my employment at any time for any reason, and the company may do likewise. I further understand that no representative of the company has authority to enter into any agreement to the contrary unless such agreement is in writing and is signed by the President of the company.

ACCEPTED

5. Captain Kenneth Pichoff boarded the Jeanne Marie at 1800 3 March 2000.

ACCEPTED

6. At the time of the Allison on 4 March 2000 at 0720, Captain Kenneth Pichoff had been on watch for over 13 hours.

ACCEPTED

7. By 1300 hours 4 March, the Jeanne Marie was safely moored at Upper St. Rose.

ACCEPTED

8. That by 1300 hours 4 March, Captain Kenneth Pichoff had worked 18 hours with no relief.

ACCEPTED

9. That no relief was available for Captain Kenneth Pichoff.

ACCEPTED

10. The allision on 4 March 2000 was not a serious marine incident. On September 13, 2000, Captain Kenny Pichoff took the stand. The facts presented were as follows:

ACCEPTED

1. He had been forced to work in excess of 12 hours for several days.

ACCEPTED

2. The company failed to provide him a relief.

ACCEPTED

3. On 4 March, he was due a relief at 0400.

ACCEPTED

4. The allision occurred on or about 0720.

ACCEPTED

5. At the time of the allision, he had been working over 13 hours.

ACCEPTED

6. After being directed to tie the vessel up safely at Upper St. Rose, he had been on watch for 18 hours with no relief.

ACCEPTED

7. The vessel was safely moored at Upper St. Rose.

ACCEPTED

8. He had reliable transportation.

ACCEPTED

9. He left the vessel safely moored with a deckhand aboard.

ACCEPTED

10. He understood he was an "at will" employee and had a right to quit after safely mooring the vessel.

On September 27, 2000, a rebuttal witness was brought forward, Mr. Gary Lerille, an employee of L & L Marine. The key facts presented in his testimony were the following:

ACCEPTED

1. The vessel was safely moored at Upper St. Rose fleet.

ACCEPTED

2. Leaving one deck hand aboard was acceptable.



ARCHIE R. BOGGS
ADMINISTRATIVE LAW JUDGE

Dated 10 April 2001
New Orleans, Louisiana