

IN THE MATTER OF LICENSE NO. 372885  
MERCHANT MARINER'S DOCUMENT Z-1050352  
AND ALL OTHER SEAMAN'S DOCUMENTS  
Issued to: William H. KELLEY

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1961

William H. KELLEY

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 5 September 1972, an Administrative Law Judge of the United States Coast Guard at Portland, Maine suspended Appellant's seaman's documents for one month on nine months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as Master on board the M/V ETHEL TIBBETTS under authority of the license above described, between 8 and 10 January 1972, Appellant did wrongfully navigate said vessel on a voyage from Portland to Jonesport, Maine while manned in violation of 46 CFR 31.15 and 46 U.S.C. 222-223, to wit, one licensed engineering officer and one licensed mate less than required by the vessel's Certificate of Inspection.

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

The Investigating Officer introduced in evidence two charts, a copy of the vessel's Certificate of Inspection and the testimony of the Officer in Charge of Marine Inspection, Portland, Maine.

In defense, Appellant offered in evidence his own and the testimony of the General Manager of the vessel owner.

After the hearing, the Administrative Law Judge rendered a decision in which he concluded that the charge and specification had been proved. He then entered an order suspending all documents issued to Appellant for a period of one month on nine months' probation.

The entire decision was served on 7 September 1972. Appeal was timely filed on 12 September 1972 and perfected on 2 March 1973.

#### *FINDINGS OF FACT*

From 8 to 10 January 1972, inclusive, Appellant was serving as Master on board the M/V ETHEL TIBBETTS and acting under authority of his license while the ship was on a round trip voyage between Portland and Jonesport, Maine.

During the course of this voyage, Appellant navigated the vessel seaward of the line of demarcation between the high seas and inland waters established pursuant to 33 U.S.C. 151. On this voyage, which was less than 400 miles, the vessel carried a licensed complement of one Master and First Class Pilot, one Chief Mate, one Chief Engineer and one Assistant Engineer.

The vessel's Certificate of Inspection required on coastwise voyages a licensed complement of one Master and First Class Pilot, three mates and three engineers to be reduced by one mate on voyage of less than 400 miles. The Certificate of Inspection further provided for, when operating on bays, sounds and rivers, a licensed complement of one Master and First Class Pilot and two engineers.

#### *BASES OF APPEAL*

This appeal has been taken from the order imposed by the

Administrative Law Judge. It is urged that the voyage in question constituted operation in "bays, sounds and rivers" as used in the vessel's Certificate of Inspection.

APPEARANCE: Dworken, Bernstein & Hoch, Boston, Massachusetts.

#### OPINION

Appellant in effect urges the contravention of the plain meaning of the phrase "bays, sounds and rivers", on the basis of an allegedly customary practice and because of possible so-called absurdities resultant from the application of that plain meaning to the vessel manning requirements. The Certificate of Inspection issued to the ETHEL TIBBETTS recites the manning requirements for coastwise voyages and provides for a reduced complement of licensed personnel for operation in "bays, sounds and rivers." This latter provision recognizes that the requisite level of safety can be maintained in sheltered waters with fewer licensed personnel than are necessary for voyages on the open sea.

In this context, as well as in view of its plain meaning, it is unthinkable that the phrase "bays, sounds and rivers" could refer to the open sea beyond the line of demarcation established pursuant to 33 U.S.C. 151. The waters seaward of that line are, almost by definition, unsheltered and are clearly not subject to a relaxation of the strict rules on maritime safety under the heading, "bays, sounds and rivers." The voyage in question was clearly not comprehended by that phrase and was, thus, a coastwise voyage subject to the manning requirements noted therefore on the vessel's Certificate of Inspection. In this respect there is no necessity of resorting to the definition of "coastwise voyage at sea" contained in 46 U.S.C. 88 relating to load lines, although it is noted that this definition compares with the definition of "coastwise voyage" contained in *Kerchove's International Maritime Dictionary*. The ETHEL TIBBETTS was certified for coastwise voyages and operation in "bays, sounds and rivers." When Appellant navigated said vessel seaward of the line of demarcation, he was no longer operating in "bays, sounds and rivers" and was, thus, on a coastwise voyage.

The laws relating to merchant vessel safety have an important purpose. They are not, except where specifically provided as in

certain of the Rules of the Road, to be subjected to *de facto* determinations by individual mariners and shipowners. Deviations from the manning requirements are lawful only when specifically allowed by endorsement on the Certificate of Inspection. Because Appellant took it upon himself to interpret the need for the required level of manning, he brought himself in violation of the law.

*ORDER*

The order of the Administrative Law Judge dated at Portland, Maine on 5 September 1972, is AFFIRMED.

T. R. SARGENT  
Vice Admiral, U. S. Coast Guard  
Acting Commandant

Signed at Washington, D. C., this 3rd day of July 1973.

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