

In the Matter of License No. 37115
Issued to: HENRY M. ZISKOWSKI

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

611

HENRY M. ZISKOWSKI

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 9 April, 1951, an Examiner of the United States Coast Guard at Port Arthur, Texas, suspended License No. 37115 issued to Henry M. Ziskowski upon finding him guilty of inattention to duty based upon a specification alleging in substance that while serving as Master on board the American SS COUNCIL GROVE under authority of the document above described, on or about 23 to 29 January, 1951, while said vessel was enroute from Las Piedras, Venezuela, to Providence, Rhode Island, he negligently navigated his vessel with the applicable load line submerged.

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 specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the record of the preliminary investigation which was conducted at Providence, Rhode Island, on

29 January, 1951, and consists of testimony by Appellant. When asked by the Examiner if he had any objection to this record being accepted in evidence, counsel replied in the negative. After a stipulation was entered into as to the draft of the vessel on 23 January, 1951, according to the rough log book, the Investigating Officer rested his case.

In defense, Appellant testified under oath in his own behalf. He admitted that the load line had been submerged as alleged but stated that this had not been done wilfully or intentionally.

At the conclusion of the hearing, having heard the argument of 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 specification. He then entered the order suspending Appellant's License No. 37115, 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 three months on twelve months' probation.

From that order, this appeal has been taken, and it is urged that Appellant has erroneously been charged with violation of 46 U.S.C. 88c which applies to coastwise voyages; that neither section 85 nor 88 of Title 46 provides for suspension of a license; that 46 U.S.C. 239 is penal and must be strictly construed; and, therefore, the Examiner exceeded his authority in suspending Appellant's license. It is also contended that Appellant's testimony was not given sufficient weight; Appellant cannot be blamed for the honest error of the Mate who was in complete charge of the loading and whose negligence was found by the Examiner to be the "predominant cause" of the overloading; and since this technical violation was not wilful and occurred under adverse loading conditions, the order should be dismissed or mitigated because of Appellant's prior unsullied record.

APPEARANCES: George E. Duncan, Esq., San Jacinto Building,
Beaumont, Texas, for Appellant.

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

FINDINGS OF FACT

On a foreign voyage covering the dates of 23 to 29 January, 1951, inclusive, Appellant was serving as Master on board the American SS COUNCIL GROVE and acting under authority of his License No. 37115 while said vessel was enroute from Las Piedras, Venezuela, to Providence, Rhode Island.

On 23 January, 1951, the COUNCIL GROVE got underway from Las Piedras in a loaded condition. She had been loaded, under the supervision of one of the Mates, at an unsheltered pier which extended to seaward for a distance of about one mile. Appellant told the Mate to load the ship to a draft of 29 feet, 10 inches forward, and 29 feet, 11 inches aft. The draft was logged as such without the estimates of the Mate having been checked by Appellant who was asleep when loading was completed. Loading had been completed at night and in an open sea with swells running two or three feet high; but the estimated draft was not checked against the dead-weight scale of the vessel or previous loadings of this ship by Appellant. Appellant calculated that based on the draft as logged and allowing for a rise of 4.5 inches after four days steaming, the ship's load line would not be submerged when she entered the winter load line zone upon crossing the parallel of 36 degrees North.

When the ship arrived at Providence, Rhode Island, on 29 January, 1951, her draft was 30 feet, 6 inches forward, and 30 feet, 4 inches aft. Based on these figures and making no allowance for fresh water, the mean draft of 30 feet, 5 inches caused the applicable winter load line to be submerged 11.75 inches. Appellant stated that although the standard charts do not make any allowance for fresh water at Providence, the results of salinity tests made by his Mates reduced the violation to a 6.75 inches submergence of the applicable load line.

Accepting Appellant's testimony that a 5 inch fresh water submergence was permissible at Providence and that the ship rose 1 1/8 inch a day for 5 1/2 days, it is evident that the mean draft upon departure from Las Piedras was at least 7 inches more than that which was logged.

There is no record of any prior disciplinary action having

been taken against Appellant during approximately twenty-five years at sea.

OPINION

Appellant was not charged with the violation of any specific statute but with inattention to duty by navigating his ship with the applicable load line submerged. This is a violation of 46 U.S.C. 85c for a vessel making a foreign voyage. But at least since 1936 when R.S. 4450 was drastically amended (46 U.S.C. 239), it has been a remedial statute rather than a penal one. For these reasons, *Bulger v. Benson* has no application to this remedial administrative proceeding. This is not a penal action for a statutory violation, and the order of suspension is clearly permitted by the provisions of 46 U.S.C. 239(g).

My findings of fact are based completely upon Appellant's testimony at the hearing and the investigation in Providence. No other file or investigation report has been considered in arriving at these findings. Although Appellant has been given every advantage by accepting his testimony, it is difficult to believe that he did not know what amount of cargo would produce the correct draft if, in fact, Appellant had loaded this same ship at the same port twice before without overloading as he did on this occasion. His testimony can only lead to one of two conclusions: he had previously overloaded or he did not check the present load against the other two cargoes. Assuming the latter, he was clearly inattentive to his duty to maintain the minimum permissible freeboard assigned to his ship.

The load line limitations provided for by the vessel's Load Line Certificate indicate the minimum freeboard with which the ship may be safely navigated. At these drafts, there will be left a sufficient percentage of reserve buoyancy to insure the safety of the vessel under various conditions. These load lines are assigned by qualified experts of the American Bureau of Shipping. Since the failure to comply with these regulations might endanger ships, cargoes and lives, it is obvious that a very high degree of care is required of Masters to make certain that there is strict compliance with these statutes and regulations.

CONCLUSION

With the purpose and importance of the load line regulations in mind, it can hardly be said that a Master is permitted to completely delegate the loading authority to one of his mates without checking the results. It would be equally foolhardy to consider this as merely a technical violation of a statute regardless of the amount of the submergence below the authorized load line. Therefore, Appellant was guilty of inattention to duty.

ORDER

The Examiner's order dated at Port Arthur, Texas, on 9 April, 1951, is AFFIRMED and the case is hereby considered closed since the probationary period has expired.

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

***** END OF DECISION NO. 611 *****

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