

In the Matter of License No. 59481 and Merchant Mariner's  
Document No. Z-316104  
Issued to: JOHN M. PYRE

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

635

JOHN M. PYRE

This appeal has been taken, in accordance with 46 United States Code 239(g), from the order of an Examiner of the United States Coast Guard at Boston, Massachusetts, on 10 October, 1952.

The order suspended Appellant's License No. 59481 and Merchant Mariner's Document No. Z-316104 for one month outright and for six months on eighteen months probation as a result of the Examiner's conclusion that Appellant was guilty of the charge of negligence which was based upon a specification alleging that while serving as Master on board the American MV HAROLD REINAUER under the authority of the above license, he did:

"on or about 7 May, 1952, at Chelsea, Mass., before welding and/or burning operations were done on the vessel in spaces adjacent to the boundaries of bulk cargo spaces fail to cause an inspection to be made to determine if such welding and/or burning operations could be undertaken with safety."

This wording parallels that which is contained in the Tank Vessels Regulations, 46 C.F.R. 35.01-1(a).

Appellant was represented by counsel at the hearing. After preliminary explanations by the Examiner, Appellant was arraigned and he entered a plea of "not guilty" to the charge and specification. The Investigating Officer made his opening statement and counsel for Appellant waived this right.

By stipulation between the parties, copies of the testimony of four witnesses, who had appeared before a Marine Board of Investigation, were received in evidence together with two exhibits which were contained in the record of proceedings of the same board of investigation. This Marine Board of Investigation had been convened to investigate an explosion which occurred on board the HAROLD REINAUER on the same date as Appellant's alleged negligence. No additional evidence was offered by either party. The Examiner rendered his decision after hearing argument and ruling on the proposed findings and conclusions submitted by counsel for Appellant.

In this appeal, it is contended that there was no violation of the pertinent regulation (46 C.F.R. 35.01-1(a)) because the work was being done in the third compartment from the nearest cargo space and, therefore, it was not an area which was "adjacent" to any "bulk cargo spaces." Appellant claims that this construction is confirmed in the opinions expressed on behalf of the Commandant in the matter of the investigation of the casualty to the ship. It is also urged that the work was under the supervision of a shipyard superintendent and the yard was performing the work as its own activity.

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

#### *FINDINGS OF FACT*

On 7 May, 1952, Appellant was serving as Master on board the American MV HAROLD REINAUER, a tanker of 818 gross tons, and acting under the authority of his License No. 59481 while the ship was moored alongside her owner's dock at Chelsea, Massachusetts.

Before cutting and welding repairs on the port wing of the bridge were commenced on this date, the No. 4 cargo tank was completely filled with water and a hose was kept running on the

main deck in the vicinity of No. 4 while the repair work was performed. The ship had four forward tanks and the No. 4 tank extended a few feet forward of the superstructure on which the bridge was the third deck above the main deck. No inspection was made to ascertain whether the other tanks were gas-free although the vessel had discharged a bulk cargo of gasoline two days earlier.

Welding and other burning operations on the port wing of the bridge were stopped approximately fifteen minutes before explosions occurred in the three tanks forward of the No. 4 tank. As a result of these explosions, three men were seriously injured and the tanker sank alongside the dock where she had been moored.

There is no record of any prior disciplinary action having been taken against Appellant.

#### OPINION

Since the evidence does not establish that there was any causal connection between the burning operations on the vessel and the explosions in her tanks, there can be no implication that Appellant was guilty of negligence as alleged simply because the explosions occurred proximately, in time, to the repair work. The specification alleges, in effect, a violation of 46 C.F.R. 35.01-1(a). Therefore, the determination depends upon whether the cutting and welding on the port wing of the bridge was done, according to the words of the regulation, in a space "adjacent" to "the boundaries of bulk cargo spaces."

In view of the fact that there were two vertical non-cargo spaces between the port wing of the bridge and the boundary of the No. 4 tank, it is my opinion that this work was not performed "adjacent" to any cargo tank. "Adjacent" is a relative term and its meaning is governed by the surrounding circumstances; but it is a term which is often used synonymously with "adjoining" and "bordering." *Long v. London and Lancashire Indemnity Co. of America* (C.C.A. 6, 1941), 119 F.2d 628.

#### ORDER

The order of the Examiner dated 10 October, 1952, at Boston, Massachusetts, is SET ASIDE and REVERSED.

Merlin O'Neill  
Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington, D. C., this 13th day of March, 1953.

\*\*\*\*\* END OF DECISION NO. 635 \*\*\*\*\*

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[Top](#)