

In the Matter of License No. 98303
Issued to: THEODORE MILLER, JR.

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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THEODORE MILLER, JR.

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 24 February, 1953, an Examiner of the United States Coast Guard at New York, New York, suspended License No. 98303 issued to Theodore Miller, Jr., upon finding him guilty of inattention to duty based upon one specification alleging in substance that while serving as Master on board the American MV REPUBLIC PITTSBURGH under authority of the document above described, on or about 13 October, 1952, while said vessel was in the port of Grand Haven, Michigan, he did wrongfully permit the ballasting of the said vessel without the said ballasting being properly supervised by a licensed officer or certificated tankerman.

At the hearing mutually agreed to be held in joinder with the hearing of George Kohlbeck, License No. 70244, Second Mate, 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 Robert Branand and Donald Vetter, 135 South LaSalle Street, Chicago, Illinois, attorneys of his own selection. He entered a plea of

"not guilty" to the charge and the specification proffered against him.

Thereupon, the Investigating Officer made his opening statements and introduced in evidence, without objection, the record of testimony of the Appellant, the joined party, George Kohlbeck, Second Mate, Herbert Albert Milarch and Walter Ernest Frederick, able seamen, Otto Nelson, First Assistant Engineer. This testimony had been taken on 16 October, 1952, during the preliminary investigation. The Investigating Officer then rested his case.

For the defense the Appellant testified in his own behalf. Counsel for the joined defendant called as witnesses Herbert Albert Milarch, Walter Ernest Frederick, and the joined party George Kohlbeck.

At the commencement of the hearing, Appellant reserved a motion to dismiss the specification on the ground that the charges show no offense and after testimony rested on that motion.

At the conclusion of the hearing, Appellant's counsel agreed to file motions and arguments in writing. The Examiner announced his findings and concluded that the charge had been proved by proof of the specification and entered the order suspending Appellant's License No. 98303 for a period of two months from the date upon which the person charged deposits his license with the cognizant United States Coast Guard authority.

From that order, this appeal has been taken, and it is urged that the Second Mate did not wait until he was relieved before going off watch and that the Second Mate was not questioned in detail on this point when he testified at the hearing. Appellant contends that the Second Mate had merely stated that he was tired and required some relaxation; and then left the deck without Appellant's permission.

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

FINDINGS OF FACT

On 13 October, 1952, Appellant was serving as Master on board the American MV REPUBLIC PITTSBURGH and acting under authority of his License No. 98303.

On that date the REPUBLIC PITTSBURGH was in the port of Grand Haven, Michigan, and had, about 1800, completed the discharge of a cargo of gasoline and commenced the water ballasting of wing tanks Nos. 1, 2, 3 and 4. The Second Officer, George Kohlbeck, had been in charge of operations from 1000. This officer and the Appellant were the only licensed officers on board. There was no Third Mate and the First Mate was on an authorized shore leave. This leave was with the consent and knowledge of the Master and Second Mate that the watch of the absent First Mate, scheduled from 1600 to 2200, would have to be covered by them.

Two A.B.'s, Herbert Milarch and Walter Frederick, were taking on the water ballast under the supervision of the Second Mate. The tanks were filled in the following order, No. 2 and No. 4. Then No. 1 and No. 3. Some of the valves in the line were stiff but there is no evidence that any of the valves were in a state of disrepair. In the customary method employed as a tank nears its filled mark, the men would take their position at the tank valves so that the valve of the next tank could be opened before that of the filling tank was closed. The opening and closing of the valves was coordinated by shouts. After a tank was filled the manhole was dogged down and the tank secured.

At about 1830, after No. 2 tank had been filled and secured and while the other tanks were being filled, the Second Mate, noticing the hour and having his own watch at 2200, went to the Master's quarters to tell him he was going aft to rest prior to his regular watch. The Appellant did not affirmatively relieve the Second Mate nor did he order the mate to retain the watch. He did tell the Second Mate to inform the seamen conducting the operation that he was leaving. He later issued ballasting instructions to one of the A.B.'s, Milarch, who came to his cabin and requested them. Still later he dressed and proceeded on deck just prior to the rupture.

Between 1900 and 1915, in response to the Appellant's instructions, Milarch and Frederick prepared to shift the filling

from the almost filled No. 1 to empty No. 3 tank.

While so shifting the already filled No. 2 tank ruptured. It was found that the valve to No. 2 tank was open about three turns. No. 1 and No. 3 valves had become closed at the same instant and the excessive pressure leaking through the incompletely closed valve had ruptured the filled and secured No. 2 tank. At the time of the rupture the Appellant had dressed and was on the starboard side proceeding forward to the scene of the operation. The Second Mate was aft in his cabin. The No. 2 tank had been filled and secured under the Second Mate's supervision and it was the latter's duty to assure himself the valve had been properly seated, especially since he knew the valves were stiff. There were no markings or other means of determining visually whether the valves were completely closed.

OPINION

The Appellant here is charged with inattention to duty in that he permitted the ballasting of his vessel to proceed without being properly supervised by a licensed officer or certificated tankerman. The supervision and control of a licensed officer or certificated tankerman is required by the Tanker Act and regulations thereunder, specifically 46 C.F.R. 35.35-35. This regulation was promulgated to secure special care at a time when casualties are likely to occur; namely, when pressure is being applied to fill tanks with liquids. Whether or not the liquid is inflammable cargo or water ballast, it is generally incompressible, and the overflowing of a tank can cause a sudden increase in pressure in the tank which can rupture the seams and damage the structure of a vessel, as in the instant case. There is little basis for an appeal from the finding of the Examiner that the Appellant was guilty of this charge.

The Master of a vessel is clothed with full authority to exert affirmative and positive control in matters relating to the vessel and its safe navigation and operation. When the Second Mate came to the cabin and informed Appellant that he, the Second Mate, was going aft to rest, the Appellant had full power and authority to accept or reject the proposal. He neither affirmatively relieved the Mate of responsibility nor did he order the Mate to stay on watch. Appellant did, however, acquiesce in the departure of the

Second Mate by telling the Mate to inform the seamen conducting the operation that he was leaving. While still in his cabin, Appellant later issued instructions regarding the ballasting, when they were requested by one of the A.B.'s Milarch, who incidentally, came to the Appellant, not the Mate, for instructions. Still later, Appellant dressed and proceeded on deck, it is assumed to take charge.

When Appellant acquiesced and permitted the Second Mate to leave the deck knowing ballasting operations were going on and did not immediately assume supervision of the ballasting operation as the only other licensed officer on board, Appellant failed to comply with the regulation. By his acquiescence, Appellant assumed the responsibility, formerly that of the Second Mate, to supervise the ballasting.

It should be noted that this opinion does not attempt to fix any liability for the rupture of the tank and structural damage to the vessel. The appeal is decided on the offense as charged and finding appealed.

ORDER

The Order of the Examiner dated 24 February, 1953, at New York, New York, should be, and it is, AFFIRMED.

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

3520 Treasury CGHQ Wash, D.C.

Dated at Washington, D.C., this 3rd day of July, 1953.

***** END OF DECISION NO. 674 *****

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