



16200

August 09, 2011

[Redacted]
[Redacted]
[Redacted]
[Redacted]
[Redacted]

RE: Case No. 3006841
[Redacted]
[REDACTED]
Dismissed

Dear Mr. [Redacted]:

The Hearing Office has forwarded the file in Civil Penalty Case No. 3006841, which includes your appeal on behalf of [Redacted] (hereinafter "[Redacted]") as owner and operator of the [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$5,000.00 penalty for the following violations:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
46 USC § 2302(a)	"COMMERCIAL VESSEL:" Operating a vessel in a negligent manner or interfering with the safe operation that endangers life, limb or property of a person.	\$5,000.00
46 CFR 4.05-1	Failure to give immediate notice of a marine casualty involving the occurrence listed in 46 CFR 4.05-1.	WARNING

The violations are alleged to have occurred on July 21, 2007, before the [REDACTED] allided with the Port Clinton Dock, in Port Clinton, Ohio.

On appeal, you deny both violations. In essence, you contend that the vessel's controls were operating within normal limits at all times when it was underway, and that therefore there was no marine casualty involving the hydraulic pump, as the Coast Guard charged, and there was also no negligence in operating the vessel with respect to the condition of the hydraulic pump.

The facts are as follows. On the morning of July 21, 2007, the [REDACTED] was experiencing overheating problems with its hydraulic pump. The pump was replaced in kind in Port Clinton, Ohio between transits from Port Clinton to Put-In-Bay, Ohio. The vessel then got underway with more than 300 passengers aboard and headed to Put-In-Bay. During the transit, the vessel's Master reported that the vessel's starboard controls were "sluggish." When the vessel reached Put-In-Bay, the original passengers disembarked and 46 passengers boarded for the return trip to Port Clinton, Ohio. While the vessel was in Put-In-Bay, the vessel engineer addressed the situation regarding the sluggish controls. The vessel engineer concluded that the vessel's starboard controls were operating normally, but the response time was slower than on the port side. The engineer informed the Master of the situation and of the need to adjust docking procedures to take into account the slower reaction time of the starboard controls. When the vessel subsequently returned to Port Clinton, Ohio, it allided with the pier, causing damage to the vessel's hull. Concerning the allision, the Master reported a lack of response when he attempted to back on the starboard engine. The engineer opined that the approach to the pier was too fast considering the current, and that the Master had not compensated for the slower-reacting starboard controls.

I will first address the alleged violation of 46 CFR 4.05-1. 46 CFR 4.05-1(a) provides, in relevant part:

Immediately after the addressing of resultant safety concerns, the owner...shall notify the nearest Marine Safety Office, Marine Inspection Office or Coast Guard Group Office whenever a vessel is involved in a marine casualty consisting in—

* * *

(3) A loss of main propulsion, primary steering, or any associated component or control system that reduces the maneuverability of the vessel.

The Coast Guard alleges that a marine casualty occurred because the vessel's propulsion/steering controls were not functioning properly, as reported by the Master. The Coast Guard further alleges that a steering/propulsion failure was a contributing factor in the subsequent allision. However, the evidence supports a finding that the propulsion/steering controls were functioning properly, albeit slower on one side than on the other. There is no evidence in the record to suggest that the controls were operating outside the range of normal. The mere fact that the vessel's starboard controls were reacting slower than the port controls does not, of itself, support a conclusion that there was a "loss" of main propulsion, primary steering, or associated control system reducing maneuverability. It is conceivable that further evidence, such as expert testimony, could have been obtained showing that the slow reaction time of the starboard controls was of a degree that amounted to a marine casualty. However, given the record, there is insufficient evidence to support a finding that, prior to the allision, a reportable marine casualty occurred. The charge under 46 CFR 4.05-1 is dismissed.

I turn now to the negligent operation charge. As used in 46 USC 2302, negligence is the failure to use the care that a reasonable and prudent person would exercise under similar circumstances. A violation of 46 USC §2302(a) occurs when the operator's breach of the standard of reasonable care results in the endangerment of life, limb, or property of a person.

The Hearing Officer found the negligence violation proved in that [Redacted] failed to take the vessel out of service to determine the cause of the sluggish controls, failed to adjust the controls

to normal operations, and failed to adjust docking procedures during adverse wind and current conditions.

The third basis for the finding of negligent operation, failure to adjust docking procedures during adverse wind and current conditions, is attributable to the Master, the operator of the vessel in the navigational sense. This case is about the negligence of the company owning the vessel, [Redacted], as operator of the vessel in the management sense. Further, [Redacted] was not on notice, prior to the Hearing Officer's final letter of December 5, 2008, that docking procedures were at issue as a basis of the charge. For both reasons, the third basis is not a proper basis for the Hearing Officer's finding of negligent operation.

The Hearing Officer found that [Redacted] was negligent in that it failed to take the vessel out of service to determine the cause of the sluggish controls and failed to adjust the controls to normal operations. The question is whether a reasonable and prudent vessel operator would have continued to operate the vessel even though its controls were "sluggish." A negative answer to this question has not been established. For the same reason that I found insufficient evidence of a reportable marine casualty, I conclude that [Redacted] has not been proved negligent in continuing to operate given the condition of the controls. The charge under 46 U.S.C. 2302(a) is dismissed.

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action.

Sincerely,

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L. I. McCLELLAND
Civil Penalty Appellate Authority
By direction of the Commandant

Copy: Coast Guard Hearing Office
Coast Guard Finance Center
Coast Guard LSC-5, Claims and Collections Branch
Coast Guard Marine Safety Unit, Toledo