

In the Matter of License No. 92993
Issued to: ROBERT A. LEVY

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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ROBERT A. LEVY

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.

By order dated 14 January, 1954, an Examiner of the United States Coast Guard at Philadelphia, Pennsylvania, suspended License No. 92993 issued to Robert A. Levy upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as Master on board the American SS CHIWAWA under authority of the document above described, on or about 3 October, 1953, he wrongfully navigated his vessel on a voyage from lake Charles, Louisiana, to Philadelphia, Pennsylvania 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 evidenced the testimony of Lieutenant George A. Warren who had accompanied the Investigating Officer while he was investigating the possible overloaded condition of the CHIWAWA on 9 October, 1953. Lieutenant Warren testified that it was determined by accurate steel tape measurements from the lower edge of the one inch high deck line that the starboard freeboard amidships was 6 feet 2 inches and the port freeboard amidships was 6 feet 3 inches; that the upper part of the ship's fresh water load line marks were submerged approximately 3 inches below the surface of the water; and that a sample of water obtained by the Chief Mate in a bucket indicated that the specific gravity of the water was less than the specific gravity of fresh water. This was shown by the reading on a hydrometer which was placed in the bucket of water. The "zero" or fresh water mark on the hydrometer was about a quarter of an inch below the surface of the water in the bucket. The Investigating Officer rested his case after this testimony was obtained.

Counsel for Appellant made am motion to dismiss the charge and specification on the ground of failure of proof of the alleged facts. The Examiner concluded that a prima facie case had been made out and he denied the motion. Counsel included his opening statement in his argument on the

motion to dismiss. After several stipulations were entered into by the parties, Appellant testified under oath in his own behalf.

Appellant stated that he had personally supervised the loading of his ship at Lake Charles and that the ship was not overloaded upon departure from Lake Charles. Appellant further testified that the ship did not have any hog or sag or list at Lake Charles; the draft was 30 feet 8 inches (freeboard would then equal 6 feet 6 5/8 inches); and the consumption of bunker fuel, stores and water on the trip to Philadelphia should have caused the draft of the ship to decrease approximately 4 inches. Appellant admitted that the applicable load line of the ship was submerged when the ship arrived at Philadelphia but he claimed that this must have been due to a peculiar condition which reduced the specific gravity of the water and, consequently, caused the water to have less buoyancy than fresh water.

At the conclusion of the hearing, having given both parties an opportunity to submit argument as well as 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. 92993, 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:

POINT I. The charge and specification should have been dismissed because the findings made by Examiner are not supported by the record. The Investigating Officer admitted that the ship's 8 inch fresh water allowance should have been increased to allow for the unusual water condition as indicated by the hydrometer reading which was taken on 9 October, 1953. In view of the affirmative and uncontradicted testimony of the Master that the ship was not overloaded at Lake Charles, the only explanation for the ship's apparently overloaded condition on 9 October, 1953, is this increased submergence allowance. The amount of the latter was not determined.

POINT II. The record shows that Appellant did not violate the Coastwise Load Line Act of 1935 (46 U.S.C. 88) since he did exercise "reasonable care," as required by the statute, to prevent overloading.

POINT III. It is respectfully submitted that the order of the Examiner should be vacated. Alternatively, it is submitted that the order should be mitigated in view of Appellant's unblemished record during 15 years at sea. Appellant has been serving as a Master since 1945 when he was 21 years of age.

APPEARANCES: Messrs. McNutt and Nash of New York City By Eli Ellis, Esquire, of Counsel.

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

FINDINGS OF FACT

On a voyage including the dates of 3 to 10 October, 1953, Appellant was serving as Master on board the American SS CHIWAWA and acting under authority of his License No. 92993 while said vessel was proceeding from Lake Charles, Louisiana, to Petty's Island, New Jersey, which is on the opposite side of the Delaware River from Philadelphia, Pennsylvania.

The CHIWAWA is a T-2 type tanker of slightly more than 10,000 gross tons and she has a total depth of 37 feet, 2 5/8 inches, from which her freeboard and draft are measured. As shown by her load line mark, which is in accord with her International Load Line Certificate, the ship is permitted a minimum amidships freeboard, in salt water, of 7 feet 2 1/2 inches in summer load line zones. This limits the draft at the load line mark to a maximum of 30 feet and 1/8 inch in the summer load line zones in salt water. The summer load line zone limits were applicable at both Lake Charles and Philadelphia on the dates in question except that the CHIWAWA's Load Line Certificate states that she is allowed an additional submergence of 8 inches when the ship is in fresh water. Tables based on the density of water in various ports show that the percentage of the fresh water allowance permissible at both of the above ports is 100 percent. Hence, the minimum freeboard allowed was 6 feet 6 1/2 inches and the maximum draft allowed was 30 feet 8 1/8 inches. The freeboard is measured from the upper edge of the deck line to the upper edge of the appropriate line of the ship's load line markings. In this case, the freeboard of 6 feet 6 1/2 inches was the distance between the deck and the fresh water summer load line.

On 3 October, 1953, the CHIWAWA departed from Lake Charles, Louisiana, with a cargo of fuel oil and arrived at Petty's Island on 9 October, 1953. After the ship docked, it was ascertained that the mean freeboard amidships was 6 feet 3 1/2 inches. This is determined by the accurate measurements taken with the steel tape and adding one inch to allow for the one inch breadth of the deck line as required by 46 C.F.R. 43.05-5(a). A sample of surface water alongside the ship was tested with a hydrometer and the reading obtained indicated that the water was less buoyant than fresh water; but the specific density of the water was not determined.

OPINION

Pursuant to statutory authority (46 U.S.C, 85a), the CHIWAWA was surveyed and issued an International Load Line Certificate which provides that her minimum amidships freeboard in fresh water shall be 6 feet 6 1/2 inches in summer load line zones. Accordingly, the fresh water summer load lines were marked on the port and starboard sides of the ship. It is unlawful for a vessel on a coastwise voyage to be so loaded to submerge the applicable markings (46 U.S.C. 88c).

It is a definitely established and admitted fact that the fresh water summer load line of the CHIWAWA was submerged when the ship arrived at Petty's Island on 9 October, 1953. Measurements taken with a steel tape indicated that the average improper submergence of the applicable port and starboard load lines was 3 inches. And Appellant testified that the draft of the ship decreased approximately 4 inches on the voyage from Lake Charles to Petty's Island. The only logical inference from these facts is that the applicable load line was submerged about 7 inches upon departure from Lake Charles. Appellant has attempted to refute the latter conclusion by his repeated statements that the ship was only loaded to a permissible draft of 30 feet 8 inches at Lake Charles; and that the freeboard at Petty's Island was less than it would have been in fresh water because the buoyancy of the water was less than that of fresh water as shown by the hydrometer test at Petty's Island.

In the face strong inference to the contrary, Appellant's contention that the vessel was not overloaded at Lake Charles cannot prevail. Even if the specific gravity of the water at Petty's Island was less than fresh water as indicated by the hydrometer test of the water alongside the ship, it is extremely improbable that the difference in the buoyancy of the water could have accounted for more than a small percentage of the difference of 7 inches in the amidships freeboard at the time the vessel departed from Lake Charles. The improbability is increased by the fact that the sample of water was taken from the surface where the specific gravity might have been less than that of the water at one-half the draft of the vessel. And in view of the proven submergence of the applicable load line at Petty's Island, the burden was on Appellant to substantiate his theory (by analysis of the water) that the density of the water was sufficiently less than that of fresh water so as to account for the entire submergence of the load line.

Even though corroborated by the stipulation as to what pilot would have testified to if he had appeared at the hearing, the Examiner was not impressed favorably by the testimony of the Appellant regarding the loaded condition of the ship at the time of departure from Lake Charles. Such testimony may be rejected if it is indirectly contradicted by its inherent improbability in view of other circumstances and facts such as are present in this case. The Dauntless (CCA 9, 1904), 129 Fed. 715. And the Examiner, as the trier of the facts who saw and heard the witnesses, was in the best position to appraise what, if any, weight should be accorded the testimony of the Appellant.

As to whether Appellant exercised "reasonable care" to prevent overloading, it is important to consider the purpose of the load line statutes and regulations in order to determine what degree of care is considered to be "reasonable." These load lines are fixed so as to indicate the freeboard and drafts at which, for various conditions, there will still be left a sufficient percentage of reserve

buoyancy to insure the safety of the vessel. Since the failure to comply with these requirements might well endanger ships, cargoes, and the lives of the entire shipboard personnel, it is clear that Masters are bound to observe a very high degree of care in order to be certain that there is strict compliance with these statutes and regulations. Considering the degree of care required to be invoked and the probability that the applicable load line was submerged only slightly less than 7 inches when the ship left Lake Charles, it is my opinion that Appellant did not exercise "reasonable care" under the prevailing circumstances.

In view of the possible serious consequences of loading vessels beyond the point considered to be safe, the probationary suspension will not be mitigated despite Appellant's prior clear record.

ORDER

The order of the Examiner dated at Philadelphia, Pennsylvania, on 14 January, 1955, is ~~REVERSED~~ **AFFIRMED**.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 14th day of January, 1955.