

In the Matter of License No. 140691
Issued to: SIGURD A. OUGLAND

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1131

SIGURD A. OUGLAND

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulation 137.11-1.

By order dated 6 January 1959, an Examiner of the United States Coast Guard at Long Beach, California suspended, on probation, Appellant's license upon finding him guilty of negligence. The three specifications found proved allege that while serving as Pilot on board the Philippine M/V DONA AURORA under authority of the document above described, on or about 29 August 1955, Appellant failed to determine the position of the ship before proceeding to enter Long Beach Harbor; Appellant failed to set a proper course from the vicinity of the Long Beach Harbor Entrance Buoy to the harbor entrance so as to clear the east end of the Middle Breakwater; Appellant failed to navigate the ship with due caution, thereby contributing to the vessel's grounding at the east end of the Middle Breakwater.

At the beginning of the hearing on 31 August 1955 and subsequent dates, Appellant was represented by counsel of his own choice. Appellant entered pleas of not guilty to the charge and each specification. The parties introduced in evidence the testimony of witnesses and documentary exhibits. Oral argument was completed on 9 September 1955 and Appellant's written argument was received on 31 January 1956.

The Examiner had not rendered a decision by 9 April 1958 when the hearing was reconvened and substitute counsel for Appellant was granted leave to submit a brief to the Examiner. This was received on 13 June 1958. The Examiner rendered his decision on 6 January 1959. He concluded that the charge and above three specifications had been proved. An order was entered suspending Appellant's license for a period of five months on eighteen months' probation. An appeal from this order was timely filed and a brief was submitted in May 1959.

FINDING OF FACT

Early on the morning of 29 August 1955, Appellant was in charge of the navigation of the inbound Philippine M/V DONA AURORA while serving as Pilot and acting under authority of his License No. 140691. At this time, the ship was on northerly courses

approaching the Long Beach Channel entrance which extends about 600 yards between the breakwaters to the east and west of the entrance. The one to the west of the entrance is named the Middle Breakwater.

Appellant's license as Master unlimited has a pilotage endorsement for San Pedro Bay and tributaries. Both San Pedro Bay and the area designed as inland waters by the Commandant of the Coast Guard are bound by the two breakwaters and a line from one to the other across the channel entrance. Appellant did not have any other license to act as a pilot in these waters. He obtained this employment on the basis of having a Federal license since he had been employed for eleven years by Pilot Jacob A. Jacobsen who held a contract to supply pilots for vessels entering and leaving San Pedro Bay within the municipal limits of Long Beach, California. Possession of a Federal license was a mandatory requirement to belong to this group controlled by Pilot Jacobsen.

Appellant boarded the DONA AURORA, which is 504 feet in length, at 0726 on 29 August 1955 in the vicinity of the harbor entrance buoy located approximately three-quarters of a mile south of the channel entrance. There is a light on the breakwater on each side of the entrance. Fog had greatly reduced the range of visibility at this time. Under such circumstances, the Pilot is customarily aided by receiving radar information, from the pilot station in Long Beach, sent by short wave radio. After going to the bridge, Appellant obtained from the pilot station a bearing to the mid-point of the channel entrance and a bearing to the light at the east end of the Middle Breakwater on the left or west side of the entrance. Without plotting this information or checking it with the ship's radar, Appellant commenced maneuvering the ship on northerly courses at slow speeds. About 0737, a patch of thick fog was observed ahead and the engines were slowed. Appellant was unable to contact the pilot station with his portable radio-telephone. He ordered both engines stopped when the ship entered the dense fog at 0739.

About this time, the ship's Master, who had been observing the radar, gave Appellant his opinion as to the location of the ship relative to the entrance. Assuming that this advice was accurate, Appellant ordered the rudder hard right at 0740 to change course to North. Again, without checking the ship's radar, Appellant thought that this would cause the ship to pass between the two breakwaters into the channel. Personnel at the pilot station observed from the radar that the ship was too far to the west but attempts to contact Appellant were unsuccessful. Less than a minute after the rudder change, Appellant sighted the Middle Breakwater light, on the west wide of the entrance, a short distance off the port bow and ordered both engines full stern. At 0742, the ship struck the underwater base of the Middle Breakwater and remained aground on it until 0940.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the Coast Guard does not have jurisdiction in this case because proceedings under 46 U. S. Code 239 are penal in nature. Hence, the statute must be strictly construed. This interpretation leads to the

conclusion that Appellant was not "acting under the authority of his license," as required by the statute, both because Appellant was on a foreign vessel and because the grounding occurred in territorial, cruising waters which are outside the inland, pilotage waters covered by the endorsement on Appellant's license. It has been held that a Federal pilot's license is not operative on a foreign vessel and its use is confined to certain geographical limits. Tyson v. Tibbetts (D.C. Calif., 1936), unreported. Therefore, the Master was in charge of the ship.

It is respectfully submitted that it is important to know what is considered to be the limitations on the Coast Guard jurisdiction so that the Cities of Los Angeles and Long Beach may, by direct licensing or otherwise, protect themselves and their employee pilots

Appearance on appeal: Ekdale and Shallenberger of San Pedro, California by Arch E. Ekdale, Esquire, of Counsel.

OPINION

I am substantially in accord with the findings of fact made by the Examiner and with his reasoning pertaining to the jurisdictional issues which counsel for Appellant has discussed at length both before and after the Examiner rendered his decision. Hence, the detailed findings and reasoning contained in his decision are incorporated by reference with respect to those matters which are not fully covered herein.

On the question of negligence, it is my opinion that the record clearly establishes the fact that Appellant was guilty. Although navigating in fog, he did not at any time personally attempt to determine the position of the vessel by use of the ship's radar or other navigational aids on the ship. At first, Appellant depended entirely on the pilot station for information. Later, when radio contact was lost, he relied solely on the Master's report from the radar rather than personally observing it. Appellant should not have placed so much reliance on either source of information when he was conning the ship.

As pointed out by the authorities cited by the Examiner, there is a presumption of negligence when a moving vessel strikes something stationary and a pilot is not exonerated because of fault on the part of the master of the ship or others. Under the prevailing circumstances, Appellant was required to have taken positive, affirmative action to personally check the position of the ship in order to be reasonably certain of her location at all times. Obviously, Appellant did not do this.

With respect to the jurisdictional issue as to whether Appellant was "acting under the authority of his licenses" as required by 46 U.S. Code 239, it is my opinion that this is a remedial statute and, therefore, should be liberally construed. In addition to the reason stated for this proposition in the Commandant's appeal decisions including No. 338, the Attorney General has stated that although penalties or forfeitures have been held to be penal when they primarily denote punishment and even though a suspension or revocation of a seaman's licenses may be considered to be a penalty in a general sense, the latter type of disciplinary proceedings do not connote penal action

or result in a penalty in the legal sense because such proceedings are viewed, not in the light of a punishment for an offense committed, but rather as a remedy to insure greater efficiency and to guard against obstructions of commerce. 24 Op. Atty. Gen. (1902) 136, 141-2. As expressed by the Examiner in other words, the purpose of these proceedings is to protect the public interest by prompting the safety of life and property at sea rather than to punish seamen for offenses committed.

It follows that, under the liberal construction given to a remedial statute, it is perfectly reasonable to conclude that Appellant was acting under the authority of his license when the DONA AURORA ran aground. A liberal construction resolves all reasonable doubts, as to the meaning of the words, in favor of the applicability of the statute to cases within the spirit or reason of the law. In the case under consideration, Appellant was required to have a Federal pilot's license or endorsement, for San Pedro Bay, as a condition of employment. Otherwise, he would not have been on the ship. In accordance with the usual procedure, Appellant took charge of the navigation of the ship while approaching the channel entrance although his pilotage endorsement did not specifically include the waters beyond the entrance. But as a practical matter, Appellant's services as an experienced pilot in these waters were required as much, or more, in reaching the entrance in a fog as in navigating the channel. It contradicts the facts of the case to say that the Master was in charge of the s
ship's navigation after Appellant went on board and commenced giving rudder and engine orders.

The contention that jurisdiction was lacking because this was a foreign vessel was disposed of in Commandant's Appeal Decision No. 1077. The additional factor, present here, that the DONA AURORA was not in the inland waters of the United States is relatively unimportant since the ship was well within the limits of the territorial waters of the United States and approaching the inland waters specifically included in Appellant's endorsement. Federal pilots are not precluded by any law from operating under their licenses in these nearby territorial waters off Long Beach. These waters are, for all practical purposes, "pilotage waters, or waters within which it is necessary for safe navigation to have a local pilot". The Delaware (1896), 161 U.S, 459, 463.

The case of Tyson v. Tibbetts which is mentioned by Appellants clearly distinguishable. The pilot in that case had not only a Federal license but a State of California license which was "in no way dependent upon any federal license". The collision with another vessel occurred in waters covered by the pilots State license but not within the geographical limits of his Federal license. The court properly held that the pilot was acting under the authority of his State license and that no action could be taken against his Federal license. With respect to Appellant's situation, he not only did not have any license other than the Federal one but none were issued by the State or local authorities for this area. Consequently, Appellant was serving as a Long Beach municipal pilot solely by virtue of having an endorsement on his Federal license.

For these reasons based on a liberal construction of the remedial statute under which these administrative, disciplinary proceedings are conducted, I conclude that Appellant was acting under the authority of his Federal license. Hence, there was jurisdiction to proceed against it.

CONCLUSION

The conclusions that the charge and specifications were proved are affirmed. But in view of the fact that the record fails to explain satisfactorily the excessive lapse of time since the commencement of the hearing in August 1955, it will be considered that the eighteen months' period of probation has expired as of the date of this decision. The delay in the various processes in this case from the time of the incident, a period of four and a half years, tends to defeat the remedial purpose of these proceedings to act as a deterrent in the immediate future. This purpose has been discussed above in greater detail.

ORDER

The order of the Examiner dated at Long Beach, California, on 6 January 1959, is AFFIRMED as MODIFIED in the above Conclusion.

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

Dated at Washington, D.C., this 28th day of January, 1960.