

IN THE MATTER OF LICENSE NOS. 17955, A-91309 AND ALL OTHER LICENSES
Issued to: CARL A. JESPERSEN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1495

CARL A. JESPERSEN

This appeal has been taken in accordance with Title 46 United States Codes 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 14 October 1964, an Examiner of the United States Coast Guard at San Francisco, California, suspended Appellant's motorboat operator's licenses for six months outright upon finding him guilty of misconduct. The two specifications found proved allege that while serving as Operator on board the United States motorboat BOTTOM BANDIT under authority of License No. 17955, on 11 July 1964, Appellant wrongfully failed to perform his duties, due to being under the influence of intoxicating beverages, while under way engaged in fishing outside of Morro Bay, California with eleven passengers on board; and, at this time, Appellant wrongfully consumed intoxicating beverages.

The BOTTOM BANIT is diesel-propelled, 38 feet in length, and certificated to carry up to 18 passengers. Appellant's License No. 17955, authorizes him to act as Operator of mechanically propelled passenger-carrying vessels of not more than 30 gross tons on the Pacific Ocean, not more than 20 miles off shore between Point Sal.

At the hearing, Appellant elected to act as his own counsel. Since Appellant entered a plea of guilty to the charge and each specification, no evidence was introduced.

In his opening statement, the Investigating Officer said the investigation indicated that Appellant drank alcoholic beverages, belonging to the passengers, to such an extent that it became necessary, on several occasions, for him to leave the wheel and go below while one of the passengers operated the vessel. Later, Appellant navigated the vessel in the channel to Morro Bay and docked without incident.

Appellant stated that, after being up practically all night due to illness, he still was not well when they got under way at 0730; he consumed a few beers and then went to sleep below while the vessel was drifting in one of the fishing areas.

At the end of the hearing, the Examiner rendered a written decision in which he concluded

that the charge and two specifications had been proved by plea.

OPINION

The sole contention on appeal is that the six months' outright suspension is excessive and unjust under the circumstances and in view of Appellant's otherwise clear record for twenty years.

It is apparent that as a result of Appellant's willful consumption of alcoholic beverages, he became incapacitated to perform his duties as operator of the fishing vessel. Hence, Appellant drank to excess which was misconduct in itself as well as leading to the additional offence of being unable to perform his duties due to his own misconduct of having had too much to drink.

Ordinarily, a six months' suspension would not be excessive for such offenses. Appellant showed a lack of responsibility which endangered the lives of all his passengers since he was the only licensed operator serving on the BOTTOM BANDIT at the time. Appellant was bound to have realized that he should not have further impaired his physical condition by drinking any intoxicating liquor if he was still ill when he did so.

Nevertheless, the order will be modified in view of Appellant's prior clear record for twenty years and the fact that he was able to navigate the vessel through the channel without incident on the return trip to Morro Bay.

ORDER

The order of the Examinere dated at San Francisco, California, on 14 October 1964, is modified to provide for an outright suspension of three (3) months and an additional suspension of three (3) months which is not to become effective unless Appellant is found guilty of an offense committed within six (6) months after completion of the outright suspension.

As MIDIFIED, the order is AFFIRMED.

E. J. ROLAND
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 1st day of April 1965.

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