

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 441141
AND MERCHANT MARINER'S DOCUMENT NO. Z-319027 "R"
Issued to: Henry GABLE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2102

Henry GABLE

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 17 August 1976, an Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida, suspended Appellant's license and Merchant Marine documents for two months outright plus six months on twelve months' probation upon finding him guilty of the charge of "negligence." The specification found proved alleges that while serving as First Assistant Engineer on board the United States SS EAGLE LEADER, under authority of the license and document above captioned, the Appellant "did on or about 18 March 1976 at approximately 1600 negligently energize the feedback circuit breaker on the generator switchboard thereby allowing 440 volts A.C. power from the emergency generator to flow to the main switchboard in the engine room creating a dangerous arc, all the while knowing that the main switchboard was disabled from an electrical casualty the day before and that engineering personnel were working in the vicinity of the main switchboard making a survey of the damage."

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and the specification.

The Investigating Officer introduced in evidence the testimony of four witnesses as well as three exhibits.

In defense, Appellant offered in evidence his own testimony.

At the end of the hearing, the Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant suspending all documents, issued to Appellant, for a period of two months outright plus six months on twelve months' probation.

The entire decision and order was served on 24 August 1976. Notice of Appeal was timely filed on 10 September 1976 and the

Appeal was perfected on 4 February 1977.

FINDINGS OF FACT

On 18 March 1976 the United States SS EAGLE LEADER was en route to Jacksonville, Florida under tow in the Atlantic Ocean just off the Florida coast. The vessel had become disabled as a result of an electrical casualty which occurred the previous day. The casualty had damaged the main electrical switchboard in the vessel's engine room and the switchboard had thus been deenergized to prevent further damage. The sole source of electrical power was supplied by the emergency diesel generator through the emergency switchboard both being located in a separate compartment on a level above the engine room. All electrical equipment was secured except for emergency lighting.

The Appellant is the holder of Engineer's License No. 441141 issued by the U. S. Coast Guard which qualifies him to serve as Chief Engineer, steam vessels, any horsepower and Third Assistant Engineer, motor vessels any horsepower. Additionally, the Appellant is the holder of U. S. Coast Guard Merchant Mariner's Document No. Z-319027 "R", qualifying him for any unlicensed rating in the engineering department and as a lifeboatman. On 18 March 1976, Appellant was serving on board the EAGLE LEADER as First Assistant Engineer and was serving under the authority of his license and document. The Appellant had first obtained his Chief Engineer's license some 27 or 28 years prior to the incident under review. He had served on the EAGLE LEADER since 10 September 1973 and had considerable knowledge of the vessel's mechanical and electrical systems.

On the afternoon of 18 March 1976 Appellant had been assigned by the Chief Engineer of the EAGLE LEADER to record certain data from the various burned out circuit breakers so that new parts could be ordered upon arrival at Jacksonville. At approximately 1600, while in the emergency generator room to record such data, the Appellant noticed that the switch of the circuit breaker which feeds 440 volts A.C. power to the main switchboard in the engine room was in the "mid-position." Whereupon Appellant "jiggled" the switch to ascertain whether it was defective. This action caused current to flow from the emergency switchboard to the main switchboard creating a dangerous electrical arc accompanied by a loud noise, smoke and fire in the engine room. At the time of the incident the Appellant knew there were engineering personnel in the engine room in the vicinity of the main switchboard. Further, the Appellant had witnessed the dangerous effects of energizing this switch on the previous day, 17 March 1976, when the circuit breaker was switched on under the direction of the chief engineer during

the casualty investigation. The action of the Appellant in energizing the circuit breaker exposed those personnel in the engine room to a possible fatal electrical charge and increased the possibility of damage to the vessel's electrical equipment.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that the Administrative Law Judge's Findings of Fact 16, 20, 21 and 22 of his Decision and Order dated August 17, 1976 is not supported by the record. It is further contended that the Coast Guard failed to meet its burden of proof that the act or acts of the Appellant were the proximate cause of the arcing.

APPEARANCE: Markowitz and Glanstein, New York, N.Y.

OPINION

I

Appellant's assertion that the record does not support the Administrative Law Judge's Findings of Facts at paragraphs numbered 16, 20, 21 and 22 is itself unsupported. The Appellant's argument appears to be based on the assumptions that the 440 volt circuit breaker had to be engaged or locked in the on position in order for current to flow to the main switchboard, that the switch in the mid-position is an indication that the switch is defective, and that it was Appellant's duty to repair the defective electrical switches.

The record shows by the Appellant's own testimony that he was not to conduct any repair (TR 152) that his duty was to record the numbers and sizes of the circuit breakers (TR 160, 162-164). The record also shows by the Appellant's own testimony that the switch in the "mid-position" indicates that it has been "tripped out" because of an overload condition. Such a condition existed the previous day when this same switch was energized (TR 150-151). Whether or not jiggling the switch could cause electrical contact to be made is answered by the Appellant in his own testimony (TR-177) and is supported by the other testimony of record. As to the jiggling of the switch itself the Appellant testified that "...I just pressed it down a short distance and then I brought it all the way up..." (TR 184).

Clearly there is sufficient evidence in the record to support

the findings of the Administrative Law Judge at paragraphs 16, 20, 21 and 22.

II

The Appellant's contention that the Coast Guard has failed to meet its burden of proof that the act or acts of the Appellant were the proximate cause of the arcing is unfounded. The quantum of proof required to support a finding in these administrative proceedings is substantial evidence of a reliable and probative character. 46 CFR 5.20-95(b) . Commandant's Appeal Decision 2052 (NELSON). The testimonial evidence including that of the Appellant clearly supports the finding that the action of the Appellant in jiggling the circuit breaker switch energized the main switchboard and caused the electrical arc.

CONCLUSION

Having reviewed the entire record and having considered Appellant's arguments, I find that there is sufficient evidence of a reliable and probative nature to support the findings of the Administrative Law Judge.

ORDER

The order of the Administrative Law Judge dated at Jacksonville, Florida on 17 August 1976, is AFFIRMED.

E. L. PERRY
Vice Admiral, U. S. Coast Guard
Vice Commandant

Signed at Washington, D. C., this 26th day of April, 1977.

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