

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
LICENSE NO. 388977 MERCHANT MARINER'S DOCUMENT  
Issued to: Michael A. STRELIC Z-377309

DECISION OF THE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2237

Michael A. STRELIC

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

By order dated 17 September 1979, an Administrative Law Judge of the United States Coast Guard at Boston, Massachusetts, suspended Appellant's license number 388 977 and all other valid Coast Guard licenses issued to Appellant for three (3) months on twelve (12) month's probation, upon finding him guilty of negligence. The specification found proved alleges that while serving as Master on board SS AMOCO CONNECTICUT, under authority of the license and document above captioned, on or about 20 December 1978, Appellant negligently failed to ensure that the vessel's position was fixed and plotted on a chart of the area, Narragansett Bay, which is a part of the navigable waters of the United States.

The hearings were held at Providence, Rhode Island, on 16 January, 13 March, 22 May and 10 July 1979.

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

The Investigating Officer introduced in evidence an Affidavit of Service of the Charge Sheet; Charts of Narragansett Bay (No. 13223), Martha's Vineyard (No. 13218), and Providence River (No. 13224); the testimony of LT William J. Morani; the deposition of Francis J. Smith, Second Mate; and log entries of the AMOCO CONNECTICUT for 19 and 20 December 1978.

In defense, Appellant offered in evidence an unsworn statement of Francis J. Smith dated 20 December 1978; a copy of page 96, U.S. Coast Pilot Vol. 2, edition; Mr. H.M. Walker, Jr. letter of 15 May 1979 to the Administrative Law Judge; Mr. Christopher H. Mansuy letter of 16 May 1979 to the Administrative Law Judge; Mr. Mansuy's letter of 1 June 1979 to the Regulations and Administrative Law Judge Division of the Coast Guard; and a copy of page 292 of Bowditch's American Practical Navigator, Vol. 1, 1977 edition.

After the hearing, the Administrative Law Judge rendered a

written decision, in which he concluded that the charge and single specification had been proved. He then entered an order suspending all licenses issued to Appellant for a period of three (3) months on twelve (12) months' probation.

The entire decision was served on 20 September 1979. Appeal was timely filed on 15 October 1979 and perfected on 17 July 1980.

#### FINDINGS OF FACT

On 20 December 1978, Appellant was serving as master on board SS AMOCO CONNECTICUT and acting under authority of his license while the vessel was at sea.

Appellant was issued Merchant Marine Officer's License No. 388 977 on 25 August 1975, which authorizes him to serve as Master of steam and motor vessels of any gross tons upon oceans and Radar Observer. He was issued Merchant Mariner's Document No. Z-377 309 on 15 January 1951, which authorized him to serve in any unlicensed rating in the Deck Department, including Able Seaman, Any Waters, Unlimited.

The SS AMOCO CONNECTICUT is a self-propelled tank vessel of 12,491 gross tons. On 20 December 1978 the AMOCO CONNECTICUT was on voyage No. 772 from Pascagoula, Mississippi, to Providence, Rhode Island.

From about 0354, when the compulsory pilot arrived on board at Brenton Reef Light, until about 0600 on 20 December 1978, in Providence, fixes were taken and recorded in the Bell Book by the Second Mate, Francis J. Smith. During the period from 0354 until 0600 the Second Mate checked the vessel's position frequently on the chart of the area, using the radar, available lights, buoys, and distinguishing features onshore as it transited Narragansett Bay, which is a navigable water of the United States.

During the period from 0354 until 0600 on 20 December, AMOCO CONNECTICUT was directly or conned by the pilot.

Prior to taking the pilot on board the vessel's position was fixed and frequently plotted on a chart of the area.

Upon taking on the pilot about 0354 on 20 December 1978, until the vessel tied up at about 0706, no fixes were plotted on any chart of the area by the Second Mate or anyone else.

There is no evidence that the vessel's position as determined by the Second Mate was relayed to either the Master or the pilot, who was directing the movement of the vessel.

The passage of the AMOCO CONNECTICUT through Narragansett Bay on 20 December 1978 was uneventful; without casualty, personal or property damage, or other incident.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that:

- (1) The Administrative Law Judge erred in denying Appellant's motion for change of venue;
- (2) There is no evidence to support the conclusion that Appellant failed to ensure, while in the navigable waters of the U.S., that the vessel's position was fixed and plotted on a chart of the area;
- (3) There is no evidence to support a finding of negligence by Appellant; and
- (4) The penalty is excessive and unjust.

#### OPINION

Appellant's first basis of appeal lack merit. The grounds stated in the motion for a change of venue amount to mere inconvenience of the Appellant and his counsel in traveling to Providence from New Jersey and New York. As held in Decision on Appeal No. 1934, a claim of inconvenience because of failure to get a change of venue is not persuasive.

Appellant's second basis of appeal also fails. Not only does the specification allege "Narragansett Bay", it alleges that the failure to fix and plot fixes occurred in a "navigable body of water of the United States." Appellant tries to equate this specification with the specification which the Administrative Law Judge dismissed. That argument fails, because 33 CFR 164.11(c) requires the plotting of fixes on a chart of the area (within the "navigable waters") for "each" fix taken. 33 CFR 164.25, on the other hand, requires tests before entering navigable waters. The argument that only one fix is required upon entering U.S. waters is ludicrous and is refuted by the word "each" and the language "constantly manned" in 33 CFR 164.11(a).

It is also clear that Appellant's contention concerning "track plotting" is inaccurate. The regulation clearly requires that "each" fix taken be plotted on a chart of the area. The preamble to those regulations does not override the regulatory requirements, and lacks the force of law. In any event the preamble only

discusses "track plotting" as being unnecessary. Plotting a track is graphically depicting on a chart (or plotting sheet) the rhumb line or lines depicting the actual path of a vessel. Plotting a fix, on the other hand, is graphically depicting a vessel's position at one point in time. It is essential that the fix be recorded on a chart to ensure a fix is taken and to show the trend of the vessel's actual movement. In this case there is no evidence that the pilot or Master even looked at the chart, nor is there evidence that the Second Mate advised the pilot, who was directing the movement of the vessel, of the location of the fixes taken as required by 33 CFR 164.11(c). This transit occurred in darkness (Smith deposition at page 5). Despite the fact that no injury occurred, a nighttime transit of the restricted waters of a bay by a pilot who was not receiving position data by the Second Mate or by reference to a chart of the area could easily have resulted in a casualty of serious proportions, especially since this was an oil tanker. It is clear that no fix was plotted on a chart of the area or relayed to the pilot as required by 33 CFR 164.11(c), but equally clear that the vessel's positions were recorded in the Bell Book by the Second Mate. Therefore, the findings have been amended to delete any reference to failure to ensure that the vessel's position was fixed. The specification was proved that the Master failed to ensure that fixes were plotted on a chart of the area while the vessel was in the navigable waters of Narragansett Bay. The charge of negligence is sustained, regardless of the issue of failure to inform the pilot of the vessel's position, since Appellant was clearly on notice that the specification was based expressly on 33 CFR 164.11(c), which includes both forms of neglect of duty (Record at page 1-11).

Appellant's third basis of appeal must fail because the negligence charge is based on the concepts of 46 CFR 5.05-20. As held in Decisions on Appeal Nos. 1755 and 2166, there is no need for a casualty or similar incident to sustain a charge of negligence.

Appellant's fourth and final basis of appeal is also without merit. As held in Decisions on Appeal Nos. 2002 and 2173, the order of an Administrative Law Judge will not be modified on appeal unless it is arbitrary or capricious. This order was not, and in fact was less than the average sanction noted in the Table of Average Orders (46 CFR 5.20-165).

Finally, although not raised on appeal, the findings have been modified to show that Appellant was not acting under authority of his Merchant Mariner's Document (Z-377 309), since the neglect of duty related solely to his status as a Master (officer), and officers are not required to hold a Certificate of Service. The Administrative Law Judge, therefore, quite properly limited the

order to the above captioned license and any other valid "licenses" of Appellant.

CONCLUSION

The findings, as modified, are base upon substantial evidence from the record as a whole, and support the allegation that Appellant was negligent in failing to ensure that fixes were plotted on a chart of the area while his vessel was navigating in Narragansett Bay.

ORDER

The order of the Administrative Law Judge entered at Boston, Massachusetts, on 17 September 1979 is AFFIRMED.

R. H. SCARBOROUGH  
Vice Admiral, U. S. Coast Guard  
Vice Commandant

Signed at Washington, D.C., this 26th day of February 1981.