

UNITED STATES COAST GUARD  
UNITED STATES OF AMERICA vs.  
MERCHANT MARINER'S DOCUMENT  
Issued to: John CONWAY Z-018-22-3080-D4

DECISION OF THE VICE COMMANDANT  
UNITED STATES COAST GUARD

2246

John CONWAY

This appeal has been taken in accordance with Title 46 U.S.C. 239(g) and CFR 5.30-1.

By order dated 18 March 1980, an Administrative Law Judge of the United States Coast Guard at New York, New York, admonished Appellant upon finding him guilty of negligence. The specification found proved alleges that while serving as Tankerman on board the TANK BARGE E 21, under authority of the document above captioned, at or about 20 July 1979, while the barge was moored in Perth Amboy, New Jersey, Appellant wrongfully caused the opening of the manifold valve before the hose connections were complete, thus permitting a harmful quantity of oil to spill into the Raritan River, a navigable water of the United States.

The hearing was held at New York at various time from 16 August 1979, to 14 March of 1980.

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

The Investigating Officer introduced in evidence two exhibits and the testimony of five witnesses.

In defense, Appellant offered in evidence three written statements, two documents, his own testimony, and that of a witness.

After the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He then entered a written order admonishing Appellant.

The entire decision was served on 18 March 1980. The appeal was timely filed on 11 April 1980, and perfected on 16 September 1980.

FINDINGS OF FACT

On 20 July 1980, Appellant was serving as Tankerman on board T/B E 21 and acting under authority of his document while the vessel was moored at Perth Amboy, New Jersey. Appellant was the tankerman in charge of T/B E21 which was preparing to transfer a cargo of oil to the Hess Terminal.

The barge had been loaded the previous evening and was brought by tug to the Hess Terminal on the Raritan River. It was a clear morning. By 1015 the barge was secured and Appellant had maneuvered the boom supporting the barge discharge hose so that the Hess dock workers could commence coupling the hose to the shoreside facility. Appellant could not see the Hess workers coupling the hose because the level of the dock was about 15 feet above the level of the deck. No pumps were running on the barge.

As the Hess workers were coupling the barge discharge hose to the shoreside manifold, Appellant was providing instruction to a trainee. In preparation for discharging cargo, Appellant directed the trainee to open the barge manifold discharge valve, knowing that the two other valves in the discharge line were secured and that the discharge hose rose 15 feet to the level of the dock. However, as the trainee opened the valve, a rush of air was released, which spewed oil from the gap remaining between the manifold flanges. The Hess workers who were making the coupling were sprayed with oil, and two or three gallons entered the Raritan River. There were only three bolts in the coupling flanges; on one the nut was almost hand tight, and on the other two the nuts were barely turned on.

The Coast Guard Pollution Investigator arrived on scene at about 1300. After several hours of investigation the investigator hypothesized that the sun had heated the barge discharge line, thereby expanding the air and providing the necessary pressure to expel the residue oil. This theory was suggested after the more common causes were ruled out and the investigator had inadvertently touched the discharge line, finding it hot.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Because of the disposition of this case, it is unnecessary to recite the specific arguments raised by Appellant.

APPEARANCE: Marvin Schwartz, Esq., 243 Waverly Place, New York, N.Y. 10014.

#### OPINION

Appellant was charged with wrongfully causing the opening of the barge manifold valve before the hose connections were complete, thus permitting a harmful quantity of oil to spill into the navigable waters of the United States. Negligence is defined by pertinent regulations at 46 CFR 5.05-20(a)(2):

"...the commission of an act which a reasonably prudent person of the same station, under the same circumstances, would not commit, or the failure to perform an act which a reasonably prudent person of the same station, under the same circumstances, would not fail to perform." In order to prove the charge, it is necessary to prove that Appellant's conduct is some manner failed to conform to the standard of care required of a reasonably prudent tankerman under the same circumstances as confronted Appellant. It is not necessary that Appellant has taken every possible precaution to prevent the discharge of oil. He need only have exercised the quantum of care required of a reasonably prudent person under similar circumstances.

I find that the evidence adduced at the hearing is insufficient to carry the burden of proving by substantial evidence that Appellant was negligent in directing that the barge manifold discharge valve be opened. The evidence offered by the Investigating Officer was that: 1) the discharge line was "hot"; 2) the Appellant had not inspected the barge and hose connections; and 3) the opening of the valve allowed a rush of air to force residue oil out the uncompleted coupling and into the navigable waters of the United States. The Investigating Officer also called the Coast Guard Pollution Investigator who testified that it was his theory that the morning sun had heated the discharge line, thus expanding the air and creating the pressure that expelled the residue oil. The pollution investigator's theory was decided upon after he had ruled out the more common causes for a discharge of oil. No other evidence was presented to explain the air pressure that forced the residue oil up 15 foot rise from the barge to the dock. This retroactive speculation upon the risk assumed by Appellant in directing the opening of the valve does not constitute substantial evidence that the Appellant was negligent.

The Investigating Officer also attempted to establish T/B E21's Oil Transfer Procedure Manual, and 46 CFR 35.35-20, as the standard of care governing Appellant's actions. The oil transfer regulations required the tankerman's inspection of the entire transfer system prior to handling cargo; however, there is no evidence in the record that the oil transfer regulations applied at the time the manifold discharge valve was opened. Thus it was not shown that the preparation to handle cargo involves the same standard of care as required for the actual transfer of oil.

Additionally, there is no evidence in the record to show that Appellant's recognition that the pipeline was hot was sufficient of itself to trigger the inspection requirements of the transfer regulations prior to opening the manifold discharge valve. Thus, knowing that the pipeline was hot might suggest that opening the valve would release expanded air, but would not reasonably dictate the same precautions that would be taken if the Appellant were to start the oil transfer pumps. Also, the 15 foot rise in the line from the barge to the dock level could be a reasonable precaution against the discharge of any residual oil in the line.

#### CONCLUSION

The evidence in the record fails to disclose that a reasonably prudent tankerman in charge of T/B E21 would have inspected the cargo transfer system prior to opening the barge manifold discharge valve. The opening of the valve under the circumstances of this case was not negligent in itself. Without substantial evidence to support the charge alleged, the order of the Administrative Law Judge must be vacated and the charge dismissed.

#### ORDER

The order of the Administrative Law Judge dated at New York, New York, on 18 March 1980, is VACATED and the charge DISMISSED.

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

Signed at Washington, D.C., this 3rd day of June 1981.