

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 499 640
Issued to: James Edward Durand Z-537 38 9922

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2249

James Edward Durand

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

By order dated 30 November 1979, and Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida, suspended Appellant's license for three months, plus six months on twelve months' probation, upon finding him guilty of misconduct. The amended specification found proved alleged that while serving as Operator on board the United States M/V PILOT, O.N. 580326, under authority of the documents above captioned, on or about 22 September 1977, Appellant operated said vessel in the Southwest lane, in contravention of the Strait of Dover Traffic Separation Scheme promulgated under authority of IMCO Resolution A. 284 (VIII), 20 November 1973. A second amended specification, that Appellant did ship and discharge seaman without filing a report as required by 46 U.S.C. 643(1), was found not proved.

The hearing was held at Jacksonville, Florida, on 23 April, 23 July, 28 September, and 4 October 1979.

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

The Investigating Officer introduced in evidence thirteen documentary exhibits and the testimony of one witness.

In defense, Appellant offered in evidence three documentary exhibits and the testimony of three witnesses, including his own.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and first specification had been proved. He then entered an order suspending all documents issued to Appellant for a period of three months plus six months on twelve months' probation.

The entire decision was served on 13 December 1979. Appeal was timely filed on 26 December 1979.

FINDINGS OF FACTS

PILOT is an uninspected towing vessel of 199.1 gross tons, employed at the time in support of oil industry in the Irish Sea. Because of damage sustained to her port propeller, PILOT traversed the Strait of Dover enroute Amsterdam to effect repairs. The trip necessitated a crossing of the Strait of Dover in the area covered by the Strait's Traffic Separation Scheme.

Traffic Separation Schemes (TSS) are established under the auspices of the Intergovernmental Maritime Consultative Organization (IMCO). The TSS in question was duly promulgated by IMCO and in force on the date in question. Rule 10 of the International Rules for Preventing Collisions at Sea, 1972 (COLREGS), in effect at the time, governs the use of these schemes. Regulations of the United States make observance of the COLREGS mandatory for United States vessels. Thus the TSS had the force of law for PILOT. Traffic in the southwest lane of the Dover TSS proceeds on a course of approximately 235°T in the area in question. To cross this lane at right angles a vessel would steer a course of about 145°T or its reciprocal. The COLREGS require a vessel to cross a TSS as nearly as practicable at right angles.

PILOT crossed the southwest TSS lane on a course of between 080°T and 100°. No unusual weather or current conditions prevailed in the Strait at the time. At the time of the crossing, Appellant was off watch and the vessel was under the control of a British licensed officer.

In light of my resolution of this appeal, further findings of fact are not required.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge.

Appellant raises six exceptions to the findings and conclusions of the Administrative Law Judge with respect to the specification found proved. In essence, two exceptions are voiced:

(1) the twice amended specification is legally insufficient to allege any act or omission on the part of Appellant constituting misconduct; and

(2) the Investigating Officer failed to carry the burden of proving by substantial evidence of a reliable and probative character that a violation of the Traffic Separation Scheme occurred.

APPEARANCE: Almer W. Beale, II, Esq., of Toole, Taylor, Moseley & Joyner, Jacksonville, Florida.

OPINION

Although not expressly raised by Appellant in his appeal, there is a threshold question of jurisdiction to be addressed in this case.

It was accepted without contention at the hearing that Appellant was serving as master of PILOT under authority of his operator's license.

Appellant's license entitles him to "operate" uninspected towing vessels. R.S. 4427(b), 46 U.S.C. 405(b); 46 CFR 10.16. PILOT is subject to no law or regulation which would require the presence on board of a "duly licensed master."

It is clear on this record that Appellant was not directing and controlling PILOT at the time of the alleged violation of DOVER TSS, but was off watch. An "operator" is subject to R.S. 4450 proceedings for professional activities peculiar to his licensed status solely for the period during which he is directing and controlling the vessel pursuant to his operator's license.

The jurisdictional basis for R.S. 4450 proceedings is manifestly absent in this case. Other issues, both procedural and substantive, are raised by this appeal, but in light of the foregoing discussion, no useful purpose would be served by addressing those issues.

ORDER

The order of the Administrative Law Judge dated at Jacksonville, Florida, on 30 November 1979, is VACATED and the charges DISMISSED.

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

Signed at Washington, D.C., this 8th day of June 1981.