

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT and License No. 42066
Issued to: George K. Sherman Z-1166281

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2262

George K. Sherman

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 30 June 1980, an Administrative Law Judge of the United States Coast Guard at Boston, Massachusetts, suspended Appellant's license and document for two months, upon finding him guilty of misconduct. The single specification found proved alleges that while serving as Master on board the United States M/V OCEAN PRINCE, O.N. 276461, under authority of the document and license above captioned, on or about 1545, on 10 March 1980, Appellant wrongfully failed to notify the nearest Marine Inspection Office as soon as possible of the collision of the Tank Barge HYGRADE 42, O.N. 515005 with the fender system of the Brightman Street Bridge in the Taunton River, causing damage in excess of fifteen hundred (\$1500) dollars, as required by 46 CFR 4.05-1.

The hearing was held at Providence, Rhode Island, on 25 March and 14 April 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 seventeen documentary exhibits and the testimony of three witnesses.

In defense, Appellant offered in evidence two 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 single specification had been proved. He then entered an order suspending all documents issued to Appellant for a period of two months.

The entire decision was served on 3 July 1980. Appeal was timely filed on 14 July 1980 and perfected on 16 December 1980.

FINDINGS OF FACT

Appellant is licensed to serve as operator of uninspected towing vessels upon oceans not more than 200 miles offshore and the inland waters of the United States, not including the western rivers.

On 10 March 1980, Appellant was serving as operator of an uninspected towing vessel, M/V OCEAN PRINCE, which is under 200 gross tons.

There is no evidence in the record that Red Star Marine Towing, the owner of OCEAN PRINCE, required Appellant to possess a license as a condition of his employment as master of the M/V OCEAN PRINCE.

In light of my resolution of this appeal, further findings of fact are not required except to correct one finding by the Administrative Law Judge.

The Administrative Law Judge stated in finding 18 that one Pruym(sic) reported the incident to the Coast Guard in writing on a CG Form 2692 which he mailed to MSO, Providence, R.I., within the next several days (after 11 March 1980). He also allowed Appellant's proposed finding of fact 34, which states that Pruim mailed a completed 2692 report for the casualty of 10 March 1980 to Providence Coast Guard within 72 hours (citing ????? testimony). Nowhere in the record is there testimony that the 2692 was mailed to the Coast Guard. It appears from the record as a whole that a 2692 was prepared by Pruim for the casualty on 10 March 1980 and "would have been sent" to Providence, except that the Coast Guard boarded OCEAN PRINCE on 11 March 1980. No 2692 appears in the record and no testimony established that one was mailed. The record as a whole supports the finding of fact that one Stebbins reported to the tug's owner about 0930 on 11 March 1980, concerning the 10 March allision; that Pruim prepared a 2692; and that the 2692 was not mailed to the Coast Guard at all, either because the Coast Guard boarding on 11 March 1980 made the report seem unnecessary to Pruim or because the damage seemed too minor to report.

BASES OF APPEAL

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

- (1) The opinion was in error in finding that the damage to the fender system exceeded \$1,500.00;
- (2) The opinion was in error in finding that Appellant did

not have a valid defense after 1800 hours;

(3) The Administrative Law Judge erred in refusing to recognize that the Coast Guard has a policy of accepting, as valid reporting compliance, the mailing of a 2692 form within 72 hours of a casualty;

(4) The Administrative Law Judge erred in not finding that a 2692 form was filed without delay; and

(5) The Administrative Law Judge was prejudiced against Appellant and desired to be as punitive as possible.

APPEARANCE: Richard E. Meyer, Esq., of McHugh, Leonard & O'Connor, New York, New York.

OPINION

Although not raised by Appellant in his appeal, there is a threshold question of jurisdiction, which resolves this case without need to address the stated bases of appeal.

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

Appellant's license entitles him to "operate" uninspected towing vessels, such as OCEAN PRINCE. R.S. 4427(b), 46 U.S.C. 405(b); 46 CFR 10.16. OCEAN PRINCE is subject to no law or regulation which would require the presence on board of a "duly licensed master." 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. In this case, Appellant was not on watch at the time of the allision with the bridge fender system when the duty to report arose. Had the allision occurred on his watch, of course, Appellant would be obligated to meet the reporting requirements of the regulations.

The jurisdictional basis for an R.S. 4450 proceeding is manifestly absent in this case. Other procedural and substantive issues 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 Administrative Law Judge dated at Boston, Massachusetts, on 30 June 1980, is VACATED and the charge

DISMISSED.

R. H. SCARBOROUGH
VICE ADMIRAL U. S. COAST GUARD
VICE COMMANDANT

Signed at Washington, D.C., this 31st day of August 1981.