

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 52840 and MERCHANT MARINER'S DOCUMENT
Issued to: James Wilson Hebert MMD 437 68 5491

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2270

James Wilson Hebert

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

By order date 12 February 1981, an Administrative Law Judge of the United States Coast Guard at Houston, Texas, suspended Appellant's seaman's documents for two months, plus two months on four months' probation, upon finding him guilty of negligence. The specifications found proved alleged that (1) while serving as operator on board the United States M/V CAPT. JOHN under authority of the documents above captioned, on or about 1900 hours 10 December, 1979, Appellant failed to navigate said vessel with caution by not providing an adequate lookout when his vessel's visibility was restricted by the barge it was pushing, contributing to a collision, (2) while serving as aforesaid, fail to navigate said vessel with caution by not keeping to that side of the midchannel which was on the starboard side of said vessel, contributing to a collision, and (3) while serving as aforesaid fail to sound the appropriate whistle signals, all while navigating on the Neches River, Texas, in the general vicinity of Port Neches Park and Jefferson Chemical Company Docks.

The hearing was held at Port Arthur, Texas, on 7 October 1980, 29 October 1980, 13 November 1980 and 26 November 1980.

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

The Investigating Officer introduced in evidence the testimony of six witnesses and six documents.

In defense, Appellant offered in evidence his own testimony and respondent's exhibits A through J.

Subsequent to the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and three specifications had been proved. He then served a written order on Appellant suspending the above captioned documents for a

period of two months plus two months on four months' probation.

The entire decision was served on 14 February 1981. Notice of Appeal was timely filed on 11 March 1981 and perfected on 19 August 1981.

FINDINGS OF FACT

On 10 December 1979 Appellant was serving under the authority of his Coast Guard issued license as operator of the Tug CAP. JOHN, which was made up to the stern of T/B HCC 101 on the Neches River. At approximately 1900 two flotillas were traveling in opposite directions in the general vicinity of Port Neches Park and Jefferson Chemical Docks, in or near Port Neches, Texas. One flotilla consisted of the Tug CAPT JOHN pushing T/B HCC 101 downbound. The other flotilla consisted of the Tug TEAL pushing the T/B B-2300 upbound assisted by the Tug JANE B.

At approximately 1900 on 10 December 1979, the port bow of the HCC 101 collided with the port bow of the B-2300 then with the port push knee of the Tug JANE B. Near Port Neches, the location of the collision, the channel is dredged about 400 feet wide with more shallow water on each side of the dredged channel. The visibility was approximately three to five miles. Winds were from the southwest at five to ten knots without gusts.

The barge B-2300 is 269.1 feet in length 52.7 feet in breadth and 14.1 feet in depth. On the night of the collision the barge was empty with a draft of 2.5 feet. The T/B HCC 101 is 195 feet in length 35 feet in width and 12 feet in depth. This barge was also empty with a draft of approximately 4 feet. Since the barges were riding extremely high in the water, the forward vision of both tug operators was severely restricted. Both tugs had operating radar, but they were ineffective for the area and configuration of their respective flotillas. There was no lookout posted on the barge HCC 101, instead, the lookout was in the wheelhouse with the operator at the time of the casualty. Prior to the collision the CAPT JOHN navigated through a sharp bend in the channel up river of the collision and failed to sound the appropriate signals.

At approximately 2200, the Coast Guard officials arrived and commenced their investigation. While there was property damage resulting from this casualty, there was neither loss of life nor personnel injury.

BASES OF APPEAL

This appeal has been taken from the order imposed by the

Administrative Law Judge at Houston, Texas. Appellant contends that the Administrative Law Judge should have dismissed the case since the hearing began nine months after the date of the casualty. Appellant also contends that the evidence was insufficient to prove that he failed to provide an adequate lookout, that he failed to keep his vessel starboard of the centerline of the channel and that he failed to sound appropriate whistle signals.

OPINION

I

Appellant presents an argument of laches, in that the Coast Guard failed to conduct the hearing in a timely manner. The fact that the hearing was delayed several months is not disputed. The Investigating Officer stated that he had tried to contact Appellant by mail regarding this case. He was unable to do so until shortly before the hearing. Before the doctrine of laches can be applied, it must be shown that the delay was inexcusable and the appellant was prejudiced by such delay. Decisions on Appeal Nos. 1382, 1480, 2064, and 2253. There was no showing that the delay was unreasonable nor that it substantially prejudiced Appellant. Latches would not apply in this case.

II

Appellant contention that he provided a proper lookout is refuted by the evidence in this case. The configuration of his flotilla restricted his view forward. The evidence showed that there was a definite blind spot looking forward from the wheelhouse of his tug due to the size and construction of the barge he was pushing. The fact that appellant, by his own admission, did not see the approaching flotilla strongly suggests that his lookout was not properly located. Decision on Appeal No. 2046.

III

The Administrative Law Judge received voluminous testimony concerning whether Appellant's flotilla was on the starboard side of the center line of the channel when the collision occurred and whether appropriate whistle signals were made prior to the collision. Some of the testimony was conflicting. While Appellant contends that his version of the events was more believable than the other witnesses and that the Administrative Law Judge erred in his findings, the credibility of each witness is better evaluated by the Administrative Law Judge below rather than on appeal. Decision on Appeal No. 1127. Unless a review of the total record shows that

the findings of the Administrative Law Judge were clearly erroneous, his findings shall be affirmed. Decision on Appeal No. 2154. Upon careful review of the record I do not find that the Administrative Law Judge's findings were clearly erroneous.

CONCLUSION

I conclude that the Administrative Law Judge did not err in denying Appellant's motion to dismiss the charge and specifications based on the theory of laches.

There is substantial evidence of a reliable and probative nature to support the Administrative Law Judge's findings that the charge of negligence and three specifications were proved.

ORDER

The order of the Administrative Law Judge dated at Houston, Texas, on 12 February 1981, is AFFIRMED.

R. H. SCARBOROUGH
Vice Admiral, US COAST GUARD
Vice Commandant

Signed at Washington, D.C., this 19th day of January 1982.