

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
LICENSE NO. 526748 and MERCHANT MARINER'S DOCUMENT  
Issued to: Robert D. Ricker 005-36-2162

DECISION OF THE VICE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2287

Robert D. Ricker

This appeal was taken in accordance with Title 46 United States Code 239(g) dated 28 January 1982, an Administrative Law Judge of the United States Coast Guard at Boston, Massachusetts suspended Appellant's license no. 526748 for one month, on six months' probation, upon finding him guilty of misconduct and negligence. The specification of misconduct found proved alleges that, while serving as person in charge on board the United States T/V VINCENT TIBBETTS under authority of the license above captioned, on or about 29 September 1981, Appellant wrongfully failed to sign the declaration of inspection while in charge of loading operations aboard the vessel as required by 33 CFR 156.150(a). The specification of negligence found proved alleges that, at the same time and place he negligently failed to ensure that the #4 port cargo tank loading valve was closed upon completion of the loading of that tank allowing the tank to overflow and discharge oil in a hazardous amount into the Fore River, a navigable water of the United States.

The hearing was held at Portland, Maine on 20 October 1981 from 1000 to 1512 and on 18 November 1981 from 1002 to 1258.

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

The Investigating Officer introduced in evidence the testimony of MK 3 Thomas Quigley, USCG who investigated the oil spill, Mr. Carl F. McCann, the person in charge of the cargo loading operation on the watch before Appellant, Mr. Howard L. McDonald the able seaman on watch with Appellant and 8 exhibits including the declaration of inspection for the cargo transfer and the Oil Transfer Procedures for the vessel.

In defense, Appellant offered in evidence his own testimony.

After the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that both charges and the single specification under each had been proved. He then

served a written order on Appellant suspending License No. 526748 issued to Appellant for a period of 1 month on 6 months' probation.

The entire decision was served on 2 February 1982. Appeal was timely filed on 24 February 1982 and perfected on 2 July 1982.

#### FINDINGS OF FACT

On 29 September 1981, Appellant was serving as Master on board the United States T/V VINCENT TIBBETTS and authority of his license and document while the vessel was in the port of South Portland, Maine. The T/V VINCENT TIBBETTS, O.N. 257217, is a tankship 244 ft in length with a cargo capacity of 16,000 bbls. There are seven cargo tanks, numbered one to seven, fore to aft. Each tank is divided into port and starboard compartments. The vessel is operated by Boston Fuel Transportation, Inc.. at about 0330 on 29 September 1981 she arrived at the Astroline Terminal on the Fore River, South Portland, Maine, where she was to receive a mixed cargo of unleaded gasoline and fuel oil.

When the T/V VINCENT TIBBETTS arrived, Mr. McCann, the mate, was on watch. He signed a declaration of inspection as person in charge of the vessel and commenced loading tanks 1,2, and 7 with unleaded gasoline and tanks 4,5, and 6 with fuel oil. There was some confusion regarding the quantity and type of cargo to be loaded in No 3 tank so it was not loaded at that time. The loading proceeded uneventfully during Mr. McCann's watch. Both he and his AB were relieved at about 0550 by Appellant and his AB., Howard L. McDonald. At that time Mr. McCann advised Appellant of the confusion regarding the cargo to be loaded in No. 3 tank and that AB Dash had a tooth infection. AB McDonald's document carried no endorsement as "tankerman," and Appellant knew that on 29 September 1981.

The loading proceeded uneventfully during Appellant's watch until No 4 cargo tank was filled. Appellant topped off the No. 4 starboard tank and AB McDonald topped off No. 4 port tank. The AB did this by directing the dockman to "squeeze down" on the dockside line valve as the cargo level rose to its proper ullage mark. The dockman secured his valve when the cargo actually reached the proper mark. The AB then drained the line and turned the No. 4 port valve to close it. At about 08008 after No. 4 port tank had been loaded, cargo operations were temporarily stopped. All tanks except No. 3 had been loaded and the crew still did not know what should be loaded in it.

About 0830 Appellant was notified that fuel oil should be loaded in tank No. 3 and the vessel commenced loading again. About

0910 Appellant left the deck to attend to paper work in his office. When he left he neither checked the No. 4 port cargo valve to ensure that it was fully closed nor ordered McDonald to do so.

At about 0915 when McDonald was alone on deck, cargo spilled out of the No. 4 port tank ullage opening onto the deck and then into then into the river. McDonald, who was standing by the No. 3 port valve, ordered the dockman to shut down and went immediately to the No.4 port valve on which he took about three turns, securing it. The cargo flow stopped immediately. The area of pollution in the Fore River measured about 75 feet by 200 feet.

At about 0945, LT Gauvin of the CG Marine Safety Office, Portland, Maine arrived at the T/V VINCENT TIBBETTS. Upon examining the vessel's documents, he noted that Captain Ricker had not signed the vessel's copy of the declaration of inspection.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended, with respect to the specification under the misconduct charge, that the Judge erred in determining that a declaration of inspection must be signed by each successor to the person in charge before that person assumes the duties of person in charge. With respect to the charge of negligence and its specification, Appellant contends that the Coast Guard has failed to produce evidence of a standard of care that would have been followed by a reasonably prudent master of a coastwise tanker under the same circumstances.

#### OPINION

##### I. The Charge of Misconduct

33 CFR 156.150(A) states:

"No person may transfer oil to or from a vessel unless each person in charge... has filled out and signed the declaration of inspection form...."

The wording of the regulation, on its face, clearly requires that the signature of each person in charge be already present on the declaration of inspection whenever oil is transferred to or from a vessel. Each successor to the original person in charge must sign the declaration of inspection before assuming the duties of person in charge.

##### II. The Charge of Negligence

Appellant was charged with negligence in failing to ensure that the No.4 port cargo tank loading valve was closed upon completion of the loading of that tank. He does not dispute that he did not personally check the valve to ensure that it was closed or that he left AB McDonald alone on deck during the loading of tank No. 3. He asserts only that the Coast Guard has not produced evidence of a standard of conduct necessary to conclude that his actions were negligent.

Included with exhibits introduced by the Coast Guard are the Oil Transfer Procedures for the T/V VINCENT TIBBETTS. Some of the pertinent parts of the transfer procedures are as follows:

"L. Duties of Deck Watch:

1. Licensed Deck Officer in charge of all transfer operations.

. . . .

3. Able Seaman or Ordinary Seaman to perform duties as directed by Deck Officer.

. . . .

O. Topping Off Cargo:

1. Deck Officer on watch will notify dockman to standby shore valves and will then supervise the topping off of cargo tanks. The loading rate will be reduced if necessary to perform the topping off operation safely.

2. Able Seaman on watch will top off cargo tanks at the pre-determined ullages and close each cargo tank valve as that ullage is reached.

3. After each cargo tank is topped off and the tank valve is closed an inspection will be made to determine that there is no leakage into any tank.

P. Closing Valves Upon Completion of Cargo Transfer:

1. Able Seaman on watch will close all tank valves.

2. Engineer on watch will stop all cargo pumps.

3. Able Seaman will below [sic] back cargo hose.
4. Able Seaman on watch and other vessel personnel as designated by the Deck Officer on watch will close cargo hose valves, disconnect cargo hoses from shore connection, and blank the ends of the hoses while being held over the drip pans on the dock.
5. The Deck Officer on watch will personally check to insure that all tanks valves have been closed, that any other valves connected to the system have been closed and that the cargo hose blank is in place and is secured."

33 CFR 155.720 requires that the vessel operator provide these procedures. 33 CFR 155.730 states that the vessel operator must require vessel personnel to follow them. 33 CFR 155.750 requires that, among other thing, the oil transfer procedures set forth the duties of each person required for oil transfer operations and include procedures for ensuring that all valves used during the transfer operation are closed upon completion of transfer. Negligently failing to perform the duties set forth in the oil transfer procedures subjects the person in charge to charges. Commandant's Decision on Appeal 2232 (MILLER).

In addition, 46 CFR 35.35-35(a) requires the senior deck officer on duty to supervise the operation of cargo system valves. Commandant's Decision on Appeal 2188 (GILLIKIN) defines the word "supervise" in this section as referring to "constant attention" and "continuous checking."

33 CFR 156.160(c) requires "each person in charge" to be "in the immediate vicinity" whenever oil is transferred to or from a vessel.

The Oil Transfer Procedures and the regulations set forth a clear standard against which to measure the performance of the person in charge of oil transfer on the T/V VINCENT TIBBETTS. The evidence is clear and undisputed that Appellant did not personally check the No. 4 port cargo tank valve to ensure that it was closed and that he left AB McDonald, a person without a tankerman's endorsement on his document, alone on deck during the loading of tank No.3 while he attended to paperwork in his office. The Judge's finding that he negligently failed to check the valve as required is well supported. Attending to paperwork in his office can hardly be said to be the "constant attention" or "continuous checking" required of the person in charge of the transfer. He was not in the "immediate vicinity" as required. The Judge'S finding that he negligently failed to properly supervise the transfer is also well supported.

Appellant also argues that the Oil Transfer Procedures should be interpreted to require that the valve be checked by the person in charge only after the entire ship is loaded. This argument takes an overly narrow view of the duties of the person in charge of the transfer and ignores his duty under 46 CFR 35.35-35(a) and Commandant's Decision on Appeal 2188 (GILLIKIN) to be "continuously checking" and giving "constant attention" to such valves. Although it was proper for the Judge to hear evidence and arguments regarding the meaning of the Oil Transfer Procedures, when, as in this case, the Judge's interpretation is reasonable, it will not be disturbed on appeal.

Appellant also argues that under the circumstances it was reasonable for him to leave the deck to attend to other matters in his office. This argument, as the previous one, ignores the high level of responsibility placed on the person in charge to give "constant attention" to his duties. The Judge's determination is reasonable it will not be disturbed on appeal.

#### CONCLUSION

The findings that both charges and the specifications under them are proved are well supported by the evidence and correctly apply the applicable law.

#### ORDER

The order of the Administrative Law Judge dated at Boston, Massachusetts on 28 January 1982, is AFFIRMED.

B. L. STABILE  
Vice Admiral, United States Coast Guard  
VICE COMMANDANT

Signed at Washington, D.C., this 15th day of December 1982.