

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 504065
Issued to: Alexander Ruby, Jr.

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2293

Alexander Ruby, Jr.

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 504065
Issued to: Alexander Ruby, Jr.

and

LICENSE NO. 494831
Issued to: Peter S. Smith

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

By orders dated 31 March and 8 April 1981, an Administrative Law Judge of the United States Coast Guard at Baltimore, Maryland admonished Appellants, Peter S. Smith and Alexander Ruby, Jr., who were Master and Chief Engineer of the SS JACKSONVILLE, respectively. The specification of the misconduct charge alleges that while serving as Master and Chief Engineer of the vessel under authority of the documents above captioned, on or about 21 January 1981, Appellants did not fail to notify the nearest Coast Guard Marine Safety Office of repairs affecting the safety of the vessel, namely, boiler tube plugging repairs.

The hearing was held in joinder at Baltimore, Maryland on 30 January 1981.

At the hearing, Appellants were represented by the same counsel. Both Appellants entered pleas of not guilty to the charge and specification.

The Investigating Officer introduced into evidence the testimony of four witnesses and one document.

In defense, the Appellants offered in evidence the testimony of one witness and three documents.

Subsequent to the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification against Appellants were proved. He then served written orders of admonition on Appellants.

The decision was served on 16 April 1981. The joint appeal was timely filed on 18 May and perfected 30 November 1981.

FINDINGS OF FACT

On 21 January 1981, Appellants were serving as Master and Chief Engineer aboard the SS JACKSONVILLE and acting under

authority of their licenses.

Prior to the date of the alleged violation, SS JACKSONVILLE had visited the ports of New York on 17 January, and Philadelphia on 19 January 1981. While in these ports, several leaking tubes in the vessel's starboard boiler had been plugged by Port Engineers employed by Sea-Land Service, Inc.

On 20 January 1981 at about 4:00 p.m., SS JACKSONVILLE arrived in the port of Baltimore. It had both boilers in service but shut the starboard boiler down for further examination soon after arrival.

On 21 January 1981 at about 9:00 a.m., LTJG Steven Melsom from Marine Safety Office, Baltimore boarded the vessel to investigate an alleged assault. While he was on board, the port boiler went out of service leaving the vessel on emergency power. Upon asking, he learned that the boilers were out of service to plug tubes and that several tubes in the starboard boiler had been plugged both in New York and Philadelphia. LTJG Melsom then contacted LT George Wright, Marine Safety Office, Baltimore by telephone. LT Wright arranged to have CWO Wetherington inspect the repairs.

At about 2:00 p.m., CWO Wetherington boarded the SS JACKSONVILLE and was informed that several boiler tubes had been plugged under the direction of Sea-Land Port Engineer, Daniel Schroppe and observed him hydrostatically test the starboard boiler. The starboard boiler failed this test. Eventually, the vessel was towed to Norfolk, Virginia.

BASES OF APPEAL

This appeal has been taken from the Decision and Order of the Administrative Law Judge. Appellants assert the Administrative Law Judge erred:

1) when he denied a defense motion to dismiss the charge and specification at the conclusion of the Investigating Officer's case;

2) when he held that the applicable regulations create non-delegable duties on the part of Masters and Chief Engineers of inspected vessels to report such repairs;

3) when he held that the "custom, policy and practice" of Sea-Land Service and the marine industry did not relieve Appellants of their responsibility to comply with the reporting requirements; and

4) when he concluded that plugging boiler tubes is a repair

which affects the safety of the vessel.

APPEARANCES: Ober, Grimes & Shriver, by John M. Kinsey

OPINION

I

Appellants first assert that the Administrative Law Judge erred when he denied their motion to dismiss upon closing of the Investigating Officer's case. I do not agree.

Appellants were charged with misconduct because they failed to notify the nearest Coast Guard Marine Safety Office of intended boiler tube repairs which affected the safety of the vessel. There was evidence that neither the Master nor the Chief Engineer notified the Coast Guard of the boiler tube repairs on 21 January 1981. Such repairs are required to be reported under 46 CFR 91.45-1, 46 CFR 50.05-10 and 46 CFR 59.01-5. Therefore, the Administrative Law Judge did not err in denying Appellant's motion.

II

Appellants next content that the Administrative Law Judge erred when he held that the duty to report such repairs to the Coast Guard was not delegable. The argument is not persuasive.

On 21 January 1981, Peter S. Smith was the Master of the SS JACKSONVILLE. The law is well established that the master of a vessel is the person who is in "command" of the vessel and is responsible for the safety of the vessel and crew. Appeal Decision No. 2098 (CORDISH). While he may delegate duties to others which affect vessel and crew safety, he may not rely on such delegations to escape responsibility for the results. Appeal Decision No. 360 (CARLSEN). Thus, Masters of inspected vessels may not avoid the responsibility for failure to report boiler repairs by delegating the duty to do so to others. At least, they must assure that such notice is provided by those to whom they have assigned the responsibility.

On 21 January 1981, Alexander Ruby, Jr. was the Chief Engineer of the SS JACKSONVILLE. In reading 46 CFR 97.30-1, 46 CFR 91.45-1, 46 CFR 50.05-10 and 46 CFR 59.01-5 together, it becomes clear that Chief Engineers of inspected vessels also have a non-delegable duty to provide notice of boiler repairs to the Coast Guard.

The Administrative Law Judge took official notice that Chief Engineers are responsible for the maintenance of boilers, and machinery which are under their cognizance. Sections 50.05-10 and

59.01-5 of 46 CFR require that the Officer in Charge, Marine Inspection be notified of boiler repairs and that the repairs be done under his cognizance. Section 91.45-1 of 46 CFR requires that the Officer in Charge, Marine Inspection be notified prior to commencement of repairs affecting machinery or equipment. Section 97.30-1 of Title 46 CFR also requires such notice and states that the "Chief Engineer" is required to "submit a report covering the nature of the repair to the Officer in Charge, Marine Inspection, at or nearest the port where the repairs are to be made," before making any boiler repairs. Since Appellant Ruby was Chief Engineer on an inspected vessel, and the intended repairs, that is, boiler tube plugging repairs, were within his cognizance the responsibility outlined within these regulations can only be interpreted as one which applied to him personally and was non-delegable. See also Appeal Decision No. 2286 (SPRAGUE).

Upon arriving at Baltimore, both Appellants relied on company policy which delegated the duty to notify the Coast Guard of the intended repairs to the Port Engineer. However, the fact that the Port Engineer should have done this, does not relieve them of responsibility for ensuring that it was done.

III

Appellants contend that the "custom, policy and practice" of Sea-Land Service and the marine industry relieve Appellants of their responsibility to notify the Coast Guard of the intended boiler repairs. Appellants' contention is unfounded.

The evidence of record establishes that it is a common shipping practice for vessel owners and operators to utilize Port Engineers when the vessel is in port. While the Port Engineer may have a duty assigned to him by his employer to notify the Coast Guard, his primary responsibility is only directed to his employer for any failure in performance. The Coast Guard deals with such Port Engineers for the owner's convenience under varying circumstances. However, such a practice does not overcome the requirements of the regulations as set forth above or the Master's traditional responsibility for his vessel.

Appellants assert that their conduct should be judged by the Sea-Land policy for maintenance of safety aboard its vessels. They rely on Appeal Decision No. 1567 (CASTRO). This argument is not persuasive. In Castro, supra, the Administrative Law Judge relied on a company's alcohol possession policy for guidance, where such guidance was not available in the regulations. Because there are regulations which address the issue here, company policy, especially where it conflicts with such regulations, is not controlling. Appeal Decision No. 1073 (FARACLAS).

Last, Appellants content that the responsibility for giving notice of boiler repairs was transferred by the steamship owner and operator to a substitute worker and rely on Appeal Decision No. 1861 (WASKASKI). In that case, it was suggested that hiring a stand-by watch stander might have constituted a defense if he were approved by "proper authority." This argument is not persuasive because Appellants have not shown that Port Engineer, Daniel Schroppe, was qualified to assume the duties of Master or Chief Engineer or ever actually did so.

IV

Appellants next argue that the Administrative Law Judge erred in concluding that plugging boiler tubes is a repair which affects the safety of the vessel. This argument is without merit. The regulations discussed above establish the requirement to report such repairs and dispose of this issue. See SPRAGUE, supra.

CONCLUSION

I find that there is sufficient evidence of a reliable and probative character to support the findings that the respective charge and specification against Peter S. Smith and Alexander Ruby, Jr. are proved.

ORDER

The orders of Administrative Law Judge, dated at Baltimore, Maryland on 31 March and 8 April 1981 are AFFIRMED.

B. L. Stabile
Vice Admiral, U. S. Coast Guard
Vice Commandant

Signed at Washington, D.C., this 21st day of March 1983.