UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 511418
Issued to: Timothy Fales

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2306

Timothy Fales

This appeal was taken in accordance with Title 46 Code 239(g) and 46 CFR 5.30-1.

By order dated 25 July 1980, an Administrative Law Judge of the United States Coast Guard at Boston, Massachusetts suspended Appellant's license for one month on twelve month's probation, upon finding him guilty of negligence. The specifications found proved allege:

(1) That while serving as Chief Mate on board the United States T/V ALLEGIANCE, O.N. 271866 under authority of the license above captioned, between 12 October 1979 and 19 December 1979, Appellant had responsibility for all cargo equipment and failed to maintain that equipment in safe operating condition such that:

1. No. 10 cargo pump in aft pumproom was leaking from both shafts;

2. No. 11 cargo pump in aft pumproom was leaking excessively from packing gland;

3. Port bulkhead stop valve on suction line in aft pumproom was leaking through the packing gland;

4. No. 5 cargo pump suction line was holed and leaking in amidships pumproom;

5. No. 5 cargo line riser valve in amidships pumproom was leaking;

6. No 12 cargo pump discharge riser in aft pumproom was repaired with a cement patch.

(2) That while so serving Appellant allowed an excessive amount of product to accumulate and remain in the amidships pumproom bilge creating a hazardous condition aboard the vessel.

The hearing was held at Melville, Rhode Island and Boston, Massachusetts on 28 January, 11 and 26 February, 11 March, 16 April and 12 June 1980.

The hearing was held in joinder with those of John D. Gaboury, Master of the vessel and Kenneth Surat Singh, the chief Engineer. 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 17 exhibits and the testimony of 5 witnesses.

In defense, Appellant and the other respondents offered in evidence 18 exhibits and the testimony of 4 witnesses in addition to their own testimony.

The record of the hearing consists of: 860 pages of transcript; 120 pages of exhibits; and a 63 page Decision and Order.

After the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and both specifications had been proved. He then entered an order suspending all licenses issued to Appellant for a period of one month on twelve months' probation.

The entire decision was served on 28 July 1980. Appeal was timely filed and perfected on 21 August 1980.

FINDINGS OF FACT

Appellant signed on the United States T/V ALLEGIANCE at Boston, Massachusetts on 12 October 1979 as Chief Mate. He served in this capacity until 19 December 1979 under authority of his Merchant Mariner's License No. 511418. The vessel's "Oil Transfer Procedures" specifically designate the Chief Mate as being in charge of all cargo operations and being responsible to the Master for the safe transfer of cargo and ballast. Some of his specific duties were "inspection of transfer components, such as bonding cable, pipes, hoses, pumps, valves (suction/filling sea valves blanks), scupper plugs, unused piping, blanks..."These duties applied at all times, and not merely during actual transfer of cargo.

T/V ALLEGIANCE is a United States flag tankship, O.N. 271866 of 19,474 gross tons and 13,025 net tons. The vessel is 632 feet in length, 90.4 feet in breadth, and 45.4 feet in depth. At 0034 on 13 December 1979 the T/V ALLEGIANCE departed Lake Charles, Louisiana for Braintree, Massachusetts, with a cargo of over

265,000 barrels of No. 2 heating oil and gasoline. The vessel arrived at the Cities Service Company Terminal, in Braintree at 1130 on 19 December 1979. Cargo transfer hoses were on at 1310.

At about 1400 on 19 December 1979 a team of Coast Guard petty officers led by Petty Officer Edward Ham boarded the T/V ALLEGIANCE for a routine tank vessel inspection. Between noon and 1300 that day LCDR Russell W. Badger, Chief of the Inspection Division, MSO Boston, received two anonymous telephone calls reporting a cement patch on one of the vessel's cargo lines. As a result, he dispatched Marine Inspector CWO Carl Beal to examine the vessel. CWO Beal arrived after Petty Officer Ham had started his inspection.

During the course of their inspection, CWO Beal and Petty Officer Ham discovered the following:

1. There was a strong odor of gasoline in the amidships pumproom and the entire bilge of the pumproom was covered with liquid to a depth of about two feet. They could find no water in the liquid.

2. The port bulkhead stop valve on the suction line in the aft pumproom was leaking. A stream of product between 1/8 inch and 1/4 inch in diameter was running from the bottom of the valve to the bilge.

3. The No. 12 cargo line discharge riser had a cement patch on it.

4. Product was being thrown from both forward mechanical shaft seals of the No. 10 cargo pump in a stream 1/4 inch in diameter.

5. The No. 11 cargo pump was leaking product out of the packing gland. A 1/8 inch diameter stream was flowing to the bilge.

At 1700 on 19 December, Mr. Beal departed the vessel.

At about 1930 on 19 December another Coast Guard marine inspector, LTJG David W. Bemis boarded the vessel to continue the inspection. He found the following:

1. There was an "extremely heavy" odor of gasoline in the pumproom and an accumulation of product in the bilge between 1 foot and 1 1/2 feet deep.

2. There was a hole about 1 inch in diameter in the suction side of the No. 5 cargo line beneath the No.5 cargo pump. Gasoline was leaking into the bilge in a stream 1/2 to 3/4 inch in diameter.

3. The No. 5 cargo line riser valve was leaking internally.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. The following bases are asserted by Appellant:

I. Failure of the Coast Guard to sustain its burden of proof that Appellant "failed to maintain or cause to be maintained said equipment in a safe operating condition" between "12 October 1979 and 19 december 1979."

II. Failure of the Coast Guard to prove that Appellant was negligent in respect to items one through six of the specification of the charge of negligence.

III. Failure of the Coast Guard to prove the second specification i.e. that Appellant "while serving as above (Chief Mate of T/V ALLEGIANCE) did between 12 December and 19 december 1979, allow an excessive amount of product to accumulate in the amidships pumproom bilges."

IV. Improper denial of Appellant's Motion to Dismiss.

V. Improper denial of Appellant's Requests for Proposed Findings.

VI. Exceptions taken at the hearing.

VII. Denial of a fair and impartial hearing.

In support of these bases, Appellant has submitted an 81 page brief. In the brief Appellant discusses at length the testimony of the various witnesses and the Administrative Law Judge's rulings and manner of conducting the hearing. For the sake of brevity these matters will not be set out in greater detail here, but will be discussed, as necessary, in the following Opinion.

APPEARANCE: Frankland W. L. Miles, Jr. of Miles and Miles, Esqs. 59 Main St., Plymouth, MA.

OPINION

The Issue of which witness to believe is involved in several of the bases for appeal. Therefore, it is discussed here rather than with each of them separately. Appellant, at great length, recites the testimony of witnesses favorable to him and, in essence, argues that the Administrative Law Judge should have believed them rather than other witnesses. This is an appropriate argument for the hearing; however, on appeal the standard is different.

It is well settled that:

> "It is the function of the judge to evaluate the credibility of witnesses in determining what version of events under consideration is correct. Commandant's Appeal Decision 2097 (TODD). The question of what weight is to be accorded to the evidence is for the judge to determine and, unless it can be shown that the evidence upon which he relied was inherently incredible, his findings will not be set aside on appeal. O'Kon v. Roland, 247 F.Supp. 743 (S.D.N.Y. 1965)."

Commandant's Appeal Decision 2116 (BAGGETT). see also Commandant's Appeal Decisions 2099 (HOLDER) and 2108 (ROYSE). Thus, so long as the Administrative Law Judge's determinations are reasonable and are supported by the evidence they will be disturbed.

I

Appellant asserts that the Coast Guard has failed to prove that he "failed to maintain or cause to be maintained said equipment in a safe operating condition" between "12 October 1978 and 19 December 1979." I do not agree.

The vessel's "Oil Transfer Procedures" specifically gave Appellant, as Chief Mate, the responsibility for inspecting and ensuring the safety of the cargo transfer components. From the testimony of the marine inspectors, CWO Beal, LTJG Bemis, and Petty Officer Ham regarding the conditions that they found on 19 December 1979, the Administrative Law Judge inferred that Appellant had failed to fulfill his duty to inspect and maintain the cargo equipment. This inference is reasonable and supported by the record. That the conditions described by CWO Beal and LTJG Bemis were unsafe needs no further proof. The dangers of fire, explosion, and pollution inherent in any condition which allows large amounts of fuel oil and gasoline to accumulate in a vessel bilge are well known.

Appellant argues at great length the testimony concerning his character. The witnesses stated that he was meticulous in the extreme, strict on safety, a perfectionist, and a stickler for

detail. He argues that others aboard the vessel testified that they had not observed any discrepancies and that the vessel had completed an annual inspection during this time. He argues that some of the witnesses testified that the conditions found were normal and not dangerous. These are all matters properly considered by the Administrative Law Judge at the hearing.

When, as in this case, the Administrative Law Judge's determination results from a reasonable interpretation of the evidence, it will not be disturbed on appeal.

II

Appellant next asserts that the Coast Guard has failed to prove that he was negligent with respect to items one through six of the first specification. I do not agree.

It is clear that Appellant had a duty to inspect and maintain this equipment from the discussion in "I" above. From the evidence, the Administrative Law Judge determined that Appellant had opportunities to conduct tests of the equipment which would have uncovered the defects and that it was reasonable for him to have done so. Therefore, the Judge's finding that Appellant was negligent with respect to these items is well supported.

III

Appellant next complains that the Coast Guard has not established that he "allowed an excessive amount of product to accumulate in the amidship pumproom bilges." He argues at length from the testimony of witnesses who disagreed with the coast Guard inspectors and were of the opinion that the liquid in the bilges was sea water rather than gasoline. He also asserts that the lack of chemical analysis of the liquid, or explosimeter tests of the vapor, should preclude the finding that the liquid was product (#2 oil and/or gasoline).

The Administrative Law Judge's finding that there was an excessive amount of product in the amidships pumproom bilge is well supported. Persons, such as the Coast Guard inspectors who testified, familiar with gasoline, sea water, and fuel oil, are able to distinguish between them without the aid of chemical tests. In addition, the numerous leaks in the cargo system made it highly probable that a substantial amount of product would be found in the bilges. As discussed above, it was not error for the Administrative Law Judge to believe that Coast Guard inspectors rather than Appellant's witnesses.

IV

Appellant's assertion that the Administrative Law Judge erred in failing to grant the motion to dismiss at the end of the Investigating Officer's case is without merit. He argues, in essence, that the evidence was not sufficient to prove the charge and specifications at that point in the hearing. As discussed in I, II and III above, evidence sufficient for the Judge to find the charge and specifications proved had been presented. The Administrative Law Judge did not err.

V

Appellant next contends that the Administrative Law Judge erred in denying his proposed findings. He takes issue with the Administrative Law Judge's rulings on 42 of his proposed findings, all except three of those that the Judge denied. His discussion of the proposed findings, the Judge's rulings on them, and the evidence supporting his views covers 31 pages of his brief. It is not necessary to discuss each assertion in detail. For the reasons set forth below, they are without merit.

Several of Appellant's proposed findings simply rephrased the specifications in the negative. The Administrative Law Judges denials of these are supported for the same reasons that his findings that the charge and specifications were proved are supported.

Several of the proposed findings deal with the weight or importance to be given to various circumstances surrounding the events in question. These are matters to be determined by the Administrative Law Judge. His rulings are adequately supported and will not be disturbed.

Several of the proposed findings merely asked for a finding that certain witnesses had given certain testimony. This is shown by the transcript and is not the proper subject of findings. The Administrative Law Judge did not err in denying them.

Many of the proposed findings concern matters of so little relevance or materiality that rulings on them, even if in error, could not be considered prejudicial. In some cases the Judge has added comments to explain his rulings or expand them beyond the request. Appellant takes issue with this. However, it is not cause to disturb the findings.

With regard to other findings, Appellant simply disagrees with the Administrative Law Judge's interpretation of the evidence. Since the Judge's interpretation is reasonable, it will not be disturbed.

With respect to request number 52 which was denied, the Administrative Law Judge made an incorrect reference to his earlier rulings. His ruling is consistent with his other findings and explained in them although not the ones cited. This error in cross referencing findings is not prejudicial to Appellant and is not cause to disturb the findings.

VI

Under the basis "Exceptions Taken at the Trial," Appellant complains of the following:

1. The Judge did not prohibit the Investigating Officer from referring to events on 20 December 1979 or an unnamed individual as "one other individual" in his opening statement.

2. The Judge allowed Petty Officer Ham to testify that the vessel "appeared to have an excessive amount of product in the bilges" before evidence regarding the type of product on the vessel was presented.

3. The Judge allowed 1.0 Exhibit 8, the boarding form used by Petty Officer Ham, into evidence even though Petty Officer Ham stated he could testify from his own memory and even though it contained irrelevant material.

4. The Judge allowed LTJG Bemis to refer to the odor of the product in the air as "extremely heavy" during his testimony.

5. The Judge allowed evidence to be introduced regarding events occurring after 19 December, the last date appearing in the specifications and later stated that he believed such evidence would become immaterial.

6. LCDR Badger was allowed to answer a question regarding the interpretation of 46 CFR 50. 05-10.

7. Appellant's motion to dismiss was denied.

In support of these complaints, Appellant cites no authority to establish that the Administrative Law Judge was prohibited from doing as he did. Items 1, 3, and 5 concern the presentation of material which may not have been relevant to the charge and specifications. Other than a bare assertion that these items were prejudicial, Appellant does not explain how he was prejudiced by their admission. In his brief he acknowledges that the Judge was mindful that this evidence might not ultimately be relevant.

"In these administrative proceedings strict adherence to the rules of evidence observed in court is not required...Irrelevant...evidence should be excluded." 46 CFR 5.20-95(a). In interpreting this provision, the Administrative Law Judge must be given reasonable latitude to enable him to manage the hearing in an orderly manner. Sometimes it is necessary to receive testimony or argument before its full relevance is known to allow its presentation in a coherent manner and to avoid recalling witnesses. The record shows that the Administrative Law Judge allowed these items only for the purpose of further explaining the conditions observed on December 19th. Their nature is such that I believe that Judge could have properly disregarded any irrelevant portions. I find no error here. Even if there were error, the effect would simply be to increase the size of the record without prejudice to Appellant.

Items 2,4, and are without merit. The Judge was within his discretion allowing this testimony. Item 7 is also without merit. It duplicates basis IV which has been discussed above.

VII

Appellant next asserts that he was denied a fair and impartial hearing. His brief in support of this covers 13 pages and repeats many of the matters previously discussed. In addition he asserts the following:

1. The Administrative law Judge, sua sponte, required to refrain from leading witnesses.

2. The Administrative Law Judge, himself, questioned some of the witnesses, taking over examination both by counsel and by the Investigating Officer.

3. The Administrative Law Judge interrupted the questioning of witnesses on several occasions in the absence of objections.

4. The Judge thanked a witness for his testimony.

5. The Administrative Law Judge stated in his Decision and Order that he gave "great weight to the testimony of the Coast Guard Officers and little weight to that of the Respondents."

Appellant neither explains why any of the specific actions or questions by the Administrative Law Judge were improper or prejudiced him nor cites any authority to establish this. He merely asserts that these things show prejudice on the part of the Judge. For the reasons set forth below these assertions are

without merit.

With respect to the first three assertions, 46 CFR 5.20-1 requires the Administrative Law Judge to:

> "...regulate and conduct the hearing in such a manner so as to bring out all the relevant and material facts, and to insure a fair and impartial hearing."

It is proper for the Administrative law Judge to question witnesses. It is not error if this happens to support one side of the case or the other. See Commandant Decision on Appeal 2013 (BRITTON).

Examination of the pages of the transcript cited by Appellant shows that the Administrative Law Judge interrupted counsel only as necessary to clarify points in question and regulate the hearing. He assisted both the Investigating Officer and Appellant's counsel questioning witnesses. This was all within his discretion and was not error.

The fact that the Administrative Law Judge thanked a witness as he left the witness stand, the fourth item, is nothing more than courtesy. It does not establish bias and was not error.

The final item is based on the Administrative Law Judge's decision of which witnesses to believe. As discussed at the beginning of the opinion, this is not error.

CONCLUSION

The findings of the Administrative Law Judge are supported by substantial evidence of a reliable and probative character. The hearing was conducted in a fair and impartial manner and within the proper limits of the Administrative Law Judge's discretion. None of the matters raised by Appellant constitute error for which he is entitled to relief.

The order of the Administrative Law Judge, with respect to Appellant, Fales, dated at Boston, Massachusetts on 25 July 1980 is AFFIRMED.

B. L STABILE
Vice Admiral, U. S. Coast Guard
VICE COMMANDANT

Signed at Washington, D.C., this 9th day of May 1983.