

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
LICENSE NO. 477744 and MERCHANT MARINER'S DOCUMENT No. Z-115115  
Issued to: JOHN D. GABOURY

DECISION OF THE VICE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2307

JOHN D. GABOURY

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

By order dated 22 July 1980, an Administrative Law Judge of the United States Coast Guard at Boston, Massachusetts, suspended Appellant's license for one month, on twelve months' probation, upon finding him guilty of negligence. The specification found proved alleges that while serving as Master on board the United States T/V ALLEGIANCE under authority of the license above captioned, on 19 December 1979, Appellant operated or allowed the said vessel to be operated in an unsafe condition in that the following hazardous conditions existed:

1. Excessive cargo product accumulation in the bilges of the amidships pumproom;
2. No. 10 cargo pump in aft pumproom leaking from both shafts;
3. No. 11 cargo pump in aft pumproom leaking excessively from packing gland;
4. No. 5 cargo pump suction line holed and leaking in amidships pumproom;
5. No. 5 cargo line riser valve in amidships pumproom leaking;
6. No. 12 cargo pump discharge riser in aft pumproom repaired with a cement patch;
7. Port bulkhead stop valve on suction line in aft pumproom leaking through packing gland.

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 Timothy Fales, the Chief Mate 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 specification had been proved. He then entered an order suspending License No. 477744 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 on 21 August 1980 and perfected on 8 June 1982.

#### FINDINGS OF FACT

On 19 December 1979, Appellant was serving as Master on board the United States T/V ALLEGIANCE and acting under authority of his license.

The T/V ALLEGIANCE departed the port of Lake Charles, L A on 13 December 1979 bound for Braintree, Massachusetts with a cargo of gasoline and No. 2 heating oil. During the passage from Lake Charles to Braintree, the bilge pump in the amidships pumproom was inoperative and the vessel took heavy seas in a storm which caused damage to the vessel's deck equipment and caused water to be taken into amidships pumproom bilge.

The T/V ALLEGIANCE arrived at the Cities Service Company Terminal, Braintree, Massachusetts, and docked at 1130 on 19 December 1979. The vessel was berthed at 1155, and transfer hoses were on at 1310. About 1400 a team of Coast Guard Officers led by Petty Officer Edward Ham boarded the T/V ALLEGIANCE for a routine inspection. Also at about 1400, Coast Guard Marine Inspector CWO Carl Beal boarded the vessel to examine it in response to two anonymous telephone calls received by LCDR Badger, Chief of the Inspection Division, MSO Boston, reporting a cement patch on one of the vessel's cargo lines. When CWO Beal arrived the vessel had not

yet started transferring cargo.

Both CWO Beal and Petty Officer Ham noticed a strong odor of gasoline in the amidships pumproom. When they investigated they found the bilge, an area 20 feet by 40 feet, to be covered to a depth of about 2 feet with liquid. The liquid had a strong odor of gasoline. When CWO Beal swirled it with a piece of wood he could discern no water in it. Because of the danger created by this situation, CWO Beal, at about 1405, ordered that no cargo be discharged through that pumproom until the bilge was pumped.

At about 1530, CWO Beal permitted the vessel to transfer cargo to reduce her draft. The tide was shifting at the time and this was necessary to prevent the vessel from grounding at low tide.

CWO Beal and Petty Officer Ham then continued their inspection and discovered the following:

1. The port bulkhead stop valve on the suction line in the aft pumproom was leaking. A stream of product 1/8 inch to 1/4 inch in diameter was running from the bottom of the valve to the bilge.
2. The No. 12 cargo line discharge riser had a cement patch on it.
3. Product was being thrown from both forward mechanical shaft seals of the No. cargo pump in a stream 1/4 inch in diameter.
4. The packing gland of the No. 11 cargo pump was leaking. Product flowing out of the gland in a stream 1/8 inch in diameter.

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

1. There was an accumulation of product in the amidships pumproom bilge to a depth of between 1 and 1/2 feet.
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 from it into the bilge in a stream 1/2 to 3/4 inch in diameter.
3. The No. 5 cargo line riser was leaking internally.

As a result of the conditions discovered by LTJG Bemis, CWO

Beal, and Petty Officer Ham, the present charges were brought against Appellant. The Chief Mate and Chief Engineer were also charged.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant asserts:

1. It was unjust to charge Appellant with operating the vessel in an unsafe condition on 19 December 1979 because the discharge of cargo was ordered by the Coast Guard. He argues that had the Coast Guard not ordered the discharge, the vessel would not have been operating and the hazardous conditions would not have come into being.
2. The Government failed to establish, by competent evidence, a specific standard of care against which to measure Appellant's actions and conclude that he was negligent.
3. The evidence does not support the conclusion that the condition aboard the vessel were hazardous.
4. The Government should be estopped from asserting that the conditions were hazardous because the Coast Guard inspectors allowed the vessel to discharge cargo and allowed the use of a pump which should not have been used to pump flammable liquid to remove the liquid from the amidships pumproom bilge.

Appearance: Frank H. Handy, Jr. of Kneeland, Kydd & Handy, One State Street, Boston, Massachusetts.

#### OPINION

I

Appellant complains that it is unjust to charge him with negligence for operating the vessel in an unsafe condition when the Coast Guard ordered him to do so. If this description accurately characterized the situation, I would agree with the Appellant. However, it does not.

The T/V ALLEGIANCE was underway, enroute Braintree, Massachusetts, and thus being operated, until 1130 on 19 December 1979. The operation of the vessel was, therefore, not limited to the discharge of cargo ordered by the Coast Guard. Since the unsafe condition was discovered shortly after the vessel's arrival and prior to discharging cargo, and not because of the large amount

of product in the bulges and numerous leaks, it is clear that it must have existed while the vessel was underway and prior to docking. There is, therefore, no injustice in charging Appellant with operating the vessel in an unsafe condition on 19 December 1979.

## II

Appellant next asserts that the Government failed to establish a specific standard of care against which to measure Appellant's actions. He charges that the Coast Guard was required to produce evidence of a specific act which he should have done and did not do or should not have done and did do. In support of this argument Appellant cites Commandant's Appeal Decision 2178 (HALL). However, HALL does not control the disposition of this case or provide cause to overturn the Administrative Law Judge's findings.

In HALL, passengers aboard a vessel, on which Frank J. Hall was serving as Operator, threw trash into the water in violation of the Refuse Act of 1899. The issue was "...whether [Mr. Hall] took reasonably adequate measures to prevent the discharge of refuse by passengers." The evidence established that there were trash containers aboard the vessel and that passengers were both advised not to throw trash overboard and were admonished by members of the crew when seen doing so. My refusal to find that a presumption existed under these circumstances amounted to no more than a refusal to hold Mr. Hall "strictly responsible without regard to his intent or conduct" for the actions of his passengers. The holding in HALL does not preclude a reasonable inference of negligence in appropriate circumstances.

In the case at hand, Appellant was Master of a vessel found to have dangerous conditions of an obvious nature existing on board upon her arrival in port on 19 December 1979. I agree with the Administrative Law Judge that the Master of a vessel has a heavy responsibility to ensure the proper management and safety of his vessel. See Commandant's Decisions on Appeal 360 (CARLSEN), 987 (BERGGREN), 2098 (CORDISH). The Master cannot manage the ship single-handedly; however, he must keep himself well informed of any defects in the vessel which could pose a significant hazard to life or property. The Administrative Law Judge correctly observed that this "may require that he make personal inspections of critical points, such as pumprooms, from time to time." The serious nature and extent of the conditions found aboard the vessel on 19 December, support the Judge's inference that Appellant did not fulfill his duty as Master to ensure the safety of the vessel. Unlike the situation in HALL, supra, the record here does not show that Appellant made diligent efforts to fulfill his duty. The existence of Appellant's duty and his failure to fulfill it are

adequately supported by the evidence.

### III

Appellant next asserts that the evidence does not support the conclusion that the conditions aboard the vessel were hazardous. This contention is without merit.

Appellant seems to believe that the conditions aboard his vessel were not hazardous until combined with pumping operations. The fact that any condition which allows substantial amounts of gasoline and #2 heating oil to accumulate in a vessel's bilges creates a hazardous condition even without pumping operations requires no further proof. The dangers of fire, explosion, and pollution inherent in allowing such an accumulation are well known. The presence of the gasoline and # 2 heating oil in the pumproom bilge is established by the testimony of the Coast Guard inspectors. It is not necessary, as Appellant contends, to produce evidence of chemical analysis or vapor to establish that the liquid in the bilge was gasoline and/or #2 heating oil. The opinion of persons familiar with them, such as the Coast Guard inspectors who testified, together with the accompanying circumstances are sufficient to support the Administrative Law Judge's determination. Here there were numerous leaks from the cargo system into the pumproom bilge and the cargo consisted of gasoline and #2 heating oil. This produced a high probability that the gasoline and/or #2 heating oil would be found. The conditions found aboard the vessel were of such an inherently hazardous nature as to require Appellant to go forward and show that they were not hazardous in the highly unlikely event he could do so.

Appellant also argues that the Coast Guard should not be allowed to assert the dangerous nature of the conditions because the Coast Guard ultimately allowed discharge of the cargo while they still existed. This contention is without merit.

Although, discharging cargo involved some risk, the record is clear that failure to reduce the vessel's draft by doing so involved an even greater risk. The vessel would have been left aground at the pier by the falling tide. The risks which the Coast Guard had to take in correcting a dangerous situation which Appellant created are not a defense to his negligence in creating it.

### CONCLUSION

There was substantial evidence of a reliable and probative nature to support the findings of the Administrative Law Judge. The hearing was conducted in accordance with the requirements of

applicable regulations.

ORDER

The order of the Administrative Law Judge with respect to the license issued to John D. Gaboury 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.