UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 488408 and MERCHANT MARINER'S DOCUMENT NO. 023-22-3595
Issued to: Alan McNaughton

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2316

Alan McNaughton

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

By order dated 15 January 1981, an Administrative Law Judge of the United States Coast Guard at Boston, Massachusetts admonished Appellant upon finding him guilty of negligence. The specification found proved alleged that while serving as master on board S.S. BAY STATE under authority of the documents above captioned, on or about 29 July 1980, Appellant allowed said vessel to sail with insufficient metacentric height to meet the requirements set forth in the vessel's Trim and Stability Booklet.

The Hearing was held at Boston, Massachusetts on 21 October, 13 November, and 8 December 1980, and 6 January 1981.

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

The Investigating Officer introduced in evidence 8 exhibits and the testimony of 2 witnesses including an expert on the calculation of metacentric height.

In defense, Appellant offered in evidence 4 exhibits, his own testimony, and the testimony of one other witness.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He then entered an order admonishing Appellant.

The entire decision was served on 19 January 1981. Appeal was timely filed on 13 February 1981 and perfected on 6 October 1982.

FINDINGS OF FACT

On 29 July 1980, Appellant was serving as MASTER on board the

United States S.S. BAY STATE and acting under authority of his license when the vessel departed Buzzard's Bay, Massachusetts, enroute to Boston, Massachusetts to load fuel for a cadet trip. There were about 580 cadets aboard, a catering staff, and 90 officers. The vessel's draft was 21 feet 7 inches and the available metacentric height (GM) was 1.73 feet.

There was a temporary stability letter aboard the S.S. BAY STATE which had been issued by the Officer in Charge, Marine Inspection, New Orleans on 27 June 1980 and which was to expire on 30 September 1980 or upon the issuance of a permanent letter. The permanent letter was to be issued subject to a deadweight survey and correction of the Trim and Stability Booklet. The temporary letter requires, in part, that the Master maintain the vessel in such a condition of stability"...so as to comply with a 2-compartment standard of damage stability." The letter specifically referred to the Trim and Stability Booklet carried aboard the S.S. BAY STATE and approved by the Coast Guard on 19 November 1956.

The Trim and Stability Booklet, on page 6, contains a graph which plots the required metacentric height (GM) for mean drafts. The required GM for a draft of 21 feet 7 inches is 3.8 feet. The book states, also on page 6:

> "The GM values given here must be maintained at all times to keep the ship stable after being damaged in any two compartments. MSTS Policy requires that this be maintained."

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that:

I. The proceedings are penal in nature and, therefore, the Coast Guard is required to meet a burden of proof of at least a preponderance of the evidence.

II. The Coast Guard did not establish that Appellant was negligent because there is no testimony that it was negligent to fail to calculate the stability of the vessel on the short voyage from Buzzard's Bay to Boston.

III. The Coast Guard should require adherence to a two-compartment standard of stability because 46 CFR 167.20 requires only a one-compartment standard for nautical school ships.

OPINION

I

Appellant's argument that suspension and revocation proceedings are penal in nature and that the Coast Guard should be required to prove its case by a preponderance of the evidence is not convincing.

The regulations governing suspensions and revocation proceedings clearly characterize them as remedial. They are intended to maintain standards of competence and conduct essential to the safety of life and property at sea. 46 CFR 5.01-20. The only action authorized as a result of these proceedings is suspension or revocation of Coast Guard issued licenses and documents. See 46 USC 239(g). None of the usual penal sanctions such as fines or imprisonment are impossible.

The applicable standard of proof is also set forth in the governing regulation. "Findings must be supported by substantial evidence of a reliable and probative character." 46 CFR 5.20-95. The Administrative Law Judge did not err in applying this standard. See also Commandant Appeal Decision 2183 (FAIRALL), and 2097 (TODD).

II

Appellant's assertion that the Coast Guard failed to establish negligence because there was no testimony that his conduct was negligent is not persuasive.

The Administrative Law Judge had sufficient evidence of the proper standard of care against which to measure Appellant's conduct. Expert testimony was not necessary. The temporary stability letter issued by the Coast Guard and aboard the vessel at the time in question required the Master to comply with a 2-compartment standard of damage stability in accordance with the Trim and Stability Booklet aboard the vessel and approved by the Coast Guard. This he failed to do by allowing the vessel to sail with an insufficient GM. Thus, there is sufficient evidence of a standard of care and its breach to support the findings of the Administrative Law Judge.

Appellant also argues that he should not be held to this standard because the voyage was very short. Since the stability letter and Trim and Stability Booklet make no exception for short voyages, this does not preclude a finding of negligence, although it may be a mitigating factor. Since only the minimum sanction of admonition was awarded the sanction is not unduly harsh and further consideration of it is not necessary.

III

Appellant's argument that 46 CFR 167.20 limits the Coast Guard to enforcement of a one-compartment standard of stability is without merit. It is true that 46 CFR 167.20-5 Subdivision required that nautical school ships be constructed to "meet the minimum standard for one-compartment subdivision..." This is a minimum requirement to which such vessels must be constructed. It is not applicable here with respect to the degree of stability to be maintained pending a new deadweight survey and correction of the Trim and Stability Booklet. 46 CFR 167.20-20 Stability states that "A stability letter, prepared by the Coast Guard, embodying necessary instructions to insure maintenance of sufficient stability at all times, for both intact and damaged condition, shall be posted on board the nautical school ship." This section does not limit the letter to be a one-compartment standard. It requires instructions for maintenance of sufficient stability at all times. Thus, the stability letter aboard the vessel was consistent with the applicable regulations and valid.

Even if the standard required in the stability letter were too strict, this would not help Appellant. He has not claimed that he was maintaining any proper lesser degree of stability, or that any information was available to him to calculate the necessary GM to maintain such lesser degree of stability. Indeed, the Administrative Law Judge found that he had not calculated the vessel's GM at all. In any event, the terms of the stability letter are a matter for determination between the Coast Guard and the vessel's owner. Where, as here, the letter has been issued, the Master of the vessel must comply with it.

CONCLUSION

There was substantial evidence of a reliable and probative character to support the findings of the Administrative Law Judge. The Hearing was conducted in accordance with the applicable regulations.

ORDER

The order of the Administrative Law Judge dated at Boston, Massachusetts on 15 January 1981, is AFFIRMED.

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

Signed at Washington, D.C., this 31st day of August 1983.

INDEX

1. ENABLING AUTHORITY
.63 Statutes
R.S. 4450 not "penal" or "criminal"

3. HEARING PROCEDURE
.20 Burden of Proof
General
Negligence

4. PROOF AND DEFENSE
.99 Proof
degree required

7. NEGLIGENCE
.05 Ballasting of vessels
Master's responsibility.
.70 Negligence
failure to maintain vessel's stability.

10. MASTER
.20 Master.
Duty to maintain stability.