

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
LICENSE NO. 006301  
Issued to: Adam R. Lorenz

DECISION OF THE VICE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2332

Adam R. Lorenz

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

By order dated 26 April 1982, an Administrative Law Judge of the United States Coast Guard at Houston, Texas suspended Appellant's license for one month, on six months' probation, upon finding him guilty of negligence. The specification found proved alleges that while serving as Chief Engineer on board the United States vessel SS AMERICAN HAWK under authority of the above captioned license, on or about 23 January 1982, Appellant did fail to maintain a proper quantity of fuel on board the vessel to complete the voyage which commenced on 12 January 1982 from Jacksonville, Florida. As a result the vessel lost all power adjacent to the Galveston Bay Entrance Channel Lighted Buoy 7A, hazarding navigation and the vessel.

The hearing was held at Galveston, Texas on 23 March 1982.

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 the testimony of one witness and four exhibits.

In defense, Appellant offered in evidence six documents and testified in his own behalf.

Subsequent to the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant suspending License No. 006301 issued to him for a period of one month on six month's probation.

The entire decision was served on 29 April 1982.

FINDINGS OF FACT

On 12 January 1982, Appellant was serving as Chief Engineer aboard the SS AMERICAN HAWK and acting under the authority of his license. In this capacity, he was responsible for operation of the engine room, which included calculating the amount of fuel needed for the voyage from Jacksonville, Florida to Texas City, Texas. Appellant testified that he calculated that the vessel required 2260 barrels of fuel, which included a 25% reserve, a customary practice in the shipping business.

The vessel departed Jacksonville on 12 January 1982 and arrived at Galveston Bay Entrance Channel on 19 January 1982. The channel was closed due to heavy fog and remained closed until 23 January 1982. The vessel was anchored during this period. In an effort to conserve fuel, Appellant shut down one generator. Appellant requested that additional fuel be delivered to the vessel at anchor but none was due to the fog. Appellant informed the Master that the fuel was low but did not state whether there was enough fuel to get to Texas City. On 23 January a pilot boarded the vessel and made plans to navigate the vessel to its designated dock. The Master informed the pilot that the vessel was low on fuel. Shortly after leaving anchor the vessel used all accessible fuel from its tanks, which left it without power and control.

Appellant had 38 years of sea service, 10 as a chief engineer and 6 years as Chief Engineer on the SS AMERICAN HAWK. He had sailed in and out of the Galveston Bay Entrance Channel many times.

It is common knowledge that the channel is often closed for several days due to heavy fog particularly during the winter months.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. As his bases for appeal Appellant asserts the following:

1. that the specification failed to establish a basis for jurisdiction;
2. that the specification failed to identify any negligent act or omission;
3. that the Administrative Law Judge erred when he permitted the Investigating Officer to amend the specification without prior notice to Appellant;
4. that the Administrative Law Judge erred when he found that extended closures of the Houston ship channel during that time of year were foreseeable;

5. that the evidence was insufficient to support a finding of negligence; and

6. that the Administrative Law Judge erred when he found that Appellant should have known the fuel level at which the fuel pump would lose suction.

APPEARANCE: Brown, Sims & Ayre by Edward A. Dodd, Jr.

#### OPINION

##### I

Appellant contends that the specification must allege that he is the holder of the license in order to be sufficient. The specification stated that Appellant was acting under the authority of his license when the negligence occurred. This sufficiently established the basis for jurisdiction. See Appeal Decision No. 2226 (DAVIS).

##### II

Appellant next contends that the specification is too broad in that it fails to allege when his duty arose and fails to specifically identify the duty. I disagree.

In support of his argument, Appellant cites Appeal Decision No. 1739 (CARNES). In that case the engineer on night watch was charged with negligence for allowing the vessel's engine room to remain vulnerable to flooding during the night. His duty, under the circumstances of that case, was not readily identified by the specification.

In the present case, Appellant was the Chief Engineer and he had the responsibility for maintaining the required fuel for the voyage from Jacksonville, Florida to Texas City, Texas. The specification alleged that Appellant failed to maintain the proper quantity of fuel to complete the voyage that was undertaken. Since the voyage undertaken was from Jacksonville, Florida, to Texas City, Texas, any intermediate stops were included. Therefore, the responsibility existed during that part of the voyage from the vessel's anchored position to Texas City. A specification is sufficient when it puts the individual on notice of the charge and provides sufficient information to prepare a defense. 46 CFR 5.05-17. See also Appeal Decision No. 2124 (BARROW). The specification here was sufficient.

Appellant does not dispute that maintaining proper quantities

of fuel for operating the vessel is a duty of the Chief Engineer but argues that the specific time for performing that duty was not alleged in the specification.

It is not necessary to identify the precise moment that the breach of duty occurred so long as the duty and breach were adequately identified in the specification. The operation of the engineroom is the continuous responsibility of the Chief Engineer. Section 229 of 46 U.S.C., in effect at the time of this occurrence, provided that:

"Whenever complaint is made against any engineer holding a license authorizing him to take charge of the boilers and machinery of any steamer, that he has through negligence or want of skill, permitted the boilers in his charge to burn or otherwise become in bad condition, or that he has not kept his engine and machinery in good working order, it shall be the duty of the Coast Guard upon satisfactory proof of such negligence or want of skill to revoke the license of such engineer..."

The language in the statute does not specifically state that a failure to maintain an adequate fuel supply is a duty of the Chief Engineer. However, in view of the general duty to maintain engines and machinery in good working order, the accepted practice in the industry, and circumstances in this case the Chief Engineer was continuously responsible for ensuring that adequate fuel was available.

Appellant argues that the decision of the Master to leave anchor relieved him of the responsibility for any consequences resulting from it. It is clear that the Master is ultimately responsible for the safety and navigation of the vessel. However, the Master looks to the Chief Engineer to inform him of whether there is sufficient fuel to reach the intended destination. Appellant informed the Master that the fuel was low but did not inform him that it was critical and that the vessel was likely to lose power at any moment. Under these circumstances, I cannot say that the Administrative Law Judge was unreasonable in his determination that this was not adequate to relieve Appellant of the responsibility for ensuring an adequate fuel supply. Therefore his determination in this respect will not be disturbed. See Appeal Decision 2108 (ROYSE).

### III

Appellant asserts that the Administrative Law Judge erred when he permitted the Investigating Officer to amend the specification without prior notice to him. I disagree.

Before Appellant was arraigned, the Investigating Officer requested permission to amend the specification by substituting "lost all power" for "ran out of fuel". The Administrative Law Judge permitted the amendment over Appellant's objection.

The guidelines for corrections or amendments to specifications are found in 46 CFR 5.20-65. The regulation provides that "The Administrative Law Judge may...permit the amendment of charges and specifications..." The Administrative Law Judge is given broad discretion in this regard, particularly in case of harmless errors. Here the basis for the negligence remained the same, failure to maintain sufficient fuel on board the vessel. The amendment did not make a substantial change in the offense alleged. Further, there has been no showing that Appellant was prejudiced by the Amendment. See Appeal Decision No 1792 (PHILLIP). Absent a substantial change in the specification and without a showing of prejudice, Appellant is not entitled to relief in this case.

#### IV

Appellant next contends that the Administrative Law Judge erred when he found that a four day closure of the channel that time of year was foreseeable. I disagree.

There was ample testimony presented to the trier of fact that it was not unusual for the channel to be closed for several days because of fog. Based on the evidence it was not unreasonable for the Administrative Law Judge to conclude that a four day closure was foreseeable. In these administrative proceedings the Administrative Law Judge is the fact finder. Unless the record indicates that his findings are clearly erroneous, they will not be disturbed. See Appeal Decision No. 2128 (ROYSE).

#### V

Appellant argues that there is insufficient evidence to support the finding that he was negligent in the amount of fuel he requested for the trip. He suggests that any conclusion of negligence is based on hindsight and second guessing. I disagree.

The evidence showed that it was customary to carry 125% of the fuel expected to be used on a particular voyage. That, however, is not always sufficient. There are situations that may require carrying more than the customary amount of fuel. In this case in the Administrative Law Judge properly determined that the common knowledge of the channel closures for severe fog conditions should have indicated to Appellant that more fuel was needed.

Negligence is defined in 46 CFR 5.05-20(a)(2) as follows:

"Negligence or inattention to duty. 'Negligence' and 'inattention to duty' are essentially the same and cover both the aspects of misfeasance and nonfeasance. They are therefore defined as the commission of an act which a reasonably prudent person of the same station, under the same circumstances, would not commit, or the failure to perform an act which a reasonably prudent person of the same station, under the same circumstances, would not fail to perform."

As stated previously, determining the facts is the responsibility of the Administrative Law judge. Unless clearly erroneous, his determination will not be disturbed. Appellant had 38 years of seagoing experience, 10 as a chief engineer. He testified that he had shipped many times in and out of the ports of Galveston, Texas City and Houston, Texas. It was common knowledge that vessels were not permitted to come into port due to fog, especially in winter months. There is enough evidence to support the Administrative Law Judge's determination that a reasonably prudent engineer with similar experience would have carried more than the customary 125% of anticipated fuel requirements.

## VI

Appellant urges that the Administrative Law Judge erred when he found that Appellant should have known the fuel level at which the fuel pump would lose suction. I disagree.

The Chief Engineer of a vessel is responsible for the complete operation of the engine room. This responsibility includes knowing the fuel consumption rate of his vessel and the amount of useable fuel aboard. Appellant attempts to evade his responsibility by stating that 38 year old blueprints of the vessel indicated that useable fuel was available to the low suction line. However, the blueprints only indicated that the low suction line was approximately three inches above the bottom of the tank. They do not state that useable fuel is available to that level or explain the well known risks that accompany using the low suction when the fuel level is below that at which the pump is flooded. For example, fuel at the bottom of the tank may be contained with water or sediment or suction may be lost if air enters the suction line for any reason. These possibilities should have been known to the Chief Engineer. In this instance the pumps were ineffective when approximately four feet of fuel was left in the bottom of the tank, the point at which the pumps ceased to be flooded. The record is unclear as to exactly what caused this. However, it is clear that once the fuel level was again raised past that at which the pumps were flooded, they worked properly. In addition, Appellant's exhibit F, the manufacturer's literature regarding the pump, instructs that "All oil pumps should be located, whenever possible,

for operation with flooded suction,..." This precautionary language combined with the commonly known hazards of low fuel operations should have made a chief engineer such as Appellant realize that a loss of suction was possible when the pump ceased to be flooded. I note that Appellant had never operated the vessel with less than 500 or 600 barrels of fuel aboard, and had less than 150 barrels when fuel suction was lost. It was unreasonable to continue to operate on the basis that the blueprints showed the suction line was three inches from the bottom of the tank, when other available information and commonly understood marine principles strongly suggested that useable fuel may not be available to that level.

#### CONCLUSION

There was substantial evidence of a reliable and probative nature to support the finding that the charge and specification were proved. The hearing was conducted in accordance with the requirements of applicable regulations.

#### ORDER

The order of the Administrative Law Judge dated at Houston, Texas on 26 April 1982 is AFFIRMED

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

Signed at Washington, D.C., this 5th day of December 1983.