

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
LICENSE NO. 000297  
Issued to: BILLY S. MAKRINOS

DECISION OF THE VICE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2342

BILLY S. MAKRINOS

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

By order dated 31 August 1981, an Administrative Law Judge of the United States Coast Guard at Boston, Massachusetts, suspended Appellant's license for one month, upon finding him guilty of misconduct. The specification found proved, alleges that while serving as Master on board the United States S/S OASIS HAWAII, under authority of the license above captioned, on or about 11 March 1981, Appellant allowed his vessel to depart the port of Texas City, Texas with its load line submerged.

The hearing was held at Boston, Massachusetts, on 2 and 30 April, 28 and 29 May, 4 June, and 16 July 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 14 exhibits and called four witnesses.

In defense, Appellant offered in evidence 21 exhibits and called three witnesses.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and the specification had been proved. He then served a written order on Appellant suspending license No. 000297 issued to Appellant for a period of one month.

The entire decision was served on 1 September 1981. Appeal was timely filed on 10 September 1981 and perfected on 12 November 1982.

FINDINGS OF FACT

On 11 March 1981 Appellant was serving as Master on board the

United States S/S OASIS HAWAII and acting under the authority of his license while the vessel was at the port of Texas City, Texas. The vessel's Load Line Certificate established a minimum summer freeboard of 9 feet, 9 1/4 inches, measured from the deckline.

The freeboard of the vessel on 11 March 1981, while it was at its dock in Texas City, Texas, was measured by the Chief Mate, Gregory Knowlton, who used a freeboard stick which was graduated into sixteenths of an inch. He entered data in the vessel's deck log which indicated that the vessel's freeboard was 9 feet, 10 inches on the starboard side and 9 feet 8 inches on the port side for a computed mean freeboard of 9 feet, 9 inches. A direct observation of the vessel's summer load line with respect to the water was not recorded. The vessel was moored port side to the dock with mooring lines connected to constant tension winches.

Appellant's expert testified that nine mooring lines held by constant tension winches would exert a downward force on the vessel of 30 tons. This would result in additional immersion of 0.35 inch. The Administrative Law Judge stated that there is no evidence of the number of mooring lines in use at the time the freeboard was measured.

Texas City, Texas is located approximately 17 miles from the sea. When the SS OASIS HAWAII traversed the 17 miles between Texas City, Texas and the sea on 11 March 1981, it consumed 500 barrels of fuel oil and 15 tons of water. The vessel's freeboard was increased .07 inches by the consumption of the fuel oil and by .14 inches by the consumption of water. The total increase in freeboard due to these expenditures was .21 inches.

#### BASES OF APPEAL

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

1. In ruling that the Coast Guard, through the use of log entries, had established a prima facie case that a load line violation occurred at Texas City, Texas on 11 March 1981; and

2. In determining that the Coast Guard had proved by substantial evidence that the load line of the vessel was submerged when the vessel reached the sea after departing from Texas City, Texas.

APPEARANCE: Thomas J. Muzyka, Esq., Glynn & Dempsey, One Boston Place, Boston, MA.

#### OPINION

I

Appellant urges that the Administrative Law Judge erred in finding that the log entries regarding the vessel's freeboard constituted a prima facie case against him. I agree.

The Administrative Law Judge based his finding that the specification was proved on an erroneous determination that the entry regarding the freeboard of the vessel made in the deck log at Texas City constituted prima facie evidence. To constitute prima facie evidence under 46 CFR 5.20-107(b), the entry must be made in the Official Logbook rather than the deck log. It must concern one of the offenses listed in 46 U.S.C. 701 and be made in substantial compliance with the procedures in 46 U.S.C. 702. Appeal Decision 2295 (AMOURY). Submergence of a load line is not one of those offenses, and the procedures in 46 U.S.C. 702 were not followed. Either, alone, requires that the finding of the Administrative Law Judge, that the specification is proved, be set aside.

II

Appellant further urges that the finding that the specification is proved is not supported by substantial evidence. I also agree.

The Chief Mate's measurements and computations on 11 March 1981 show the vessel with a list to port with a difference of 2 inches in freeboard and a mean freeboard one-fourth inch less than required at sea. The measurements on which his computations were based were taken with a stick graduated into sixteenths of an inch. The measurements were recorded in the log in even inches and it appears that the entries may well have been rounded to the nearest inch. Were there no more, it is doubtful that these measurements were accurate enough to reasonably support the conclusion that the vessel lacked one-fourth inch of freeboard.

Load line violations must be determined subject to the consumption of fuel and other materials used in proceeding to sea. 46 CFR 42.07-10 (d). The vessel, however, was 17 miles from sea when these measurements were taken. The uncontested evidence is that it would use enough fuel and water in travelling that 17 miles to increase the freeboard 0.21 inches. Therefore, if the measurements were accurate to 0.01 inch, which is unlikely, the vessel would have lacked 0.04 inch of freeboard as it reached the sea. In this connection, I note that the freeboard stick used to measure the freeboard was graduated in sixteenths or 0.06ths of an inch. It is doubtful that it could accurately distinguish 0.04 inch, especially in a computation based on two measurements.

Even if the above figures were accurate, they ignore the fact that the vessel was using constant tension winches on its mooring lines. The evidence shows that nine lines on such winches would have exerted enough downward force on the vessel to cause a loss of 0.35 inches of freeboard. Although the Administrative Law Judge found that the evidence did not establish the number of mooring lines on constant tension winches at Texas City, the vessel had a list while at the dock and the evidence shows it used nine lines on constant tension winches at its next port, Boston, Massachusetts. Thus, it is probable that there were at least some mooring lines attached to constant tension winches at Texas City and that they exerted a sufficient force to produce more than the 0.04 inch submergence unaccounted for.

#### CONCLUSION

The Administrative Law Judge erred in finding that the entries in the deck log constituted prima facie evidence of the submergence of the load line. Even if the facts recited in the deck log are assumed to be proved, the record, as a whole, does not support the finding that the charge and specification are proved.

#### ORDER

The order of the Administrative Law Judge dated at Boston, Massachusetts on 31 August 1981 is VACATED, the findings are SET ASIDE, and the charge is DISMISSED.

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

Signed at Washington, D.C., this 6th day of March 1984.