

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: Gregory VON GOETZ 554566

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2486

Gregory VON GOETZ

This appeal has been taken in accordance with 46 U.S.C. SS7702 and 46 CFR SS5.701.

By order dated 19 April 1988, an Administrative Law Judge of the United States Coast Guard at Norfolk, Virginia, suspended Appellant's Merchant Mariner's License outright for twelve months, upon finding proved the charges of negligence and misconduct. The negligence charge was supported by one specification, which was found proved. The misconduct charge was supported by the negligence charge found proved alleged that Appellant, while serving as the Master aboard the motor vessel JET TRADER, under the authority of the captioned documents, on or about 27 June 1987, failed to maintain a proper lookout, creating a hazardous situation which led to a collision between the M/V JET TRADER and a 16 foot pleasure craft. The first specification under the misconduct charge found proved alleged that Appellant, while serving in the same capacity at the same time failed to take action to avoid a collision with a 16 foot pleasure craft, as required by 33 USC 2008 (Rule 8 of the Inland Navigation Rules) resulting in a collision with the pleasure craft. The second specification found proved alleged that Appellant, while serving in the same capacity at the same time failed to render assistance after the collision with the pleasure craft, as required by 46 USC 2303(a).

The hearing was held at New York, NY on 5 January 1988. Appellant appeared at the hearing and was represented by counsel. Appellant entered, in accordance with 46 CFR 5.527(a), answers of denial to all charges and specifications.

The Investigating Officer introduced nine exhibits into evidence and called four witnesses.

Appellant introduced four exhibits into evidence and testified in his own behalf.

After the hearing, the Administrative Law Judge rendered a decision in which he concluded that both charges and all specifications had been found proved, and entered a written order suspending all licenses and documents issued to Appellant outright for twelve months.

The complete Decision and Order was served on Appellant on 20 April 1988. Notice of appeal was timely filed on 16 May 1988.

FINDINGS OF FACT

At all times relevant, Appellant was serving as Master aboard the M/V JET TRADER, a merchant vessel of the United States, under the authority of his Coast Guard License No. 554566. Appellant's license authorized him to serve as Master of Steam or Motor vessels of not more than 1000 gross tons upon Bays, Lakes and Sounds, except those waters subject to the International Regulations for the Prevention of Collisions at Sea of 1972, and as Mate of Steam or Motor vessels of any gross tons upon Bays, Lakes and Sounds, except those waters subject to the International Regulations for the Prevention of Collisions at Sea of 1972.

On 3 April 1985, Appellant was also issued License No. 230973 authorizing him to operate and navigate passenger carrying vessels, mechanically propelled (as defined in the Act of August 26, 1983) of not more than 100 gross tons upon the Pacific Ocean, not more than 100 miles offshore between Point Conception, California and parallel of latitude 32 degrees, 30' North.

The M/V JET TRADER is a self-propelled steel tank ship, 150.7 feet in length which displaces 518 gross tons with an average draft of 0 feet forward and 8.6 feet aft. The vessel has a cargo capacity of 6000 barrels of fuel oil in separate tanks - four tanks on the port side and four starboard. It is owned and operated by South Bay Fuel Transportation, Inc., 1571 Richmond Terrace, Staten Island, New York 10310.

On 27 June 1987 at 1430, the JET TRADER departed its berth at Oyster Bay near the northern shore of Long Island, New York, bound for the GATX Terminal, Carteret, New Jersey. Upon entering Arthur Kill, Appellant made radio contact with his employer and was informed that another vessel was at his intended berth at GATX. After a brief stop

at a company dock, the vessel, with Appellant at the helm, departed for GATX at about 1910. Two other crew members were aboard. One was in the galley eating dinner. The other was shuffling between the engine room and the galley. Neither man was in the wheelhouse or acting as lookout during the passage along Arthur Kill.

At approximately 1500 on 27 June 1987, Mr. Ronald Benjamin, owner of the 16 foot fiberglass pleasure vessel number NY 7512 PK, and a passenger launched the pleasure vessel from a New Jersey public marina and proceeded on a cruise around New York Harbor. Mr. Benjamin headed down the Elizabethport Reach of the Arthur Kill and passed the JET TRADER 300-400 yards above the Elizabeth City, New Jersey Marina.

At about 1915, the outboard motor on the pleasure vessel stalled and Mr. Benjamin was unable to restart it. As the JET TRADER closed, it became apparent to him that a collision was likely, and he started to paddle toward the New Jersey shore. However, the JET TRADER struck the pleasure vessel on the starboard side, swamping it and pinning the passenger in the boat as the tanker ran over it.

Mr. Benjamin dived clear of the boat and surfaced alongside the JET TRADER. A few seconds later, the boat with the passenger inside surfaced a few feet away. The passenger's hand was injured as a result of the collision, but neither man suffered any major disabilities.

Appellant was unaware of the collision. The JET TRADER did not alter course or speed before striking the pleasure vessel, nor did it stop to render assistance after the collision had occurred.

BASES OF APPEAL

Appellant has filed a letter which does not clearly identify or address any alleged errors in the Administrative Law Judge's decision. However, Appellant appears to raise several issues:

- (1) Whether the burden of proof was met.
- (2) Whether actual knowledge of a potential collision is required in order to find proved a specification alleging failure to take action to avoid a collision.
- (3) Whether actual knowledge of a marine casualty is required in order to find proved a specification alleging failure to render assistance.

(4) Whether the 12-month outright suspension was warranted.

Appearance by: Appellant pro se

OPINION

I

At the outset, I note that Appellant has failed to raise any issues on appeal which are justiciable under Coast Guard regulations governing these proceedings. The applicable regulation, 46 CFR 5.701 provides, in pertinent part:

The only matters which will be considered by the Commandant on appeal are:

- (1) Rulings on motions or objections which were not waived during the proceedings;
- (2) Clear errors on the record;
- (3) Jurisdictional questions.

Further, 46 CFR 5.703(d) provides:

The appeal must contain a brief or memorandum setting forth legal or other authorities relied upon. All grounds for appeal or exceptions to the Administrative Law Judge's decision must be described with particularity.

Appellant has not identified any improper rulings on motions or objections, clear errors, or jurisdictional questions, nor has he filed a brief or memorandum.

II

Despite Appellant's failure to follow regulations governing appeal, he does raise several issues upon which I will briefly comment.

First, Appellant asserts that the burden of proof was not met. However, the findings of the Administrative Law Judge are well supported by the record, including testimony by Mr. Benjamin and an eyewitness who observed the incident from shore.

Next, Appellant suggests that actual knowledge of the collision is required to support the two specifications under the misconduct charge. As noted supra, the first of these specifications alleged that Appellant failed to take action to avoid a collision; the second alleged that he failed to render assistance after the collision.

Appellant raised this issue as a defense at the hearing. Concerning Appellant's failure to take action to avoid a collision, the Administrative Law Judge stated that the defense was without merit, since Appellant "should have been aware of the small boat directly ahead and his ignorance cannot be excused when his lack of knowledge is due to his own omission." Decision and Order at 21. Similarly, concerning Appellant's failure to render assistance, the Administrative Law Judge said, "If he did not know of the collision that ignorance is directly attributable to his failure to maintain a proper lookout. He cannot successfully assert this defense where his action directly leading up to this violation constituted a violation of law itself." Decision and Order at 22.

I agree with the Administrative Law Judge. These are administrative proceedings - not criminal actions. It is well settled that a violation of a duty imposed by formal rule or regulation may be charged as misconduct and that there is no requirement that willful misconduct be proved. Appeal Decision 2445 (MATHISON); Appeal Decision 2248 (FREEMAN).

Finally, Appellant asserts that the twelve month outright suspension is excessive. However, the order in a particular case is peculiarly within the discretion of the Administrative Law Judge and, absent some special circumstances, will not be disturbed on appeal. Appeal Decision 2468 (LEWIN); Appeal Decision 2379 (DRUM); Appeal Decision 2366 (MONAGHAN); Appeal Decision 2352 (IAUKEA); Appeal Decision 2344 (KOHAJDA); Appeal Decision 1751 (CASTRONUOVO). I fully agree with the Administrative Law Judge's statement, in his order suspending Appellant's license, that "the incident here is very serious and . . . two men were nearly killed as a result of [Appellant's] negligence." Order dated 19 April 1988 at 3. I find no special circumstances in this case which would cause me to modify the Administrative Law Judge's order.

ONCLUSION

Appellant has failed to raise any issues on appeal which are justiciable under Coast Guard regulations governing these proceedings.

Additionally, however, having reviewed the entire record and considered Appellant's arguments, I find that Appellant has not established sufficient cause to disturb the findings and conclusions of the Administrative Law Judge. The hearing was conducted in accordance with the requirements of applicable regulations.

ORDER

The decision and order of the Administrative Law Judge dated 19 April 1988 at Norfolk, Virginia, is AFFIRMED.

CLYDE T. LUSK, JR
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C. this 29th day of June, 1989.

6. MISCONDUCT

.360 Violation of rule/regulation

as misconduct

willful violation need not be proven

13. APPEAL AND REVIEW

.04 Administrative Law Judge

order not modified unless obviously excessive

.10 Appeals

argument not proper on appeal

grounds for

CITATIONS

Appeal Decisions cited: 2468 (LEWIN), 2445 (MATHISON), 2379 (DRUM), 2366 (MONAGHAN), 2352 (IAUKEA), 2344 (KOHAIJDA), 2248 (FREEMAN), 1751 (CASTRONUOVO).

NTSB Cases Cited: None.

Federal Cases Cited: None.

Statutes Cited: 33 USC 2008, 46 USC 2303(a)

Regulations Cited: 46 CFR 5.701, 46 CFR 5.703(d).

***** END OF DECISION NO. 2486 *****