

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT  
Issued to: Antonio ESTRADA, JR. 051 30 2318

DECISION OF THE VICE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2516

Antonio ESTRADA, JR.

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

By order dated 27 October 1989, an Administrative Law Judge of the United States Coast Guard at San Juan, Puerto Rico, suspended Appellant's Merchant Mariner's License and Document for five months remitted on 10 months probation. This order was issued upon finding proved a charge of negligence supported by a single specification.

The charge alleged that Appellant, while serving under the authority of his license and document as pilot aboard the S/S SEALAND DISCOVERY, did, on or about 28 July 1988, fail to safely navigate within San Juan Harbor Channel, thereby causing the S/S SEALAND DISCOVERY to run aground.

The hearing was held at San Juan, Puerto Rico on 22 and 23 September 1989.

Appellant appeared at the hearing and was represented by professional counsel. Appellant entered, in accordance with 46 C.F.R. SS5.527(a), an answer of deny to the charge and specification.

The Investigating Officer introduced in evidence 12 exhibits and called four witnesses.

Appellant introduced four exhibits into evidence and called three witnesses. Appellant testified under oath in his own behalf.

The Decision and Order was dated 27 October 1989 and was served on Appellant on 31 October 1989. Appellant filed a notice of appeal on 6 November 1989. Appellant received the transcript of the proceedings on 8 May 1990 and subsequently filed an appellate brief on 20 June 1990. Accordingly, this appeal is timely and properly before the Vice Commandant for review.

FINDINGS OF FACT

At all times relevant, Appellant was serving under the authority of the above-captioned Merchant Mariner's License and Document. Appellant's license authorized him to serve as: Master of freight and towing vessels of not more than 1,000 gross tons upon oceans; Second mate of steam or motor vessels of any gross tons upon oceans; and First class pilot of steam or motor vessels of any gross tons upon the waters of Bahia De San Juan, Puerto Rico. This license was issued by the U.S. Coast Guard at San Juan, Puerto Rico on 8 February 1982.

The S/S SEALAND DISCOVERY is a U.S. documented container ship of 18,894 tons and 700.6 feet in length. The vessel has a forward draft of 22 feet 10 inches and an aft draft of 30 feet 2 inches.

On 28 July 1988, the S/S SEALAND DISCOVERY was underway, proceeding from New Orleans, Louisiana to San Juan, Puerto Rico. The vessel was scheduled to arrive at San Juan at 0400 hours at which time a pilot from San Juan would board the vessel to make the approach into San Juan harbor channel.

At approximately 0400, while making an approach on a generally southerly heading to San Juan harbor, the S/S SEALAND DISCOVERY's bridge was manned by the Master, the Third Mate, and the Helmsman. San Juan Port Control notified the Master by radio that a pilot was in transit to meet the vessel and that the vessel was to wait one and one-half miles from the harbor entrance for the pilot.

The S/S SEALAND DISCOVERY proceeded to within one and one-half miles of the harbor entrance on a course of 182 to 184 degrees to compensate for a westerly setting current of approximately one knot. At that position, the vessel waited for the arrival of the pilot. The course adjustment was made in order for the vessel to make good a "range course" of 188 degrees. This "range course" is accomplished by positioning the vessel in line with the harbor channel navigational range lights, which indicate the centerline of the harbor channel.

The vessel waited at that location until approximately 0407 when the pilot launch was observed. At that time the S/S SEALAND DISCOVERY proceeded at 182-184 degrees, boarding Appellant, the pilot, at approximately 0411.

Appellant, upon boarding the S/S SEALAND DISCOVERY, proceeded to the bridge, accompanied by the Chief Mate, arriving at approximately 0413. When Appellant boarded the vessel, the S/S SEALAND DISCOVERY was making good the range (centerline channel) course, was slightly left of the range and was at full ahead making approximately 10 knots. The Master advised Appellant of the vessel's course, speed, engine order and that the vessel was on the range.

Appellant took over the conn at 0413, ordering 10 degrees right rudder. The Helmsman informed Appellant that the helm was already at 20 degrees right rudder. Appellant then ordered hard right rudder to which the Helmsman complied. The Master immediately told Appellant that the hard right rudder order was too much rudder with the vessel going full ahead. Appellant replied: "You are supposed to be on course 188 degrees," and told the Helmsman: "I don't mean for you to be on a heading of 188 degrees, keep her hard right."

At about 0413.5, the vessel had started a swing to the right.

After swinging past 192 degrees, the Master and Appellant proceeded to the starboard bridge wing and observed #4 starboard buoy off the vessel's port bow. Appellant then said: "The Helmsman is supposed to have his helm hard left." The Master and the Chief Mate replied: "No, you told him hard right."

Appellant then immediately returned to the bridge house and ordered hard left rudder and full ahead. At 0416, with the vessel halfway between starboard buoys #2 and #4, Appellant ordered stop engines. The vessel was swinging to the left with the #4 starboard buoy very close to the starboard side of the S/S SEALAND DISCOVERY. At 0417, when the vessel cleared the #4 starboard buoy and was heading in the direction of starboard buoy #6, Appellant ordered full astern, then emergency full astern. At that time, the S/S SEALAND DISCOVERY grounded outside the channel between starboard buoys #6 and #6A.

Appearance: Harry A. Ezratty, P.O. Box 5242, San Juan, Puerto Rico 00906.

#### BASES OF APPEAL

Appellant raises the following issues on appeal:

1. Appellant's actions do not constitute negligence but only "error in judgment."
2. The findings of the Administrative Law Judge are not supported by the evidence. The Administrative Law Judge relied on evidence that was not credible while "ignoring" evidence supporting Appellant.

## OPINION

### I

Appellant asserts that his actions while serving as the pilot of the S/S SEALAND DISCOVERY did not constitute negligence but were reflective only of an error in judgment. I do not agree.

"Negligence" is the commission of an act a reasonably prudent mariner would not commit under the same circumstances or an omitted act which a reasonably prudent mariner would not fail to perform. Error in judgment, in contrast, is an act or omission over which reasonable mariners would differ. Appeal Decision 2216 (SORENSEN).

The record clearly reflects that Appellant gave an inappropriate rudder order of hard right rudder within a few minutes of assuming his duties and responsibilities as pilot. [TR vol. I, pp. 107, 120, vol. II, pp. 31, 101]. Appellant's rudder order was issued after the Master had advised Appellant of the vessel's speed, engine order, and that the vessel was on the proper harbor entrance course to negotiate the channel. It is noteworthy that this hard right rudder order was maintained by Appellant even after the Master warned him that it was too much. [TR vol. II, p. 95].

The record also reflects that Appellant mistakenly believed he had ordered hard left rudder. His realization that he had not did not occur until the vessel had been swinging right with hard right rudder for approximately one minute causing the heading of the vessel to be substantially outside the channel to starboard. It is also noteworthy that Appellant's own testimony does not refute the observations of the Master and Chief Mate in this regard.

The events that followed reflect Appellant's futile attempts to correct the S/S SEALAND DISCOVERY's rapid swing to the right of the harbor channel. These included a hard left rudder order and various engine orders including an emergency full astern order. [TR vol. I, pp. 119-121, vol. II, pp. 101-102].

Contrary to Appellant's contention, Appellant's error in ordering hard right rudder was not a choice between reasonable alternatives constituting an error in judgment. The record provides no evidence that the order of a hard right rudder under the extant circumstances could be considered a prudent navigational order from a pilot charged with knowledge of the vessel and all local conditions of navigation. A reasonable mariner charged with pilotage for this particular area would have realized that a hard right rudder command, maintained for over a minute in the constraints of the navigation channel with the vessel at full ahead, would put the vessel in harm's way.

In the case herein, Appellant's situation was of his own making. The conditions his vessel experienced, because of the erroneous rudder command, could have been foreseen through the exercise of reasonable care. See, Appeal Decision 2379 (DRUM); Appeal Decision 2325 (PAYNE). Appellant's failure to exercise such care cannot be condoned or excused as an error in judgment.

Appellant's error was patently negligent conduct which took the S/S SEALAND DISCOVERY out of the harbor channel and directly caused the grounding.

### II

Appellant asserts that the findings of the Administrative Law Judge were not supported by reliable evidence. I do not agree.

Contrary to Appellant's assertion, the Administrative Law Judge's findings are fully supported by the evidence and the testimony reflected in the record.

The fact that Appellant erroneously ordered a hard right rudder order is reflected in the testimony of the Master, the Third Mate and the Chief Mate. [TR vol. I, pp. 101-121, vol. II, 30-32, 101-104]. In addition, the testimony of the Master and the Third Mate reflects that when Appellant took over the conn of the vessel as pilot, the S/S SEALAND DISCOVERY was properly lined up for the approach and transit into San Juan Harbor Channel. [TR vol I, pp 242-243, vol II, pp 27-29]. Finally, the testimony of the Master and Chief Mate clearly reflects that Appellant's aberrant hard right rudder order caused the vessel to swing rapidly to the right; a swing that eventually grounded the vessel; a swing that Appellant attempted to no avail to correct with a hard left rudder order. [TR vol. I, pp. 260-264, 286, vol. II, pp. 101-103].

Accordingly, contrary to the assertion of Appellant, the Administrative Law Judge did not rely exclusively on the testimony of the Master. The testimony of the Chief Mate and the Third Mate is consonant with the Master's testimony and provide a sound, credible basis for the findings of the Administrative Law Judge.

It is a tenet of these proceedings that the Administrative Law Judge is vested with broad discretion in making determinations regarding the credibility of witnesses and in resolving inconsistencies in the evidence. Appeal Decision 2052 (NELSON), dismissed sub nom Commandant v. Nelson, NTSB Order EM-54, 2 NTSB 2810; Appeal Decision 2212 (LAWSON); Appeal Decision 2472 (GARDNER); Appeal Decision 2474 (CARMLENKE); Appeal Decision 2492 (RATH); Appeal Decision 2503 (MOULDS). The record reflects no abuse of discretion by the Administrative Law Judge.

Appellant stresses that some inconsistencies exist regarding the testimony of the Master of the S/S SEALAND DISCOVERY and the other witnesses. These alleged inconsistencies relate to peripheral matters and do not refute the sustained hard right rudder command issued by Appellant that is the crux of the negligence charge. The key issue of Appellant giving an erroneous sustained hard right rudder order which precipitated a swing to the right side of the channel and eventual grounding is soundly supported by reliable, credible testimony of three witnesses.

It must be noted that the findings of the Administrative Law Judge need not be completely consistent with all evidence as long as sufficient evidence exists to reasonably justify the findings reached. Appeal Decision 2282 (LITTLEFIELD); Appeal Decision 2492 (RATH); Appeal Decision 2503 (MOULDS).

A review of the record reflects that there is sufficient basis in fact for the Administrative Law Judge to resolve any inconsistencies in the evidence. His findings are substantially supported by the record and his Decision and Order effectively address evidentiary inconsistencies of any significance. Accordingly, the findings of the Administrative Law Judge will not be disturbed.

#### CONCLUSION

The findings of the Administrative Law Judge are supported by substantial evidence of a reliable and probative nature. The hearing was conducted in accordance with the requirements of applicable law and regulations.

MARTIN H. DANIELL  
Vice Admiral, U.S. Coast Guard  
Vice Commandant

Signed at Washington, D.C. this 24th day of October, 1990.

\*\*\*\*\* END OF DECISION NO. 2516 \*\*\*\*\*