

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: Jean Grant JEPSON 236378

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2519

Jean Grant JEPSON

This appeal has been taken in accordance with 46 U.S.C. 7702 and 46 CFR 5.701.

By an order dated 30 March 1990, an Administrative Law Judge of the United States Coast Guard at Long Beach, California suspended Appellant's Merchant Mariner's License outright for six months with an additional six months suspension remitted on twelve months probation.

Appellant was charged with negligence supported by five specifications. The charge and specifications two and three were found proved. Specifications four and five were withdrawn by the Investigating Officer. Specification one was found not proved and was dismissed.

Specification two alleged, as amended, that Appellant, while serving aboard the M/V LITTLE BELLE, under the authority of the above-captioned license, did, on or about 28 March 1989, operate the vessel on the Colorado River, Bullhead City, Arizona, and negligently failed to take positive, timely action to avoid collision with the unnamed motorboat, AZ 2088C(motorboat), in violation of 33 U.S.C. 2008 (Rule 8), Inland Navigational Rules of the Road.

Specification three alleged, as amended, that Appellant, while serving aboard the M/V LITTLE BELLE, under the authority of his license, did, on or about 28 March 1989, operate the vessel on the Colorado River, Bullhead City, Arizona, and negligently failed to keep out of the way of the motorboat AZ 2088C, then not under command, in violation of 33 U.S.C. 2018(a)(i) (Rule 18), Inland Navigational Rules of the Road.

The first session of the hearing was held at Bullhead City, Arizona, on 24 July 1989. After the Administrative Law Judge granted several continuances to Appellant, an additional session was held on 26 January, 1990 at Bullhead City, Arizona.

Appellant appeared at both sessions and was represented by professional counsel at the first session. The Investigating Officer presented six exhibits which were admitted into evidence and introduced the testimony of four witnesses. Appellant presented one exhibit which was admitted into evidence, introduced the testimony of three witnesses, and testified in his own behalf. Appellant entered the answer of deny to the charge and specifications.

The Administrative Law Judge's written Order was issued on 30 March 1990, and served on Appellant on 17 April 1990. Appellant filed his notice of appeal on 3 May 1990 and filed his appeal brief on 29 June 1990.

Under 46 C.F.R. 5.703(c), when a transcript is not requested by the appellant, the completed appeal must be submitted to the Commandant within sixty days after service of the complete written decision. As noted above, the decision was served on 17 April 1990. Under this regulation, therefore, Appellant's appeal was not timely. However, in his letter acknowledging the receipt of Appellant's Notice of Appeal, the Administrative Law Judge erroneously advised Appellant that Appellant had sixty days from 13 May 1990,

the date of receipt of the Notice of Appeal, in which to perfect his appeal. Since the Appellant could have reasonably relied on this erroneous deadline transmitted by the Administrative Law Judge, Appellant's submissions must be considered timely. Accordingly, this matter is properly before the Vice Commandant for review.

FINDINGS OF FACT

At all times relevant, Appellant was the holder of the above-captioned license authorizing him to serve as "Operator of mechanically propelled small passenger vessels as defined in the Act of August 26, 1983, of not more than 100 gross tons upon waters other than ocean or coastwise other than the Great Lakes, excepting waters subject to International Regulations for Preventing Collisions at Sea, 1972, restricted to the Colorado River upon Lake Powell and between Davis Dam and Parker Dam."

M/V LITTLE BELLE, Official No. 907940, is a 63-foot steel-hulled small passenger vessel, certificated by the United States Coast Guard to carry a maximum of 150 passengers. The vessel is owned and operated by Laughlin River Tours, Inc., and operates as an excursion vessel on the Colorado River out of Laughlin, Nevada.

On or about 28 March 1989, and at all times relevant, Appellant was serving as the operator on board the M/V LITTLE BELLE under the authority of his duly issued license.

On 28 March 1989, at approximately 1700, the M/V LITTLE BELLE was underway on the Colorado River traveling upstream at 11 to 12 knots. The vessel was carrying passengers on a pleasure tour of the Colorado River. Visibility was unlimited and the weather was clear and sunny. Vessel traffic in the vicinity was light and there were no other vessels ahead or abeam of the M/V LITTLE BELLE.

Appellant first sighted the drifting motorboat approximately 350 yards upstream and sounded the M/V LITTLE BELLE's horn in a series of rapid blasts when the vessels were approximately 250 yards apart. The motorboat was not under command and its occupants attempted to signal

the M/V LITTLE BELLE of her distress by waving their arms and shouting. The M/V LITTLE BELLE continued upriver without altering course or speed, until the vessel collided with the unnamed motorboat. The motorboat capsized and its occupants were thrown in the water. The Appellant did not stop the vessel to assist two of the motorboat occupants still in the water and the M/V LITTLE BELLE continued on the tour and returned to her berth approximately 45 minutes later.

Appearance (first session): Bradford S. Mead, Struckmeyer and Wilson, 910 East Osborn, Phoenix, Arizona 85014.

BASES OF APPEAL

Appellant raises the following issues pro se:

1. Statements made by the Administrative Law Judge in his Decision and Order are contrary to any evidence or testimony given in the hearing;
2. The Administrative Law Judge made accusations in the Decision and Order that had not been raised before, making defense against such accusations impossible;
3. Numerous errors and inconsistencies regarding particulars, such as in names of witnesses and vessels, were made in the Decision and Order;
4. The Administrative Law Judge considered only the testimony of biased witnesses; the Administrative Law Judge erred by not applying the "narrow channel rule."

OPINION

I

Appellant asserts that the statements in the Decision and Order are contrary to "any" evidence or testimony. A thorough review of the record and the Decision and Order reflects that there is no basis for this assertion. The evidence and testimony submitted by the Investigating Officer as reflected in the record clearly support the decision reached. Thus, the Appellant's claim that the decision is contrary to "any" evidence is without merit.

II

Appellant claims that the Administrative Law Judge made "accusations" in the Decision and Order that had not been made at the hearing, making a defense against them impossible. Appellant's specific basis for this claim is not stated in his Appeal and consequently cannot be addressed in any detail. However, it is noted that the Administrative Law Judge's written Decision and Order is sufficiently detailed and concise and does not reflect any "accusations" or unsupported findings or conclusions. Accordingly, Appellant's bare assertion is unsubstantiated.

III

Appellant claims that numerous errors were made in the Decision and Order. The alleged errors such as reference in the record to Warren Parks as Wayne Parks, reference to the M/V LITTLE BELLE as the GOLDEN BELLE, and reference to the motorboat as a steamboat are clearly peripheral to the negligence charge and are thus not proper grounds for reversal of the Decision and Order. Appeal Decision 2396 (MCDOWELL), rev'd on other grounds sub nom. Commandant v. McDowell, NTSB Order EM-132 (1986).

Appellant alleges that several inconsistencies exist in the testimony of various witnesses and in statements made by the Administrative Law Judge. Without detailing these assertions, after thoroughly reviewing the record of the proceedings and the written Decision and Order, it is noted that these perceived inconsistencies are minor in nature and purely peripheral to the issue of Appellant's negligence.

Additionally, it must be stressed 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 2516 (ESTRADA); Appeal Decision 2503 (MOULDS); Appeal Decision 2492 (RATH); Appeal Decision 2282 (LITTLEFIELD). In the case herein, the findings of the Administrative Law Judge are reasonably supported by substantial evidence, notwithstanding minor inconsistencies in testimony. These findings are addressed and sufficiently detailed in the Administrative Law Judge's written Decision and Order.

IV

Appellant asserts that all witnesses introduced by the Investigating Officer were occupants of the motorboat and consequently biased and that the Administrative Law Judge had no grounds for doubting the credibility of Appellant's witnesses.

A determination of bias cannot be made solely on the basis of the identity or status of the witness. The testimony of the witnesses referred to by Appellant does not, on its face, reflect any degree of bias or prejudice.

The Administrative Law Judge is vested with broad discretion in making determinations regarding the credibility of witnesses and in resolving inconsistencies in the evidence. The Administrative Law

Judge as the presiding official at the hearing can fully observe the response, character and demeanor of the witnesses in issue. Appeal Decision 2516 (ESTRADA); Appeal Decision 2503 (MOULDS); Appeal Decision 2492 (RATH); Appeal Decision 2474 (CARMIIENKE); Appeal Decision 2472 (GARDNER); Appeal Decision 2212 (LAWSON); Appeal Decision 2052 (NELSON), dismissed sub nom Commandant v. Nelson, NTSB Order EM-54, 2 NTSB 2810.

Furthermore, contrary to the assertion of Appellant, the Administrative Law Judge was within his discretion in determining that the testimony of Appellant and his witnesses lacked credibility. The record reflects no abuse of discretion by the Administrative Law Judge in making credibility determinations regarding the witnesses. In fact, the Administrative Law Judge supports and details his credibility determinations based on the demeanor of the witnesses and the inconsistency of their testimony. [Decision and Order, p. 11].

Appellant inter alia raises issues regarding the sobriety of the motorboat operator, the method of signalling by a passenger in the motorboat, and alleged improper boarding methods employed by the Coast Guard. However, these assertions and the information submitted by Appellant in their support are not a matter of common knowledge and the record contains no evidence of a reliable and probative nature concerning these issues. On the contrary, the record reflects that the motorboat operator had "drank one beer" prior to the collision. [TR-1, p. 35]. The record also reflects that clear visual signals were given by the motorboat occupants to Appellant that the motorboat was dead in the water. [TR-1, pp. 58-59]. Finally, the record reflects no irregular boarding methods employed by the Coast Guard that would have been relevant to the issue of negligence. Accordingly, Appellant's assertions are not properly raised on appeal. 46 C.F.R. 5.701(b), Appeal Decision 2515 (COUSINS), Appeal Decision 2314 (CREWS), Appeal Decision 2509 (BRYANT).

V

Appellant asserts that the Administrative Law Judge erred by not applying the "narrow channel rule" (Inland Navigation Rule 9). Appellant urges that the Administrative Law Judge failed to apply the rule even though he determined that the river was 150 - 200 feet wide at the point of the collision.

Appellant's assertion is without merit. Application of the "narrow channel rule" is dependent upon the peculiar facts of each situation. It is well established that "narrow channels" are waterways navigated in opposite directions, where maneuverability is confined or restricted. See, Harbor Towing v. The Tug RELIANCE, 211 F. Supp. 896 (E.D. Va. 1963); The KLATAWA, 266 F. 120 (D.C. Wash. 1920).

In the case herein, the Administrative Law Judge found that the river is between 150 and 200 feet wide at the point of collision. He further determined that the beam of the M/V LITTLE BELLE is only 20 feet and that there were no other vessels impairing the M/V LITTLE BELLE's ability to maneuver around the motorboat. [Decision and Order, p. 14]. This determination is supported by the record. [TR-1, pp. 69, 72, 77]. Accordingly, the Administrative Law Judge correctly found that the waterway in issue was not restricted and that the "narrow channel rule" was inapplicable.

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.

ORDER

The decision and order of the Administrative Law Judge dated 30 March 1990 at Long Beach, California is AFFIRMED.

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

Signed at Washington, D.C., this 7th day of February ,1991.

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5. EVIDENCE

5.43 Inconsistencies

Permitted as long as reasonably justifying findings

5.115 Testimony

credibility of, determination of ALJ
weight of determined by ALJ

5.190 Witnesses

ALJ's duty to observe character, responses to determine credibility

Bias of witness cannot be determined solely on basis of status or identity

Credibility of determined by ALJ

7. NEGLIGENCE

7.14 Collision

failure to avoid motorboat dead-in-water

failure to take timely action to avoid

"Narrow Channel" rule not applied

where waterway 150-200 feet wide

7.13 Channels

"Narrow Channel" Rule (Inland Rule 9)
not applied where river 150-200 feet wide

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12. ADMINISTRATIVE LAW JUDGE

12.50 Findings

Assertion of unsupported findings must be substantiated

Upheld unless substantial evidence proves unsupported

Need not be completely consistent with evidence

DECISIONS CITED: Appeal Decisions: 2396 (MCDOWELL); 2516 (ESTRADA); 2503 (MOULDS); 2492 (RATH); 2282 (LITTLEFIELD); 2492 (RATH); 2474 (CARMENKE); 2472 (GARDNER); 2212 (LAWSON); 2052 (NELSON); 2515 (COUSINS); 2314 (CREWS); 2509 (BRYANT); Commandant v. Nelson, NTSB Order EM-54, 2 NTSB 2810; Commandant v. McDowell, NTSB Order EM-132 (1986).

STATUTES CITED: 46 USC 7702; 33 USC 2008; 33 USC 2018; 01; 46 USC 3311; 46 USC 12110;

REGULATIONS CITED: 46 CFR 5.701;

FEDERAL CASES CITED: Harbor Towing v. Tug RELIANCE, 211 F.Supp. 896 (E.D. Va. 1963); The KLATAWA, 266 F. 120 (D.C. Wash. 1920).

***** END OF DECISION NO. 2519 *****