

NTSB Order No.  
EM-84

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D. C.,  
on the 12th day of February, 1981

JOHN B. HAYES, Commandant, United States Coast Guard,

vs.

GEORGE H. McDONALD,

Appellant.

Docket ME-77

ORDER DENYING RECONSIDERATION

By Order EM-80 (served June 10, 1980), the Board affirmed the Commandant's decision to suspend appellant's license on findings that as a result of his negligent piloting of the SS PHILLIPS WASHINGTON the tug TONY ST. PHILIP was capsized and sank. Appellant has filed a motion requesting that we reconsider our affirmance on the ground that it fails to recognize the intervening negligence of the WASHINGTON's crew as a factor exonerating his conduct in the mishap. <sup>1</sup> In support of his position, appellant contends that while our decision "specifically addressed the negligence of the WASHINGTON'S crew in failing to release the hawser... it did not apply the correct standard for analysis of intervening negligence" (Motion at 4). We find no merit in this contention.

Our decision did not, as appellant maintains, acknowledge any negligence on the part of the WASHINGTON's crew. It did, however, discuss appellant's argument that competent line handling by the crew would have prevented the casualty and concluded that he bore "no responsibility for the failure on the part of the vessel's crew to be vigilant at the critical time" (Order EM-80 at 4). We made no attempt to determine, as the issue was not before us, whether the crew's lack of vigilance amounted to negligence. In any event, assuming, arguendo, that the crew was negligent in its line

---

<sup>1</sup>Grant or denial of reconsideration of decisions on seaman appeal is a matter committed to the Board's discretion. See Commandant v. Neilson, 2 NTSB 2694 (1974).

handling, our disposition of this case would be the same. The fact that the tug might not have sunk had the crew released the line is simply not relevant to our conclusion that the appellant's failure to verify that the line had been released before ordering the WASHINGTON's engines full ahead was negligent. We would consider appellant's conduct to have been negligent even if the tug had not sunk, for his lack of proper concern for the safety of the tug and its crew would still be manifest. Finally, since appellant could have easily verified whether the line had been released before ordering the engines put full ahead, any prior dereliction on the crew's part, if such occurred, cannot be viewed as intervening negligence within the meaning of the doctrine appellant relies on. For these reasons, we find no basis for granting reconsideration of our original decision.

ACCORDINGLY, IT IS ORDERED THAT:

The appellant's motion for reconsideration of Order EM-80 is denied.

KING, Chairman, DRIVER, Vice Chairman, McADAMS, GOLDMAN and BURSLEY, Members of the Board, concurred in the above order.