

NTSB Order No.  
EM-118

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 28th day of December, 1984

JAMES S. GRACEY, Commandant, United States Coast Guard,

v.

JAMES R. WILKINS, Appellant.

Docket No. ME-108

ORDER DISMISSING APPEAL

This appeal challenges an order admonishing the appellant for his misconduct in navigating a coastwise seagoing oil carrying barge when he did not have on board a licensed pilot. The order was issued by Administrative Law Judge Michael E. Hanrahan on September 30, 1981, following an evidentiary hearing held on July 7, 1981. The order of admonition was affirmed by the Vice Commandant on June 12, 1984.<sup>1</sup> By motion to dismiss filed October 10, 1984, the Coast Guard contends, citing Commandant v. Leskinen, NTSB Order EM-59 (1977) and Commandant v. Schuiling, NTSB Order EM-109 (1984), that the appeal should be dismissed because the Board's jurisdiction to review extends only to orders revoking, suspending or denying licenses, and not to orders of admonition.

In opposition to the motion the appellant argues, first, that the case should not be dismissed because the Coast Guard's conclusion that appellant was subject to a sanction for not having a pilot on board his tug disregards Board precedent to the contrary in Commandant v. Pitts, NTSB Order EM-98 (1983). Since the only material difference between this case and Pitts, according to appellant, is that in Pitts a suspension order was at issue, a dismissal denying appellant the administrative relief available to pitts "offends the traditional American notion of justice and fairness" (Opp. at 2). Second, the appellant argues that an admonition at least potentially involves a suspension since, under the Coast Guard's Table of Average Orders in 46 CFR §5.20-165, the repetition within three years of an offense for which an

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<sup>1</sup>Copies of the decisions of the Vice Commandant (acting delegation) and the law judge are attached.

admonishment was issued will result in a license suspension. We find these arguments unavailing.

The fact that the Coast Guard's decision in this case involves issues we addressed in Pitts does not alter our view that an order of admonition is not subject to our review as we held in the cases cited in the Coast Guard's motion. Our authority under 49 U.S.C. 1903(a) (9) (B) is based on the nature of the license action taken by the Coast Guard, not on the reasons underlying such action. AS to the contention that the Board can review an order of admonition because an order could have an impact on sanction in a subsequent disciplinary proceeding, we are not persuaded that possibility justifies construing our review authority to embrace a type of order not mentioned in the statute's "specific listing of orders which are reviewable" (Leskinen, supra, at 2).<sup>2</sup>

ACCORDINGLY, IT IS ORDERED THAT:

1. The motion to dismiss is granted; and
2. The instant appeal is dismissed.

Burnett, Chairman, GOLDMAN, Vice Chairman, and BURSLEY, Member of the Board, concurred in the above order.

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<sup>2</sup>Moreover, it should be noted that the Table of Average Orders is" for the information and guidance of administrative law judges." 46 CFR §5.20-165. Thus, it is possible that an admonition would have no impact on sanction in a subsequent proceeding for an offense repeated within three years. In a case where it did have an impact that resulted in an order subject to Board review, it is possible that the Board would have jurisdiction for some purposes over an order an admonition alleged to have been issued without or contrary to authority of law.