

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. Z-421604-R
Issued to: Victor V. COLEMAN LICENSE NO. 429600

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2100

Victor V. COLEMAN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 code of Federal Regulations 5.30-1.

By order dated 12 July, 1976, an Administrative Law Judge of the United States Coast Guard at Houston, Texas suspended Appellant's license for one month outright plus two months on four months' probation upon finding him guilty of negligence. The specification found proved alleges that while serving as Chief Engineer on board the United States SS AMERICAN EAGLE under authority of the license above captioned, on or about 19 February 1976, Appellant was negligent in his duties, which resulted in a spillage of fuel oil into Corpus Christi Harbor, Coastal States Petrochemical Company Dock, Nueces County, Texas, to wit: allowing the starboard settling tank to overflow.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of three witnesses and pertinent documentary materials.

In defense, Appellant offered in evidence his own testimony and pertinent documents.

At the end of the hearing, the Judge rendered on oral decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant suspending the license issued to Appellant, for a period of one month outright plus two months on four months' probation.

The entire decision and order was served on 5 August 1976. Appeal was timely filed on 18 January 1977. A temporary license was issued on 5 August 1976, pending disposition of the appeal.

FINDINGS OF FACT

On February 1976, Appellant was serving as Chief Engineer on board the United States SS AMERICAN EAGLE and acting under authority of his license while the ship was at the Coastal States Petrochemical Company Dock, Nueces County, Texas. On the date in question, Appellant was Chief Engineer and officer in charge of loading bunker fuel. Appellant had decided that 4,800 barrels of fuel oil should be received, and prior to loading, inquired of the dockman as to what the loading rate would be. Appellant testified the rate the dockman gave was about 1200-13000 barrels per hour. The dockman verified this statement.

Loading commence at 1615 hours, after several delays. During the preliminary stages, Appellant was taking on fuel into five tanks, namely, the port and starboard wing tanks, the port and starboard settling tanks, and the number two deep tank forward. After this simultaneous loading, Appellant closed down the number two deep tank forward, and the port and starboard wing tanks aft. Prior to the discharge, he was loading only two tanks, the port and starboard settling tanks with the same cargo loading rate. Appellant testified he noticed the rate was steady into the port and starboard tanks for about one hour. While loading the two tanks, Appellant checked his alleges with both his tape and the ladder rungs in the tanks.

Appellant intended to top off the port and starboard settling tanks after a check of the number two port deep tank forward. Checking the ladder rungs in the loading tanks, he estimated he had

time to make a five or six minute visit forward to the number two port deep tank to see that it was shut down properly, and check the amount of fuel oil in the tank. Appellant proceeded to do so, and while checking the port deep tank forward, oil overflowed from the starboard settler, over the deck, and into Corpus Christi Harbor. The average flow of the oil was estimated after the incident to be 18 hundred barrels per hour. Additionally, the oil was being loaded at 206 degrees, average loading temperature being near 120 degrees.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

- (1) The charge and specification, as amended, was legally insufficient, ambiguous, overly broad and so vague and general in nature as to deprive Appellant of adequate notice, and
- (2) The Administrative Law Judge's finding of negligence was unsupported by and contrary to the evidence received at the hearing.

APPEARANCE: Robert J. Patterson, Keys, Russell, Seaman and Mansker, Corpus Christi, Texas.

OPINION

I

It is manifestly clear that charges and specifications in administrative proceedings need not meet the technical requirements of court pleadings *Commandant's Appeal Decision 2022 (PALMER)*. "It is now generally accepted that there may be no subsequent challenge of insures which are actually litigated, if there has been actual notice and adequate opportunity to cure surprise."

Kuhn v. Civil Aeronautics Board, 183 F.2d 839, 841(D.C.Cir. 1950). Appellant contends that the specifications fail to denote the acts or omissions which were actually negligent. The provisions of 46 CFR S5.05-17b outline the necessary elements of valid specifications. The regulation reads:

(b) A "specification" sets forth the facts which form the basis of the "charge." The purpose of a "specification" is to enable the person charged to identify the offense so that he will be in a position to prepare his defense. Each specification shall state:

- (1) Basis for jurisdiction;
- (2) Date and place of offense; and
- (3) A statement of the facts constituting the offense.

Review of the record indicates that the amended specification clearly sets forth the offense of negligence, in this case, allowing the starboard setting tank to overflow. Additionally, appellant, on direct examination by his counsel, acknowledge his familiarity with the specification and charge, (R-139, R-140) and tailored his defense to refute the allegations. The first basis for appeal is, therefore, without merit.

II

Negligence is defined in 46 CFR 5.05-20(2) as "the commission of an act which a reasonably prudent person of the same station, under the same circumstances, would not commit, or the failure to perform an act which a reasonably prudent person of the same station, under the same circumstances, would not fail to perform." In order to prove the charge, it is necessary for the Coast Guard to prove that Appellant's conduct in some manner failed to conform to the standard of care required by the reasonably prudent chief engineer under the same circumstances confronted by Appellant. I find the record contains sufficient evidence of such proof.

On the date in question, Appellant was Chief Engineer and officer in charge of loading bunker fuel. Under these

circumstances, Appellant was duty bound to monitor loading operations carefully, in order to prevent discharges such as the one which occurred.

The evidence indicates that Appellant left two settling tanks about to "top off" to check a forward deep port tank, and was away from his loading tanks for approximately five or six minutes. It also reveals that prior to leaving the loading tanks, Appellant estimated the amount of ullage remaining in the tanks by a visual inspection of ladder rungs in the tanks. During his absence, the starboard settler overflowed. Appellant's actions were clearly negligent. Had he remained with his tanks, or had he ascertained a more accurate loading rate by the use of his tape, the common procedures followed in such situations, the discharge would not have occurred.

CONCLUSION

The specification alleging negligence in allowing the starboard settling tank to overflow was sufficient notice to Appellant of the charges against him. The specification, has been proved by substantial evidence. Accordingly, the findings of the Administrative Law Judge are AFFIRMED.

ORDER

The order of the Administrative Law Judge dated at Houston, Texas on 12 July 1976, is AFFIRMED.

O. W. SILER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 26th day of April 1977.

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