

In the Matter of License No. 39274
Issued to: LEON A HAZLETON

BY ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

442

LEON A. HAZLETON

By virtue of the authority reposed in me as Commandant of the United States Coast Guard, and because of the unique problem presented by this case, I have *ex proprio motu* reviewed the decision rendered by the Examiner on 16 September, 1949.

On 16 September, 1949, a hearing pursuant to Title 46 United States Code 239 was conducted by a Coast Guard Examiner at Coeur d'Alene, Idaho. Leon A. Hazelton was charged with "negligence" supported by two specifications alleging in substance that while serving as operator on board the American MV NOKOWAHNA, under authority of the license above described, on or about 31 July, 1949, he operated said vessel without having proper equipment on board (life jackets, fire extinguishers, bell, flame arrestor on the carburetor and ventilators for the engine compartment) and without having on board the required documents issued by the U.S. Customs.

At the hearing, the person charged was given a full explanation of the nature of the proceedings and he was represented by counsel of his own choice. Hazelton entered a plea of "not guilty" to the charge and each of the specifications.

The Investigating Officer introduced in evidence the testimony of two witnesses before resting his case. The person charged testified under oath in his own behalf and also offered in evidence the testimony of John F. Finney, the owner of the MV NOKOWAHNA.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and counsel for the person charged, the Examiner found the charge of "negligence" and both specifications proved except as to the flame arrestor and ventilators. He then entered an order dated 16 September, 1949, suspending License No. 39274, and all other licenses, certificates and documents held by Leon A. Hazelton, for a period of six (6) months on twelve (12) months' probation.

On 12 August, 1949, prior to the issuance of the Examiner's order; John F. Finney, as owner of the NOKOWAHNA, was sent a notice of violation based on the same allegations set forth in the two specifications herein. The total possible penalties which could be assessed for these violations under Title 46 U.S.C. 526o and Title 46 U.S.C. 38 (later stated to be in error in favor of 46 U.S.C. 277) were stated to be \$1200 distributed as follows:

1. \$500 for violation of 46 C.F.R. 1.55 (later said to be a violation of 46 U.S.C. 277) in that the vessel's documents were not on board.
2. \$200 for violation of 46 U.S.C 526e since the life jackets on board fell ten short of the approved type.
3. \$200 for violation of 46 U.S.C. 526g because there were only two instead of three fire extinguishers on board and one of the two was empty.
4. \$100 for violation of 46 U.S.C 526d since there was no bell aboard the vessel.
5. \$100 for violation of 46 U.S.C. 526i in that there was no flame arrestor on the carburetor.
6. \$100 for violation of 46 U.S.C. 526j since the engine compartment was not properly ventilated.

John F. Finney replied to this notice of violation by letter dated 27 August, 1949, in which he stated that the documents were kept ashore to preserve them against damage or misplacement; that a sufficient number of approved life preservers had been on board two days before the inspection so that some of them must have been

stolen; that the vessel had previously been approved with two fire extinguishers and both of these extinguishers had been in good condition when last checked; that a bell had never been required because the vessel was not operated in fog; that the vessel had previously been approved without a flame arrestor on the carburetor; that the engine compartment ventilation had been previously approved; and that these discrepancies had all been remedied so that the NOKOWAHNA conforms in all respects to these Coast Guard regulations.

Consideration having been given to these explanations, the assessment of penalties was reduced to \$400 by the Commander of the Thirteenth Coast Guard District. The penalties assessed for violation of 46 U.S.C. 526e and 46 U.S.C. 526g were not reduced but the other penalties were entirely remitted. Finney was informed of this action by the assessment notice dated 4 October, 1949.

An appeal from this assessment was taken to the Commandant on 28 October, 1949. In addition to substantially the same explanations which were set forth in the letter of 27 August, 1949, it is contended in this appeal that the Coast Guard has no jurisdiction over Lake Coeur d'Alene because it is not a "navigable" body of water. Upon review of this appeal, it was ordered on 9 December, 1949, that the \$400 assessment should be mitigated to \$150 since the circumstances did not seem to justify imposing the maximum penalty for these two violations. This assessment was paid by Finney in January, 1950.

Since the action on the assessment was taken subsequent to the order of the probationary suspension imposed by the Examiner as a result of the hearing in the case of Leon A. Hazelton, the appeal taken in connection with the assessment of the navigation fines shall be considered as applicable to the suspension proceedings.

For the purpose of this review, the findings and conclusions of the Examiner are hereby adopted except as otherwise specified. Since the fines imposed in connection with the documents, the bell, the flame arrestor and the ventilation were remitted and the other two penalties mitigated due to the circumstances involved, it is my opinion that these circumstances should be reflected in the suspension proceedings by an appropriate modification of the Examiner's order. By doing this, it is felt that the two results

will assume a reasonable degree of consistency.

A discussion of the federal jurisdiction over navigation on Lake Coeur d'Alene may be found in my decision in the case of John F. Finney. (Headquarters No. 440). It was there decided, on the authority of *Spokane Mill Co. v. Post (1892)*, 50 Fed. 429, and *United States v. Appalachian Electric Power Co. (1940)*, 311 U.S. 377, that Lake Coeur d'Alene is subject to federal jurisdiction.

In order to accomplish the desired end, the order of the Examiner dated 16 September, 1949, is modified to read as follows:

ORDER

"License No. 39274 and all other certificates, licenses and documents held by Leon A. Hazelton, are hereby suspended for a period of one (1) month. The suspension ordered shall not be effective provided no charge under R.S. 4450, as amended (46 USC 239) is proved against you for acts committed within six (6) months of 16 September 1949. If this probation is violated, the order for which probation was granted shall become effective with respect to all certificates of service, licenses or merchant mariner's documents here involved, and also any certificates of service, licenses, or merchant mariner's documents acquired by you during the period of probation, at such time as designated by any Examiner finding the violation, and may be added to or form a part of any additional order which is entered by such Examiner." As so modified, said Order is AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 23rd day of January, 1951.

***** END OF DECISION NO. 442 *****

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