

IN THE MATTER OF LICENSE NO. 33038
Issued to: CHRISTIAN DRIVDAHL

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

585

CHRISTIAN DRIVDAHL

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 12 October, 1951, an Examiner of the United States Coast Guard at New York City suspended License No. 33038 issued to Christian Drivdahl upon finding him guilty of negligence based upon a specification alleging in substance that while serving as Master on board the American SS SANDMATE under authority of the document above described, on or about 24 May, 1951, he did "negligently overload the said vessel thereby causing submersion below the authorized freeboard line and contributing to the subsequent grounding and sinking of the vessel."

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own selection and he entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer and counsel for Appellant made their opening statements and the Investigating Officer

introduced in evidence the testimony of Second Mate Long, the testimony of Commander Stewart who had examined the SANDMATE for stability, and three documentary exhibits, including the stability letter which authorized the SANDMATE to operate with a minimum freeboard of 3 feet 10 inches.

In defense, Appellant offered in evidence the testimony of Captain Ammon who was the regular Master of the SANDMATE. Appellant also testified under oath in his own behalf as to the events which occurred while he was acting as relief Master of the SANDMATE on 24 May, 1951.

At the conclusion of the hearing, having considered arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order suspending Appellant's License No. 33038, and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of three months on nine months probation.

In this appeal which has been taken from the order, it is contended that Captain Ammon had made alterations in the two hoppers of the SANDMATE and that these alterations made it impossible to load the vessel in such a manner that her freeboard was less than the three feet ten inches permitted by the temporary stability letter issued to the SANDMATE.

Appellant claims that after the vessel came out of the shipyard and was put in service in October 1950, Captain Ammon experimented while loading her with sand in order to prevent overloading. At first, he chained in an open position the upper series of four sets of doors which formed a series of outlets at four different levels on each of the four sides of the after hopper. This was done to keep the top outlets open and thereby prevent the sand from being loaded above the sills of the upper openings but it was found that the vessel would still be overloaded if the after hopper was filled to this point. Consequently, Captain Ammon later had slots cut in two sides of the after hopper below the sills of the upper series of doors so that sand would flow out of these slots with the water and thereby prevent loading

the vessel so as to bring her below the authorized freeboard. At a still later time, the upper series of doors were removed as a safety precaution which had nothing to do with the cargo carrying capacity of the vessel.

It is stated that Appellant was advised of these alterations which were made to avoid the possibility of overloading and, for this reason, he did not measure the freeboard of the SANDMATE at any time during his temporary stay on the vessel.

Finally, it is urged that the Examiner had an erroneous impression concerning the alterations which had been made on the SANDMATE because he did not accept the invitation to examine similar vessels; the record does not support the statement by the Examiner that Second Mate Long and Appellant had testified at a preliminary investigation that the freeboard of the vessel on the occasion in question was only two feet ten inches; and, for all of those reasons, the decision of the Examiner should be reversed or, in the alternative, the case should be remanded for further proof.

APPEARANCES: Messrs. Hagen, Senecal and Eidenbach of New York City, by Charles W. Hagen, Esquire, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 24 May, 1951, Appellant was serving as temporary relief Master on board the American SS SANDMATE and acting under authority of his License No. 33038.

The SANDMATE, Official No. 260880, was a self-loading sandsucker type dredge of 2072 gross tons and equipped with a forward and after hopper. She was a twin-screw steam vessel, approximately 275 feet in length and a beam of about 50 feet.

Before the SANDMATE was put into service after leaving the Bethlehem Shipyard in October, 1950, stability tests were conducted and the SANDMATE was authorized to operate as a dredge on inland waters subject to the restriction that she maintain "minimum

freeboard at lowest point of sheer to be not less than 3'10"." This temporary stability certificate was issued in a letter dated 27 October, 1950, to the shipowner from the Officer in Charge, Marine Inspection, at New York City. It was posted in the pilothouse of the SANDMATE.

Subsequent to the issuance of this letter, Captain Robert R. Ammon, Master of the SANDMATE, made certain alterations in the after hopper for the purpose of limiting the capacity of the hopper and thereby prevent the freeboard from being less than three feet ten inches. A slot about 6 by 18 inches was cut in the spillways, on two sides of the hopper, below the upper of the four series of outlet doors which measured about 14 by 17 inches; and the four top outlet doors on the after hopper were removed. No alterations were made with respect to the capacity of the forward hopper.

On 24 May, 1951, the SANDMATE was engaged in dredging operations off East Bank, Coney Island, under the supervision of Second Mate Long.

At about 0030, she completed pumping aboard a cargo of sand. The freeboard of the vessel at this time was between two and three feet.

The SANDMATE was proceeding to Newark, New Jersey, when she sheered to the starboard side of the channel and struck bottom twice at 0120 after rounding the buoy off Bergen Point to head into Newark Bay. The vessel was beached about a mile beyond the place of the grounding and eventually sank off the starboard side of the channel.

There is no record of any prior disciplinary action having been taken against Appellant during his twenty years' service with a Master's license.

OPINION

Appellant's denial that he committed the offense of overloading his vessel is based upon his contention that there is no evidence that the freeboard was less than the authorized minimum

as well as upon the affirmative testimony of Captain Ammon that it was impossible to have a freeboard of less than three feet ten inches when both hoppers of the SANDMATE were loaded.

Based upon the record of the hearing, I have found that the freeboard of the SANDMATE was between two and three feet after completion of loading on 24 May, 1951. This finding is based on the testimony as to the visual estimate of the freeboard which was made by Second Mate Long on 24 May, 1951 (R.11); the testimony of Appellant that the freeboard was "less than three feet . . ." (R.58); the testimony of Captain Ammon that the overflow slots which were practically level with the deck (R.43) were only about two feet above the waterline (R.44); and the testimony of both Appellant and Second Mate Long at the preliminary investigation (R.10, 59).

The individual testimony of Appellant, Second Mate Long, and Captain Ammon, which was taken at the hearing was all somewhat self-contradictory. Although each one of them submitted testimony which does not support my finding that the vessel was overloaded, they also testified in favor of it as is pointed out in the preceding paragraph. These excerpts from the testimony of each witness corroborate the parallel testimony of the other two witnesses; and each supports the charge and specification.

But because of the lack of accord within the testimony of these three witnesses, particularly that of the Appellant and Second Mate Long, I have placed much greater weight upon the evaluation of credibility by the Examiner and the testimony of the latter two witnesses when they appeared at the preliminary investigation. Their testimony at that time was clearly to the effect that the freeboard of the SANDMATE was less than three feet. Appellant did not attempt to refute his admission, which was introduced in evidence at the hearing, by showing that there had been any contradictory testimony taken on this point at the investigation. It is merely claimed that on the basis of later information acquired by Appellant and Long, they realized that their estimates which were given during the investigation must have been wrong. But even in the face of this, Long reiterated at the hearing that his best visual estimate of the freeboard on 24 May, 1951, was between two and three feet!

Appellant's admission may be received as original evidence against him to establish the truth of the statements made, and its admissibility is not dependent upon any tendency to discredit the Appellant although they are competent for the additional purpose of impeaching him. *31 Corpus Juris Secundum 1027.*

Opposed to this direct and convincing evidence is the lengthy testimony of Captain Ammon as to the alterations which made overloading impossible. As was pointed out above, Captain Ammon's testimony is not entirely consistent. Even if it were, I would not, under the circumstances, give such evidence, which is generally less probative, greater weight than the direct evidence which is before me.

It is claimed that Appellant simply accepted Captain Ammon's that the vessel could not be overloaded and Appellant did not measure the freeboard at any time while he was Master. In view of the purpose in assigning minimum freeboards to vessels and the fact that the certificate was posted in the pilothouse (which Appellant states he misread as two feet ten inches), Appellant was very lax in his attitude. The minimum freeboard indicates the point to which a vessel may be loaded without depriving her of a sufficient percentage of reserve buoyancy to insure the safety of the vessel. Since the failure to comply with these requirements might well endanger ships, cargoes, and the lives of shipboard personnel, Masters are bound to observe a very high degree of care in order to be certain that their vessels comply strictly with such requirements. It is not an adequate excuse for Appellant to blame the overloading on the inability to make accurate observations due to the unfavorable weather conditions. The need for this reserve buoyancy becomes all the more important when rough seas are encountered.

CONCLUSION

I am convinced that Appellant loaded his vessel to such an extent that her freeboard was approximately one foot less than the authorized minimum of three feet ten inches; and that this overloading, although it might not have caused the vessel to sheer to a greater degree than usual, contributed to the grounding by making her bottom lower in the water and to the sinking by having deprived her of the required reserve buoyancy to some extent.

ORDER

The order of the Examiner dated 12 October, 1951 is hereby
AFFIRMED.

A. C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 3rd day of September, 1952.

***** END OF DECISION NO. 585 *****

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