

In the Matter of License No. 91655
Issued to: JOHN T. HOKENSON

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

400

JOHN T. HOKENSON

This appeal comes before me by virtue of Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

On 13 and 14 April, 1949 and 18 May, 1949, Appellant appeared before an Examiner of the United States Coast Guard to answer a charge of negligence supported by two specifications, the first alleging that Appellant while serving as Master of the SS OSCAR CHAPPELL under the authority of his duly issued license, did on or about 22, 23, and 24 March, 1949, while said vessel was on the high seas fail to take proper precautions to confine the Chief Cook, John H. Hitchner, to prevent him from doing harm to himself upon being informed of his peculiar actions and particularly upon being informed of his attempt to jump overboard at sea; the second specification alleging that Appellant, while serving as above, did on or about 24 March, 1949, unnecessarily delay in launching a lifeboat to recover John H. Hitchner from the sea after he had gone overboard.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. Appellant was represented by counsel of his own choice and pleaded "not

guilty" to the charge and specifications.

Witnesses were called by both the Investigating Officer and the person charged and the latter testified in his own behalf. When the hearing was concluded, the Examiner found the charge and the first specification "proved." The second specification was found "not proved" and was dismissed. The Examiner, thereupon, entered an order suspending Appellant's License for a period of 12 months, the last 6 months of the suspension not to be effective provided no charge under R.S. 4450, as amended, be proved against Appellant for acts committed within 24 months from the first day of said probation.

From that order, dated 18 May, 1949, this appeal has been taken. Appellant contends that:

- (1) Only Hitchner's actions which were brought to the attention of Captain Hokenson are material in the hearing of a charge of negligence against the master.
- (2) The course of action followed by Captain Hokenson was adequate and intelligent and was properly calculated to deal with the situation as it had been reported to him.
- (3) The findings of fact of the Examiner are (a) not supported by the evidence in the case, and (b) immaterial to the charge against Hokenson.
- (4) The Examiner erred in that he imposed an excessive penalty even on the facts as he found them.

Thos. M. Johnston, Esq., of Norfolk, Virginia, For Appellant.

Based upon my examination of the record in this case, I hereby make the following:

FINDINGS OF FACT

At all times hereinafter mentioned Appellant was serving as Master of the SS OSCAR CHAPPELL, under the authority of his duly

issued License No. 91655.

The SS OSCAR CHAPPELL departed Venice, Italy, on 19 March, 1949, bound for Norfolk, Virginia. On this voyage, John H. Hitchner was serving as Chief Cook. While the vessel had been in Venice, Hitchner indulged excessively in the drinking of alcoholic liquors, which apparently had been his habit for years. After the vessel sailed, a report was made to the Steward by a galleyman and second cook that Hitchner was acting in a peculiar manner with the result that those working in the galley became apprehensive when said Hitchner was handling knives and cleavers while their backs were turned. On the evening of 22 March, 1949, when the vessel was well at sea, Hitchner was observed on deck fully dressed and with his bags packed. Upon being questioned, he stated that he was going ashore. At a gathering of the ship's crew there was a discussion as to the situation regarding Hitchner and it was decided to send a delegate to Appellant to see if Hitchner could be locked in his room in order to prevent him from doing harm to the men or himself. As a result, one Frasco, the ship's delegate reported to Appellant that Hitchner had been packing his bags and was getting ready to go over the side. Frasco and Appellant considered the question of locking Hitchner in the forepeak or the deck locker, or handcuffing him to his bunk, but no action along this line was taken by the Master. Shortly thereafter, Appellant proceeded to Hitchner's room and was informed by Hitchner, "Captain, somebody told me to hurry up, the launch is waiting." Appellant informed Hitchner that there was no launch waiting and advised him to go to sleep. Appellant also gave him two bromide pills and told him to lay down on the bunk. Appellant thereafter left Hitchner and went back to his own room.

On the following day, 23 March, 1949, Hitchner was removed from the engine room by the Chief Engineer who was informed by Hitchner that he could hear music coming up from the engine room. Hitchner had also made this same statement to the Steward previously. No report of this activity was made to the Appellant.

On 24 March, 1949, Hitchner was observed by the Steward in the passageway wearing a lifejacket and upon being questioned stated: "I am going to jump over the side" and "if I don't he is going to throw me overboard." Within a few minutes of this occurrence, at about 1:15 P.M., the Steward and a seaman observed Hitchner

attempting to go over the side of the vessel, whereupon they stopped him and returned him to his room. Almost immediately thereafter, the seaman reported this action to the Mate on watch, who in turn made a report to the Appellant. At about 2:15 P.M. that same afternoon Hitchner went over the starboard side of the CHAPPEL and subsequent rescue efforts were unavailing; the body was not recovered.

In view of the finding by the Examiner that the second specification relative to a delay in launching a lifeboat was not proved, I make no findings of fact in regard thereto.

OPINION

There is substantial evidence in the record of this case to clearly show that Appellant had sufficient notice of Hitchner's peculiar actions which would have been enough to cause a prudent man under the same circumstances to take the proper measures to prevent Hitchner from doing harm to himself. In my opinion the failure of Appellant to take positive steps to prevent Hitchner from going over the side of the CHAPPELL constitutes negligence.

The Supreme Court of the United States has defined negligence as follows:

"Negligence is the failure to do what a reasonable and prudent man would ordinarily have done under the circumstances of the situation; or doing what such a person, under the existing circumstances, would not have done. The duty is dictated and measured by the exigencies of the occasion." *Baltimore & P. R. Co. v. Jones*, 95 U.S. 439.

No good purpose will be served by multiplying citation of authorities on this proposition.

As contended by counsel for Appellant, only Hitchner's actions which were brought to the attention of Appellant are material to the charge of negligence. However, the record in this case clearly shows that on three different, distinct occasions the Master was placed on notice, either directly or by report, that something was

wrong with Hitchner. The first occurred when the report was made by the ship's delegate, Frasco, to the effect that Hitchner had been found on deck dressed and with his bags packed, stating that he was going ashore. This alone, under the circumstances of the vessel being well at sea, should have been sufficient notice to Appellant that Hitchner might do harm to himself. However, in addition to this occurrence, the Master himself in direct conversation with Hitchner was informed, "Captain, somebody told me to hurry up, the launch is waiting." This entirely irrational remark should have warned the Master that without proper surveillance some harm might befall Hitchner. In spite of these two warning signs of irrational thoughts and actions on the part of Hitchner, Appellant did nothing to confine him to his room or otherwise place him under the slightest sort of guard.

The third and most striking notice given to the Appellant was the report made to him while he was on the bridge that Hitchner had been forcibly restrained from jumping over the side through the efforts of the Steward and an ordinary seaman. It is my opinion that Appellant, with his attendant responsibility for the safety of his crew, should have taken immediate steps to insure that Hitchner was placed under guard to prevent him from again attempting such suicidal action. This, in my opinion, is what a reasonable and prudent man would have done under the circumstances of the situation. Appellant, however, merely ascertained that Hitchner had been returned to his room, and then resumed his management of the vessel in making a landfall. Appellant's complete failure to take positive action at this point resulted in Hitchner being able to freely reach the side of the vessel and jump into the sea, thereby losing his life.

I cannot agree, as contended by counsel for Appellant, that the course of action followed by Captain Hokenson was adequate and intelligent and was properly calculated to deal with the situation as it had been reported to him. I am firmly of the opinion that Appellant did not do what a reasonable and prudent man would ordinarily have done under the circumstances.

In connection with Appellant's contention that the findings of fact of the Examiner was not supported by the evidence in the case and are immaterial to the charge against Appellant, I do not consider it necessary to individually treat each of the statements

made concerning the findings of fact. I agree that the Examiner made several findings that were in excess of those required to reach a proper conclusion. However, these were in no way prejudicial to Appellant, and included among the findings are those which directly bear on the charge against Appellant and fully support the conclusion of the Examiner. I make reference to those findings which relate to the notice given to Appellant of the peculiar actions of Hitchner and Appellant's failure to take any positive action in regard thereto.

I am of the opinion that the evidence in the case clearly shows that these findings are justified.

CONCLUSION

My final conclusion in this case is that, under the circumstances as shown by the evidence in the record, there was a sufficient manifestation of unusual conduct by Hitchner and appropriate notice thereof to Appellant; the failure of Appellant to take adequate precautions to prevent Hitchner from harming himself constitutes negligence.

Due notice is taken of the fact that Appellant herein has been following the sea for 45 years, 25 years of which have been as Master, and of his otherwise excellent and clear record, and accordingly, it is my conclusion that the order of the Examiner should be modified.

ORDER

I hereby direct that the order of the Examiner dated 18 May, 1949, be MODIFIED to read "That License No. 91655 issued to John T. Hokenson, and all other valid documents issued by the United States Coast Guard or any predecessor agency now held by you, be, and the same are hereby suspended for a period of twelve months. This order shall not be effective provided no charge under R.S. 4450, as amended, is proved against you for acts committed within twelve months from this date."

As so MODIFIED, said order is AFFIRMED.

MERLIN O'NEILL
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 15th day of December, 1949.

***** END OF DECISION NO. 400 *****

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