

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
UNITED STATES COAST GUARD

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD
COMPLAINANT,

vs.

License
No. 796310

Issued to:
Daniel J. Hotard
Respondent

Docket No. 01-0054
PA No. 01000085

RECORDED
JAN 26 9 51 AM '01
ADJUTANT GENERAL
OFFICE

Before: Archie R. Boggs
Administrative Law Judge

PRELIMINARY STATEMENT

This proceeding is brought pursuant to the authority contained in 5 USC 551-559; 46 USC Chapter 77; 46 CFR Part 5; and 33 CFR Part 20.

Daniel J. Hotard was served with a Complaint by a U.S. Coast Guard Investigating Officer on 26 January 2001. The Complaint alleges statutory authority as 46 USC 7703 and regulatory authority as 46 CFR 5.27.

The factual allegations are as follows:

“Factual allegations - Misconduct

- (1) The Coast Guard alleges that on December 24, 2000, the Respondent wrongfully relinquished control of the vessel Marie M. Morgan with two loaded red flag barges to an unlicensed deckhand.
- (2) The Respondent wrongfully deserted the vessel Marie M. Morgan.

The Respondent filed an answer through his attorney on 5 February 2001. He admitted the jurisdictional allegations and he denied the factual allegations. He requested a hearing.

A hearing was held in accord with his request on 2 May 2001 at the Marine Safety Office, 1615 Poydras Street, Room 737, New Orleans, LA.

LT Scott Johnson presented the case for the Coast Guard. Carlton J. Cheramie, attorney at law, P.O. Box 640, Cutoff, LA, 70345, represented the Respondent.

In support of the Complaint the Investigating Officer introduced in evidence the testimony of; (1) Michael Lombardo, who joined the M/V Marie M. Morgan on 22 December 2000 as master. Also in support of the Complaint the Investigating Officer introduced an entry from the log book of the Marie M. Morgan.

Mr. Hotard testified in his own behalf. He also called his father, Stanley Hotard, Sr., who is Captain of the M/V Jesus Saves.

FINDINGS OF FACT

Both the Coast Guard and the Respondent indicated that they desired to submit Proposed Findings of Fact and Conclusions of Law. The Coast Guard submitted timely Proposed Findings. However, the Respondent submitted a memorandum with no numerical Proposed Findings. The Coast Guard's Proposed Findings of Fact and Conclusions of Law are Accepted and Adopted, in toto, as the Administrative Law Judge's Findings of Fact.

ACCEPTED

1. The Respondent, Daniel Hotard, is the holder of U.S. Coast Guard License number 796310.

ACCEPTED

2. On December 24, 2000, the Respondent was acting under the authority of his license while serving as a pilot aboard the MARIE M. MORGAN.

ACCEPTED

3. The Respondent's hitch aboard the M/V MARIE M. MORGAN was scheduled to be completed December 28, 2000.

ACCEPTED

4. On December 24, 2000, the MARIE M. MORGAN was pushing two tankbarges, RCT 8 and RCT 103, eastbound on the Intercoastal (sic) Waterway between Morgan City and New Orleans, LA.

ACCEPTED

5. The tankbarges RCT 8 and RCT 103 were loaded with 21,000 bbls of lube oil.

ACCEPTED

6. The Respondent and the MARIE M. MORGAN's Relief Captain, Michael Lombardo, were alternating six-hour watches with the Respondent serving the 12-6 watches, and Captain Lombardo serving the 6-12 watches.

ACCEPTED

7. At approximately 1200 on December 24, 2000, the Respondent relieved Captain Lombardo in the MARIE M. MORGAN's wheelhouse.

ACCEPTED

8. At approximately 1500, the Respondent left the MARIE M. MORGAN, which was underway and making way, under the direction and control of an unlicensed deckhand while he went below to wake up Captain Lombardo and inform him that he was departing the MARIE M. MORGAN.

ACCEPTED

9. At approximately 1545, the Respondent, together with one of the MARIE M. MORGAN's deckhands, deserted the MARIE M. MORGAN by boarding the tug JESUS SAVES.

ACCEPTED

10. Captain Lombardo, who already stood the 0600-1200 watch on December 24, 2000, was forced to remain on watch an additional 8½ hours, from 1500-2330, due to the Respondents desertion of the MARIE M. MORGAN.

CONCLUSIONS OF LAW

ACCEPTED

The testimony of both Captain Lombardo and the Respondent established that the MARIE M. MORGAN was underway and making way when the Respondent was down below decks in the process of waking up and talking to Captain Lombardo. This is a direct violation of 46 CFR 15.610 which states that "every uninspected towing vessel which is at least 26 feet in length measured from end to end over the deck (excluding sheer) must be under the direction and control of an individual licensed by the Coast Guard." The MARIE M MORGAN is 56.4 feet in length and 98 gross tons. This violation is exacerbated by the fact that the MARIE M. MORGAN was pushing two red-flag barges loaded with lube oil.

ACCEPTED

Both Captain Lombardo and the Respondent testified that the Respondent's hitch aboard the MARIE M. MORGAN did not end until Thursday, December 28, 2000. Though the Respondent testified that he was dissatisfied with his job aboard the MARIE M. MORGAN as early as December 20, 2000, he did not depart the vessel when it was safely moored at a fuel dock on December 23 (sic), 2000. Nor did he wait until the vessel arrived in Larose, LA where it could have been safely moored. Instead, the Respondent chose to desert the vessel while underway and in the middle of his scheduled watch. This was not only a dangerous operation but it forced Captain Lombardo to stand watch three hours earlier than his normally scheduled time with less sleep than normal. As a result of the Respondent's desertion, Captain Lombardo was also placed in a predicament in which he had to exceed the work hour limitations in 46 USC 8104. Furthermore, as a result of the Respondent's desertion, the MARIE M. MORGAN was without her full complement of licensed operators until late afternoon on December 25, 2000, when the company was finally able to procure a replacement operator.

ACCEPTED

When on watch, Coast Guard licensed officers are charged with the safety of the vessel and its crew. On December 24, 2000, the Respondent demonstrated several acts of irresponsibility, which ultimately put the vessel and crew at an unnecessary risk. For his wrongful actions the government recommends that Respondent's license be suspended outright for six months.

OPINION

There is no doubt that Mr. Hotard deserted the M/V Marie M. Morgan when he left that vessel on 24 December 2000. His method of departure – jumping on another vessel when both vessels were underway in the Intracoastal Waterway – was not only unique but also dangerous.

In his treatise on "The Law of Seamen," Volume I, Third Edition, Martin J. Norris defines desertion as follows:

"Desertion Defined. – Desertion is the abandonment of duty by a seaman by quitting the ship before the end of the engagement without consent, without justification and with the intention of not returning to the ship's service.

Congress is enacting penalties for desertion in Title 46 USC 701, has characterized that action without defining it. The concept of desertion and what constitutes this action therefore has come down to us from the general maritime law. In *Cloutman v Tunison*, Judge Story defined desertion as follows:

'Desertion, in the sense of the maritime law, is a quitting of the ship and her service, not only without leave, and against the duty of the party, but with an intent not again to return to the ship's duty.'

Another definition of desertion contained in *The City of Norwich*, is as follows:

'Desertion consists in the abandonment of duty by quitting the ship before the termination of the engagement, without justification, and with the intention of not returning.'

It should be noted that the Act of desertion is as equally applicable to the officers of the ship as to the unlicensed personnel."

Mr. Norris also addresses "Deserting from Harbor Craft," which could be equated to desertion from a towing vessel, as follows:

"Deserting from Harbor Craft – the act of desertion can take place when seamen serve on harbor boats just as well as on deep sea vessels. Harbor Craft do not sign their men on articles for a particular voyage, but rather engage them by all oral or written agreements for wages on a monthly basis. A seaman, who before the expiration of the month leaves the vessel without consent, without justification, and with the intention of not returning to the ship's service is a deserter."

CONCLUSIONS OF LAW

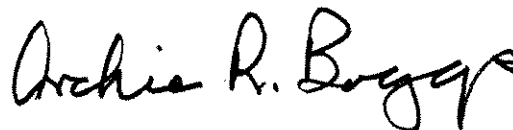
The Complaint, which alleges that (1) the Respondent wrongfully relinquished control of the M/V Marie M. Morgan on 24 December 2000 to an unlicensed deckhand and (2) he wrongfully deserted the M/V Marie M. Morgan is proved.

In accord with the Investigating Officer's recommendation the following is issued:

ORDER

That your License No. 796310 and all other valid licenses, documents, or certificates of service issued to you by the United States Coast Guard, or any predecessor authority, now held by you, be and the same, are hereby suspended outright, effective as of the date on which you deposit your license with the Coast Guard. The said outright suspension shall remain in effect for six (6) months. You are hereby ordered to forthwith deliver and surrender your license to the United States Coast Guard Marine Safety Office, 1615 Poydras Street, Room 737, New Orleans, LA.

The rules governing appeals are attached hereto.



ARCHIE R. BOGGS
ADMINISTRATIVE LAW JUDGE

Dated: 11 July 2001
New Orleans, Louisiana

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