

In the Matter of License No. 263789 and all other Seaman Documents  
Issued to: ELMER A. ALFORD

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1351

ELMER A. ALFORD

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

By order dated 22 December 1960, an Examiner of the United States Coast Guard at Houston, Texas revoked Appellant's seaman documents upon finding him guilty of negligence. The specification found proved alleges that while serving as Night Relief Officer on board the United States SS AMOCO VIRGINIA under authority of the license above described, on 7 and 8 November 1959, Appellant failed

"to discontinue cargo loading operations and to take other precautionary safety measures, when informed of the presence of gasoline on the surface of the water alongside of, and in the immediate vicinity adjacent to the vessel, a failure which contributed to the casualty of the vessel."

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

Both parties introduced in evidence the testimony of witnesses

in person, and by stipulation from the record of the Coast Guard investigation of the casualty. In addition, Appellant submitted several documentary exhibits. In his testimony at the hearing, Appellant denied that he was informed of the presence of gasoline as alleged (R. 100) and stated that he had no reason to look into the water for the purpose of observing petroleum products (R. 123).

#### *FINDINGS OF FACT*

On 7 and 8 November 1959, Appellant was serving as Night Relief Engineer on board the United States SS AMOCO VIRGINIA, (a tanker of 12,527 gross tons and 552 feet in length) and acting under authority of his license while the ship was in the port of Houston, Texas. At approximately 0020 on 8 November, a mixture of gasoline and No. 2 heating oil on the surface of the water in the middle of Houston Ship Channel caught fire. The flame spread gradually, in a two to four feet wide trail, to the AMOCO VIRGINIA and then to other nearby points causing explosions and fires. Eight lives were lost, eighteen members of the crew of the VIRGINIA were injured and there was a considerable amount of property damage.

The VIRGINIA moored port side to Ship Dock No. 2, Hess Terminal, Houston, on the morning of 7 November. She was heading downstream. About 0830, the ship commenced loading gasoline and No. 2 heating oil pumped from barges through shore pipe lines. One of these barges, located approximately 500 feet upstream at Ship Dock No. 1, had been damaged earlier in the morning and was leaking gasoline although most of the damage to the barge was repaired before 1000. One of the fuel hoses used at Ship Dock No. 1 was leaking No. 2 heating oil.

At 1600, Appellant relieved the Loading Mate on the VIRGINIA. Thereafter, Appellant was in charge of the loading operations.

Later in the afternoon, two barges were moored on the starboard, outboard side of the VIRGINIA by the tug PAN SIX and the tug tied up outboard of the upstream barge. The barges began pumping gasoline directly to the number 9 tanks of the VIRGINIA, at 1820, through the ship's stripping line. The Master of the tug, Captain Hodges, and he Chief Engineer, Simmons, remained on the two barges until 2400.

Starting about 2200, Captain Hodges and Chief Engineer Simmons of the PAN SIX noticed that the odor of gasoline was getting stronger and they unsuccessfully checked the two barges looking for leaks. Using flashlights, they saw that there was an increasing accumulation of gasoline on the water between the VIRGINIA and the barges. The Captain and Chief Engineer communicated this information to Appellant three times prior to 2330, but he did not take any action to discontinue the loading operations to determine the source of this gasoline and stop the leakage.

There was little wind and a slight ebb tide which carried the gasoline and oil downstream from Ship Dock No. 1 and the VIRGINIA and out toward midchannel. At 0010, the number 9 tanks were filled and the pumping from the two barges alongside was stopped. At 0020, the vapors and then the gasoline and oil mixture on the water were ignited at a distance of about 300 feet off the starboard bow of the VIRGINIA, possibly by the open flame oil lanterns used as running lights on a passing barge. The fire increased in size as it advanced toward the VIRGINIA. When it reached the ship, there was a flare-up as the gasoline fumes were ignited, fire broke out all around the VIRGINIA, the flames spread over large portions of the ship, and there were at least three explosions on board. Meanwhile, the fire continued along the water upstream to Ship Dock No. 1 in the same manner it had reached the VIRGINIA. The fire was not under control until 2000 on 8 November.

Appellant has no prior record.

#### *BASES FOR APPEAL*

This appeal has been taken from the order imposed by the Examiner. It is contended that Appellant was improperly found guilty of negligence for failing to inspect the water between the AMOCO VIRGINIA and the barges after being told by Captain Hodges about a leak. Appellant was not charged with this offense, he did not defend against it, and he was too busy topping off tanks to be considered negligent for not making an inspection on the basis of a conservation which indicated that there was no leak since Captain Hodges could not find any.

Appellant was not negligent for failing to stop loading operations and to take other precautionary measures after Captain

Hodges and his Chief Engineer Simmons told Appellant that there was gasoline on the surface of the water, between the ship and the barges, because there is no evidence that Hodges and Simmons "actually told" Appellant about such gasoline and Appellant denied that they told him.

The Examiner's conclusion of negligence was influenced by the erroneous beliefs that gasoline on water could be detected at night and that the fire was started as a result of a large quantity of gasoline coming from the overboard discharge adjacent to the pump room and forward of the break of the poop deck. The discharge from the ship was water from the engine room overboard discharge which was 20 or more feet aft of the discharge line by the pump room.

Definite evidence that gas and oil were leaking from a barge and hose, respectively, at Ship Dock No. 1, 500 feet upstream, leads to the conclusion that this mixture caused the initial fire after drifting downstream. Expert testimony shows that the substance ignited consisted predominately of heating oil and not gasoline since it burned gradually along a narrow path rather than causing a flash fire over a large circular area. This tends to refute the testimony of Hodges and Simmons that there was a large quantity of gasoline on the water.

It is respectfully submitted that the decision of the Examiner should be set aside and Appellant's license returned to him since he exercised reasonable care under the circumstances. If it is concluded that Appellant was negligent, then mitigating factors should be considered because the Examiner automatically ordered revocation as the result of deaths and serious property damage. Appellant has a previously unblemished record as a licensed officer for 20 years and he did not intentionally disregard normal safety practices. His negligence, if any, was slight and a reprimand or warning is sufficient. The order imposed should depend on the degree of inattention to duty involved rather than on the extent of the damage done and lives lost, which was the criterion followed by the Examiner.

APPEARANCES: Royston, Rayzor and Cook of  
Houston, Texas, by E. D. Vickery, Esquire,  
of counsel

and  
Phipps, Smith and alexander of  
Galveston, Texas, by Charles B. Smith, Esquire,  
of counsel.

*OPINION*

It is clear from the evidence that the fire started when highly flammable vapors, lying above a quantity of petroleum products on the surface of the water, were ignited by some undetermined means. It is my opinion that the liquid which caught fire consisted, in part, of gasoline from the fueling operation of the AMOCO VIRGINIA and the two barges alongside, that there was an increasing concentration of gasoline on the water along the starboard side of the VIRGINIA for about two hours prior to the fire, and that Appellant was informed of this. Nevertheless, he did not investigate and stop this discharge into the water or discontinue all loading operations until the source of the trouble could be located. This constituted negligence, one element of which was Appellant's failure to inspect the water for excessive quantities of gasoline after he was told by Captain Hodges of the PAN SIX that he suspected there was a leak. This was a minimum precaution which Appellant should have taken as a starting point after having been warned.

I think there is substantial evidence to support the contested finding of the Examiner that Captain Hodges and Chief Engineer Simmons "actually told" Appellant that there was gasoline between the ship and the barges. Captain Hodges testified that, between 2300 and 2330, he reported the gasoline on the water to the person who gave the loading orders, the loading mate (R. 38, 39), but nobody from the ship investigated it (R. 40). The Chief Engineer reported the gasoline once at 2200 and once later to a person assumed, from his conduct, to be the loading mate (R. 7, 9, 30). About 2330, after Hodges and Simmons checked for leaks, Hodges told Appellant, when he inquired, that no leaks could be found (R. 61, 99). Captain Hodges identified Appellant at the hearing although there was some discrepancy as to the clothing Appellant had been wearing during this fueling operation at night more than a year earlier.

On the basis of the above testimony, it is my opinion that

there is adequate evidence to support this finding by the trier of the facts who is the best judge as to the credibility of witnesses. It was conceded by counsel, in questioning Appellant, that Hodges and Simmons testified that they talked to Appellant on three occasions with respect to the gasoline on the water and the Examiner rejected Appellant's denial of the truth of this testimony (R. 100). Having found that there was gasoline on the water as alleged, the testimony of Hodges and Simmons as to the thickness of the concentration of gasoline on the water is corroborated by chemist Mills who testified, as an expert witness for the defense, that gasoline could be detected on water, but, in order to do so at night with a flashlight, the gasoline would have to be thick in order to see the reflected colors from the artificial rays of a flashlight as compared with the richer hues in daylight (R. 222, 234). There is no finding that the gasoline came from the overboard discharge on the starboard side of the ship's pumproom since both Hodges and Simmons agreed that the discharge they saw might have been water (R. 26, 35). How the gasoline got into the water is not material to the question of negligence on Appellant's part.

There is no attempt herein to reject chemist Mills' testimony that the gasoline and oil leaking at Ship Dock No. 1 were sufficient to furnish the mixture which caught fire (R. 233) and that the fire had the characteristics of a predominantly oil mixture as it spread (R. 228: not a flash fire over a large area of water). It is simply pointed out that the chemist did not indicate that he thought the leakage from Ship Dock No. 1 was the only cause of the fire and that the 6 to 8 percentage of gasoline by volume was his estimate as to the bare minimum percentage of gasoline in a mixture which could possibly be ignited in this manner by an open flame lantern (R. 225, 227). (This is probably what ignited the vapors.) The fact that a large quantity of gasoline was not required to start the fire, according to the chemist, does not discredit the testimony of Hodges and Simmons that there was a large quantity of gasoline along the starboard side of the ship approximately 300 feet from the origin of the fire. The petroleum products were moving slowly downstream with only a slight ebb tide. Appellant's testimony that "it started burning all around the ship" with a quick flash (R. 110) indicates that there was quite a bit of gasoline on the water around the ship.

Under these circumstances, it is a reasonable inference to conclude that some of the gasoline from between the VIRGINIA and the two barges was in the mixture which was ignited and, consequently, Appellant's negligent failure to do anything about this situation after it was reported to him contributed to the casualty which followed. Although the relative proportions of gasoline and oil in the mixture which started the fire are not directly in issue, the vulnerability of the chemist's testimony on this subject is apparent from a similar situation in the case of *EDMOND J. MORAN, Inc. V. the HAROLD REINAUER* (U.S.D.C., N.Y.), 1954 American Maritime Cases 1138, aff. 221 F. 2d 306 (C.A. 2, 1955). The court determined that there was negligence and liability of the shipowner for damages resulting from a fire on the water. This conclusion was arrived at by showing that the ship had been carrying gasoline and No. 2 fuel oil, an oil and gas slick appeared near the ship, the fumes were ignited by some unknown cause, the fire "advanced" (not a flash fire) toward the pier causing damage to tugs and a barge. An analysis of the substance skimmed from the top of the water showed that the oil distillate contained "mostly gasoline with a small admixture of heavier elements". 1954 A.M.C. 1140.

#### CONCLUSION

It is my opinion that other parties were guilty of contributory negligence which led to this casualty. Considering this, Appellant's prior clear record, and the evidence which shows that his negligence amounted to unintentional carelessness while he was busily employed in charge of the loading operations, the order of revocation will be modified to an outright suspension of twelve months. Although this is a lengthy suspension, it is justified because the danger presented by the gasoline on the water was so great, as demonstrated by the result, that any disregard of safety precautions constituted a serious offense of negligence.

#### ORDER

The order of the Examiner dated at Houston, Texas, on 22 December 1960, is modified to provide for a suspension of twelve (12) months.

As so MODIFIED, the order is AFFIRMED.

E. J. Roland  
Admiral, United States Coast Guard  
Commandant

Signed at Washington, D. C., this 23rd day of October, 1962.

In the Matter of License No. 263789 and all other Seaman Documents  
Issued to: Elmer A. Alford

Revised

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1351

Elmer A. Alford

This matter has been submitted for reconsideration of the twelve months' suspension imposed by my order of 23 October 1962 as a result of fires and explosions on the United States SS AMOCO VIRGINIA in November 1959 while Captain Alford was serving under his Master's license as Night Relief Officer in charge of the loading operations on this tanker.

My order of 23 October 1962 has not yet become effective since the voyage which Captain Alford commenced on the SS PRAIRIE GROVE in May 1962, while serving under the last of several temporary licenses, has not been completed. Therefore, the present order is intended to supersede my order of 23 October 1962.

This request for reconsideration is based on the fact that Captain Alford had an unblemished record prior to the accident; a showing that he has satisfactorily served in various capacities as a mate during more than half of the approximately three and a half years since the casualty; and the suggestion that Captain Alford's

record subsequent to the accident is important in view of the long lapse of time and the remedial nature of these proceedings. One of the three affidavits submitted by his employers commends Captain Alford for outstanding performance of duties as Chief Mate on the PRAIRIE GROVE since May 1962.

Due to the unusual circumstance whereby Captain Alford has been permitted to continue employment under temporary Master's licenses since the casualty in November 1959, it has been established to my satisfaction that Captain Alford is a prudent and capable seaman while serving as a member of a crew. He has not been in a position to demonstrate his attentiveness to duty while in command since the accident because he has not served as a Master. Hence, the order of twelve months' suspension will not be changed with respect to the authority to serve as a Master. It is felt that the deterrent of being deprived of the use of a Master's license should be effective for the twelve months' period.

*ORDER*

My order of 23 October 1962 is revised to provide that License No. 263789, issued to Elmer A. Alford, shall be suspended outright for twelve (12) months commencing 25 May 1963. However, a Chief Mate's license and Merchant Mariner's Document shall, upon request, be issued after the suspension of all licenses and documents has remained in effect for at least three (3) months.

D. McG. Morrison  
Vice Admiral, United States Coast Guard  
Acting Commandant

Signed at Washington, D. C., this 6th day of May, 1963.

\*\*\*\*\* END OF DECISION NO. 1351 \*\*\*\*\*

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