

IN THE MATTER OF LICENSE NO. 372834 MERCHANT MARINER'S DOCUMENT NO.
Z-280651 AND ALL OTHER SEAMAN'S DOCUMENTS

Issued to: William VALS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1974

William VALS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 1 May 1972, an Administrative Law Judge of the United States Coast Guard at New York, New York, suspended Appellant's seaman's documents for six months on 12 months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as Master on board M/V F. L. HAYES under authority of the document and license above described, from at or about 2350, 20 March 1972, to at or about 0310, 21 March 1972, Appellant allowed himself to be relieved as pilot of the vessel by a person, one Francis A. Burn, Jr., not properly licensed for that responsibility thus contributing to the subsequent grounding of the vessel.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of guilty to the charge and specification.

The Investigating Officer introduced no evidence.

In defense, Appellant stated that the relieving officer had a third mate's license and a stipulation was made by counsel and the Investigating Officer that this person had a sufficient number of trips to quality to sit for an additional pilot's endorsement for certain waters.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved by plea. The Administrative Law Judge then entered an order suspending all documents issued to Appellant for a period of six months on 12 months' probation.

The entire decision was served on 11 May 1972. Appeal was timely filed.

FINDINGS OF FACT

On 20 and 21 March 1972, Appellant was serving as Master of M/V F. L. HAYES and acting under authority of his license and document. At about 2350 on 20 March Appellant permitted one Francis A. Burn, Jr. to assume the watch as the sole licensed officer on watch and Burn so acted until about 0310 on 21 March 1972.

F. L. HAYES was at the time in question a coastwise, seagoing steam vessel, not sailing on register and not on the high seas, and thus subject to the pilotage requirements of 46 U.S.C. 364.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that the suspension ordered is too severe under the circumstances of the case.

APPEARANCE: McHugh, Heckman, Smith and Leonard, by Richard E. Meyer, Esquire.

OPINION

I

Although the specification upon which this case was heard was the end product of effort by the Investigating Officer, the Administrative Law Judge, and Appellant's counsel, it is inartfully drawn. One might believe, for example, that the alleged grounding, since it is described as "subsequent", took place after 0310 on 21 March 1972 at which time the condition of navigation without a qualified pilot had allegedly ceased, with a resultant query as to the relationship between the grounding and the permitting of an unqualified pilot to "relieve" from 2350 to 0310. A statement by Appellant's counsel goes some way to clear this up, in that he declares that the grounding took place while the unqualified person was in charge and while Appellant was below, asleep; *i.e.*, presumably at or shortly before 0310.

In the same way we learn that the grounding occurred near Bartlett Reef, Long Island Sound. We also are so informed that the unqualified person held a third mate's license with some pilotage endorsed thereon but that he had no endorsement for the area in which the grounding took place, although the relationship between the grounding and the lack of qualification is still not spelled out.

It seems nevertheless that we can infer from the plea of guilty that F. L. HAYES was at the time a "coastwise seagoing steam vessel," that it was not on the high seas, that it was not on register, and that it was not under the direction and control of a duly licensed pilot in violation of 46 U.S.C. 364. We may also infer from the plea that there was in fact a causal relationship between the lack of a pilot's endorsement and the grounding. Ideally, perhaps, there should have been two specifications separately litigable, one of permitting the vessel to be navigated other than under the direction and control of a properly licensed pilot (an offense whether or not there was a grounding) and one alleging causality of the grounding (since even a licensed pilot may ground through some error other than that of failure to have an endorsement).

It can be seen also that the allegation of permitting one's own relief by an unqualified person is inartful but this too is cured by attributing the fault to Appellant as Master for allowing

relief as a pilot and by the plea.

The guilty plea permits both the inference of allowing a violation of 46 U.S.C. 364 and the causality of that violation to the grounding, but in light of Appellant's statement at the hearing I am far from certain as to the causality of the grounding.

II

Looking to Appellant's single complaint, that the order is too severe, I cannot agree with Appellant that the treatment accorded to the mate by way of order in a different hearing demonstrates that a period of twelve months' probation is unfair because the mate was not given probation at all. Not only is a comparison with what a different Administrative Law Judge did in another case normally irrelevant, it is, as expressed here, unfathomable. If the probation were eliminated here, and nothing else done, the order would be a fully effective suspension of six months. Appellant certainly does not mean this. The alternative is elimination of the six month suspension on twelve months' probation, or, in other words, no order at all. There is no way of attempting a parity with the order given to the mate of the vessel.

In urging that the probation period be reduced to a lesser period than twelve months Appellant argues that it is unfair for a Master of a tanker to be on probation for so long because he is so easily made the responsible victim of a subordinate's error. At the same time he argues that a prior offense found proved in 1971 should be disregarded because it was of a different nature from the offense found here.

I note here that the earlier offense was of a nature not unique to tankers but of especial importance aboard tankers. Appellant was found at fault not for the error of a subordinate but carrying a lighted cigarette on a weather deck while loading combustible cargo. In the instant case what was found proved against Appellant was not a vicarious fault either but an act of his own - the use of an unqualified person as pilot in violation of law. However, in so noting, I must also note that the "subsequent" grounding of F. L. HAYES is not adequately tied to Appellant in such a way as to render his offense, not "merely technical" as the Administrative Law Judge characterized it, but aggravated by the

foreseeable and avoidable fault of another. The Investigating Officer was required by 46 CFR 137920-80(b) to summarize the evidence upon which the specification was based. He provided no information as to the grounding. Appellant, however, declared that the third mate had all the experience needed to qualify for the endorsement which he lacked at the time of grounding, and had in fact later obtained that endorsement. The thrust of this was, in effect, a denial of causality between placing the mate on watch and grounding.

I need not speculate as to whether a different result might have been reached had the question of a relationship between the absence of an endorsement on the mate's license and the grounding been separately considered. As said above, ideally the matters should have been separately alleged and, in view of Appellant's announced reliance upon his mate's experience, despite his guilty plea the matters should have been separately considered.

CONCLUSION

I conclude that the findings must be modified to fit this opinion and that, since the grounding must have weighed upon the framing of the order, the order should properly be modified.

ORDER

The findings of the Administrative Law Judge made at New York, on 1 May 1972, are MODIFIED to reflect that Appellant permitted F. L. HAYES to be navigated without being under the direction and control of a duly licensed pilot, as required by law. The order entered is MODIFIED to provide for a suspension of four months on eight months' probation, and as modified the order is AFFIRMED.

T. R. SARGENT
Vice Admiral, United State Coast Guard
Acting Commandant

Signed at Washington, D. C., this 5th day of July 1973.

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