

In the Matter of License No. 34572 and Merchant Mariner's Document
No. Z-458287

Issued to: ROBERT RAPPEL

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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ROBERT RAPPEL

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.

By order dated 18 June, 1953, an Examiner of the United States Coast Guard at New York, New York, suspended License No. 34572 and Merchant Mariner's Document No. Z-458287 issued to Robert Rappel upon finding him guilty of misconduct based upon three specifications alleging in substance that while serving as Master on board the American SS PIONEER MAIL under authority of the license above described from, on or about 11 April, 1953, to 9 June, 1953, he wrongfully failed to report a casualty which occurred on or about 11 April, 1953, at Manila, P.I., and resulted in the death of the First Assistant Engineer (First Specification); from on or about 20 May, 1953, to 9 June, 1953, he wrongfully failed to report a grounding of said vessel which occurred on or about 20 May, 1953, near the National Sugar Dock, Long Island City, New York, and resulted in approximately \$25,000 damage to said vessel (Second Specification); and from on or about 16 March, 1953, to 9 June, 1953, he wrongfully failed to report a casualty which occurred on or about 16 March, 1953, and resulted in material

damage to the propeller, affecting the seaworthiness or efficiency of said vessel (Third Specification).

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 each specification proffered against him.

Thereupon, the Investigating Officer and counsel for Appellant made their opening statements. After the Examiner reserved his ruling on counsel's motion to dismiss the three specifications, the Investigating Officer introduced in evidence copies of extracts from the Official Logbook of the PIONEER MAIL, three copies of Report of Marine Casualty (Form CG-2692) pertaining to each of the three specifications, and a letter from the United States Lines dated 9 June, 1953, forwarding the three Marine Casualty reports to the Coast Guard.

No evidence was submitted in behalf of the Appellant.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel, the Examiner denied counsel's motion to dismiss the three specifications. The Examiner then announced his findings and concluded that the charge had been proved by proof of the three specifications. He entered the order suspending Appellant's License No. 34572, Merchant Mariner's Document No. Z-458287, 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 six months on twelve months probation from 18 June, 1953.

From that order, this appeal has been taken, and it is urged that:

POINT I. The death of the First Assistant Engineer did not result from a "marine casualty" within the meaning of 46 C.F.R. 97.07 and 46 C.F.R. 136.03. Therefore, it was not required that a report be made to the Coast Guard of such death (First Specification).

POINT II. The report of the grounding of the PIONEER MAIL was made by the Appellant within a reasonable time. Title 33 U.S.C., 361 requires a report within five days of an accident and Appellant prepared the report five days after the grounding (Second Specification).

POINT III. No. report was required of the \$125 damage to the propeller since this was not "material damage" nor "damage affecting the seaworthiness or efficiency" of the ship within the meaning of 46 C.F.R. 97.07-1(a)(2) (Third Specification).

In conclusion, it is respectfully submitted that the decision and order of the Examiner should be reversed.

APPEARANCES: Messrs. Kirlin, Campbell and Keating of New York City by Joseph M. Cunningham, Esquire, of Counsel.

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

FINDINGS OF FACT

On a foreign voyage between the dates of 26 January, 1953, and 20 May, 1953, appellant was serving as Master on board the American SS PIONEER MAIL and acting under authority of his License No. 34572.

When the ship was passing through the submarine nets at the entrance to Tokoyo Bay after departing from Yokohama, on 16 March, 1953, the vessel was set down on a buoy and the propeller was damaged. On 20 March, 1953, at Pusan, Korea, a note of protest was entered at the American Consulate regarding this accident. The propeller damage was repaired on 24 and 25 March, 1953, at Keelung, Formosa, at a cost of approximately \$200 and the ship was issued a certificate of seaworthiness by the American Bureau of Shipping.

While the ship was at Manila, P.I., on 11 April, 1953, the First Assistant Engineer of the ship fell overboard from a lighter alongside the PIONEER MAIL when he was attempting to board the vessel from the lighter. The First Assistant Engineer was taken ashore and he was pronounced dead at 0240 on 12 April, 1953. On

the latter date, the ship departed from Manila for New York, via Honolulu, San Pedro and Cristobal.

On 20 May, 1953, the PIONEER MAIL grounded while entering a berth near the National Sugar Dock at Long Island City, New York. With the assistance of two tugs, the vessel was freed and proceeded to Baltimore where she was put in drydock for her annual inspection. It was there determined that the damage to the bottom was approximately \$25,000.

Appellant submitted Reports of Marine Casualty (Form CG-2692) dated 25 May, 1953, concerning each of the above three incidents. These reports were submitted by Appellant to the shipowner, the United States Lines Company. The shipowner sent the reports to the United States Coast Guard at New York City with a covering letter dated 9 June, 1953. The reports were received by the Coast Guard Merchant Marine Investigating Unit in New York City on 11 June, 1953. No prior report of any of these three incidents had been made to the Coast Guard in New York or elsewhere.

There is no record of prior disciplinary action having been taken against Appellant who has held a Master's license for more than ten years.

OPINION

POINT I

The death of the First Assistant Engineer occurred in connection with his attempt to go on board the SS PIONEER MAIL. Title 46 C.F.R. 136.03-1(b) states that a "marine casualty or accident shall include any occurrence involving a vessel which results in loss of life of any of its crew. . . ." Title 46 C.F.R. 136.05-10 requires a report of all marine casualties of accidents (except for personal accidents not involving death) on Form CG-2692 to be made as soon as possible by the person in charge of a vessel to the Coast Guard Marine Inspector Office in Charge "at the port in which the casualty occurred or nearest the port of first arrival." Since the accident happened to a member of the crew of the ship and while he was going on board, the vessel was "involved" in the "occurrence" and such a report on Form CG- 2692 was required. The incident should have been reported to the

Officer in Charge of Marine Inspection at Honolulu or San Pedro. But no report was made to the Coast Guard until two months after the death.

In accordance with the long-standing practice of the Coast Guard and formerly the Bureau of Marine Inspection and Navigation within the Department of Commerce, it is considered that the death of any member of the crew of a vessel is within the meaning of the above regulations. Such deaths are routinely investigated in order to determine if they were caused by either the unseaworthiness of the vessel or misconduct by another member of the crew. Therefore, the Master should report the death of a member of the crew to the Coast Guard immediately upon arrival at a port in an area where the Coast Guard has a representative.

POINT II

Title 33 U.S.C. 361 required that the report of the grounding should have been made to the Coast Guard within five days. Since Appellant submitted this report to the shipowner rather than to the Coast Guard, this statute was not strictly complied with even though the report was dated five days after the date of the grounding. Because of the extent of the damage to the ship, this was at least a technical violation.

POINT III

The record does not contain any evidence which proved that the damage to the propeller affected the seaworthiness of the vessel. Since the latter factor was not present and the amount of the damage was between \$125 and \$200, no report of the casualty was required. See 46 C.F.R. 97.07-1, 97.07-10, 136.05-1, 136.05-10. The Third Specification is hereby reversed and dismissed.

CONCLUSION

In view of the mitigating circumstances that the two violations were technical in nature since the required matters were eventually reported to the Coast Guard by Appellant, the order will be modified.

ORDER

The order of the Examiner dated at New York, New York, on 18 June, 1953, is hereby modified to directing an admonition against Appellant. In accordance with 46 C.F.R. 137.09-75(d), Appellant is advised that this admonition will be made a matter of official record.

As so MODIFIED, said order is

AFFIRMED.

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

Dated at Washington, D. C., this 17th day of February, 1954.

***** END OF DECISION NO. 727 *****

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