UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S LICENSE No. 525 053 and DOCUMENT No(redacted)
Issued to: Peter N. BUSINELLE, JR.

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2392

Peter N. BUSINELLE, JR.

This appeal has been taken in accordance with Title 46 U.S.C. 7702 and 46 CFR 5.30-1.

By order dated 12 July 1984, an Administrative Law Judge of the United States Coast Guard at Houston, Texas, suspended Appellant's license and document for one month plus an additional two months on six months' probation upon finding proved the charge of misconduct. The specification found proved alleges that while serving as Master aboard the M/V POINT CHALEUR, under authority of the captioned documents, Appellant did, on or about 4 May 1984, operate the M/V POINT CHALEUR without a licensed chief engineer on board as required by the vessel's Certificate of Inspection.

The hearing was held at Corpus Christi, Texas, on 5 June 1984.

At the hearing, Appellant elected to represent himself and entered a plea of guilty to the charge and specification.

The Investigating Officer introduced in evidence five exhibits.

In defense, Appellant introduced in evidence his own testimony and one exhibit.

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. He then closed the

hearing without rendering an order.

The Decision and Order was served on 12 July 1984. Appeal was timely filed on 30 July 1984 and perfected on 18 February 1985.

FINDINGS OF FACT

Appellant was serving under authority of his license as Master aboard the M/V POINT CHALEUR on or about 4 May 1984. The Certificate of Inspection for the M/V POINT CHALEUR requires a U.S. Coast Guard licensed chief engineer. Appellant knew of this requirement but chose to sail without such a licensed engineer.

Appellant's employer hires and assigns the crew to the vessel. Had Appellant failed to sail as directed on 4 May 1984, his employer may well have replaced him.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant urges:

1. Since Appellant's employer controls the hiring and assignment of crews to vessels, Appellant should not be held responsible for his failure to have a Coast Guard licensed chief engineer aboard;

2. The sanction is unduly harsh under the circumstances.

APPEARANCE: Appellant, *pro se*.

OPINION

I

Appellant urges that he should not be held responsible for operation of the M/V POINT CHALEUR without a licensed engineer. I do not agree.

The applicable regulation, 46 CFR 157.05-11(b) states

> ...it is the responsibility of the owner, master, or person in charge or command, of the vessel, to determine if the officers and crew carried meet the requirements of the applicable navigation and inspection laws.

Thus, Appellant, as well as the owner, was responsible to ensure that the vessel was properly manned.

Appellant further urges that it is difficult to obtain qualified personnel to man a vessel because of the relatively low pay scale. This, however, is not cause to excuse Appellant's violation of the manning requirements. See Appeal Decision 2210 (HARRIS).

The requirement for a licensed chief engineer aboard the M/V POINT CHALEUR may require that engineer be paid more than the licensed individual. However, the requirement for a licensed engineer is set forth by statute in 46 U.S.C. 8301(b) and 46 U.S.C. 3313. It may not be waived by the Coast Guard.

II

Appellant further urges that the sanction imposed is too harsh. I do not agree.

It is a serious breach of his duty for the Master of a vessel to operate that vessel without the crew required by law and for safety. A Master who does so, not only violates the law, but also endangers all those aboard his vessel and the maritime community in general. Such conduct cannot be tolerated on the part of a licensed individual. Therefore, the sanction imposed is not unduly harsh.

CONCLUSION

The findings of the Administrative Law Judge are supported by Appellant's plea of guilty. The hearing was fair and conducted in accordance with the requirements of applicable regulations. The sanction imposed is not unduly harsh under the circumstances.

ORDER

The order of the Administrative Law Judge dated at Houston, Texas, on 12 July 1984 is AFFIRMED.

B.L. STABILE
Vice Admiral, U. S. Coast Guard
VICE COMMANDANT

Signed at Washington, D.C. this *13th* day of *June*, 1985.

***** END OF DECISION NO. 2392 *****

Top