

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 488 180 and
MERCHANT MARINERS DOCUMENT NO. 1092258
Issued to: James R. WILKINS

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2360

James R. WILKINS

This appeal has been taken in accordance with Title 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 30 September 1981, an Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida admonished Appellant upon finding him guilty of misconduct. The specification found proved alleges that while serving as Operator on board M/V FREEDOM under authority of the above captioned license on or about 28 January 1981, Appellant exceeded the scope of his license by navigating the enrolled, coastwise, seagoing barge OCEAN 193, while not on the high seas, without having on board a properly licensed pilot as required.

The hearing was held at Jacksonville, Florida on 7 July 1981.

At the hearing, Appellant was not present but was represented by professional counsel. A plea of not guilty to the charge and specification was entered on his behalf. A stipulation of facts was entered into between Appellant's counsel and the Investigating Officer. The Investigating Officer also introduced in evidence an additional document and stipulated to Appellant's negative prior

record.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant admonishing him.

The entire decision was served on 30 September 1981. Appeal was timely filed on 29 October 1981 and perfected pursuant to authorized extensions of time on April 1983.

FINDINGS OF FACT

On 28 January 1981, Appellant was serving as Operator on board the M/V FREEDOM and acting under authority of his license while the vessel was underway on the inland waters of the United States near Jacksonville, Florida.

The M/V FREEDOM, is an uninspected towing vessel of 176 gross tons documented under the laws of the United States. At the time in question, the M/V FREEDOM was pushing OCEAN 193, a tank barge of 10,549 gross and net tons, documented under the laws of the United States. Appellant is the holder of Coast Guard License No. 488 180 which authorizes him to serve as master of freight and towing vessels of not more than 1,000 gross tons. The license is also endorsed for service as operator of uninspected towing vessels. While serving as Operator of the M/V FREEDOM, Appellant moved the tank barge OCEAN 193 from the Triangle Oil docks, Jacksonville, Florida to the Charter Oil dock at Commodore's Point, Jacksonville, Florida. OCEAN 193 is an enrolled, coastwise, seagoing tank barge. At the time of the shift neither the M/V FREEDOM nor OCEAN 193 had on board a licensed pilot.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended that:

1. No violation of 46 U.S.C. 364 by Appellant has been established because the statute does not encompass intraport

movements; and,

2. Appellant may not be fairly deemed to have notice of the Coast Guard's position that his uninspected towing vessel operator's license did not authorize him to act as pilot of a seagoing tank barge in inland waters.

APPEARANCE: Toole, Taylor, Moseley and Joiner, Jacksonville, Florida, by Robert B. Parrish, Esq.

OPINION

I

Appellant's contention that no violation of 46 U.S.C. 364 was established since the statute does not encompass intraport movements is without merit.

Appellant stipulated that he was the person-in-charge of his vessel, an enrolled coastwise seagoing tank barge, while it was underway not on the high seas during an intraport shift in Jacksonville, Florida. The Investigating Officer introduced evidence establishing, and Appellant admitted, that no pilot was aboard during the intraport shift.

46 U.S.C. 364 is plain on its face and provides that:

[E] very coastwise seagoing steam vessels, subject to the navigation laws of the United States, ...not sailing under the register, shall, when under way, except on the high seas, be under the control and direction of pilots licensed by the Coast Guard.

46 U.S.C. 391a(3) makes this provision applicable to tank barges such as OCEAN 193. *Moran Maritime Associates v. U.S. Coast Guard*, 526 F. Supp. 335 (D.D.C. 1981); *aff'd mem.*, 679 F. 2d 261 (D.C. Cir. 1982).

The purpose of the pilotage statutes, including 46 U.S.C. 364, is to ensure the safety of life and property in confined harbor waters by placing "coastwise seagoing steam vessels" under the

control of pilots specially licensed by the Coast Guard to assure the pilot's intimate knowledge of local navigational conditions. *Jackson v. Marine Exploration Co.*, 583 F.2d 1336, (5th Cir. 1978). Appellant quotes *Jackson* in support of his argument that the statute does not encompass intraport movement. He insists that the need for pilots is limited to those times when a vessel is entering or leaving port. *Jackson*, however, did not address intraport movements.

The tug-barge combination was underway on the confined harbor waters of Jacksonville, not on the high seas. Therefore, its intraport movement violated 46 U.S.C. 364. I find no support in the clear statutory wording for Appellant's interpretation that intraport movements are not included.

Appellant also argues that the pilotage requirement should not be applied to operators of uninspected towing vessels. Acceptance of Appellant's argument would lead to the absurd result that an unmanned, non-self propelled oil barge attached to a towboat with a licensed master is required to take a federal pilot when not on the high seas, but that once attached to a towboat under the control of an operator licensed for uninspected towing vessels, the same barge is exempt from the pilotage requirement. Because master's and mate's licenses are higher licenses than uninspected towing vessel (UTV) operator's licenses, I cannot accept that conclusion. The examination required for UTV operator's licenses is much less rigorous than that required for masters of mates of freight and towing vessels. In fact, a holder of a master's or mate's license may receive an endorsement as UTV operator within the geographic limitations of his existing license without examination. 46 CFR 10.16. 46 U.S.C. 405(b)(2) was never intended to license federal pilots. It was a safety measure whose purpose was to license and qualify individuals in charge of uninspected vessels towing barges. S. REP. NO.92-92268 92d Cong., 2d Sess., 2, reprinted in 1972 U.S. CODE CONG. and ADE. NEWS 27608 2761. It was not intended to make the UTV operator's license superior to master's or mate's licenses.

II

Appellant contends that he had no notice from the Coast Guard prior to 28 January 1981 that he was required to carry a federally licensed pilot other than himself. The evidence of record does not support this contention.

Appellant bases his contention on a statement attached to his post hearing brief. The statement describes advice supposedly given to Appellant by a Coast Guard Officer regarding the pilotage requirement. This statement, however, is not evidence that will support findings. It is not under oath and was not subject to cross examination as required by 46 CFR 5.20-90. The Investigating Officer did not stipulate to its truth and, indeed, appears to have had no opportunity to object to or rebut it. I note that the Administrative Law Judge properly based no findings on this statement. Had Appellant wished to present testimony in his own behalf he should have appeared at the hearing. If he had good cause to not appear, he could have applied to the Administrative Law Judge to testify by deposition in accordance with 46 CFR 5.20-140.

In addition, it appears clear from the evidence of record, and is uncontested, that Appellant employed a pilot when entering and leaving the port of Jacksonville, Florida. This indicates that Appellant realized the pilotage requirement was applicable to him.

The Administrative Law Judge gave appropriate consideration to Appellant's unblemished record of maritime service and his good faith efforts to comply during the pendency of this appeal. The admonition ordered is an appropriate remedial order.

CONCLUSION

There was substantial evidence of a reliable and probative character to support the findings and order of the Administrative Law Judge. The hearing was conducted in accordance with the requirements of applicable regulations.

ORDER

The order of the Administrative Law Judge dated at

Jacksonville, Florida on 30 September 1981 is AFFIRMED.

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

Signed at Washington, D.C., this 12th day of June 1984.

***** END OF DECISION NO. 2360 *****

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