

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
LICENSE NO. 161822 and MERCHANT MARINER'S DOCUMENT [redacted]  
Issued to: Michael Angelo Canada

DECISION OF THE VICE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2349

Michael Angelo Canada

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

By order dated 2 June 1981, an Administrative Law Judge of the United States Coast Guard at Port Arthur, Texas, suspended Appellant's Ocean Operator's license and Merchant Mariner's document for one month on three months' probation, upon finding him guilty of negligence. The specification found proved alleges that, while serving as Operator on board the M/V WANDA LOUISE under authority of the above captioned licenses and document on or about 3 April 1981, Appellant failed to properly supervise the transfer of oil within the vessel which failure resulted in the discharge of about 1,000 gallons of oil into the Calcasieu River, a navigable waterway of the United States.

The hearing was held at Port Arthur, Texas on 12 May 1981.

At the hearing, Appellant was represented by non-professional counsel and entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced four exhibits and the testimony of one witness into evidence.

In defense, Appellant offered his own testimony, the testimony of one witness and four exhibits.

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 suspending all licenses and documents issued to Appellant for one month on three months' probation. The Decision and Order was served on Appellant on 5 June 1981.

The appeal was timely filed and perfected on 2 July 1981.

#### *FINDINGS OF FACT*

On 3 April 1981, Appellant was serving as Operator on board the M/V WANDA LOUISE and acting under authority of his license while the vessel was waiting to moor at the Transco Docks near Cameron, Louisiana. M/V WANDA LOUISE is a diesel powered offshore-supply vessel of 97 gross tons engaged in providing logistic support to drilling rigs off the coast of Louisiana. An unlicensed engineer, Ray Berghefer, had reported aboard for duty just two days prior to 3 April 1981.

In a discussion with Appellant on 2 April 1981 concerning fuel oil transfer procedures, Mr. Berghefer stated that they should transfer fuel to the day tanks prior to taking on bunkers. At that time Appellant told Mr. Berghefer to sound the tanks and let him know what kind of reading he obtained. Appellant also told him that he would go over the tables with him, and that he, Appellant, would be with him when fuel was transferred after docking the next morning.

On the morning of 3 April, Mr. Berghefer, without consulting Appellant, proceeded with the fuel transfer. After setting the manifold valves and starting the pump, Mr. Berghefer did some other work in the engine room and finally went on deck to sound the tanks. As he came out on deck, he observed oil spilling over into the river on the starboard side. Hurrying back to the engine room, he stopped the pump and returned to the deck. Meanwhile, Appellant had arrived on deck and closed the valve which Mr. Berghefer had left open when pumping was commenced.

#### *BASES OF APPEAL*

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

Appellant argues that he was not aware that the fuel transfer was taking place and should not be liable for the new engineer's negligence.

APPEARANCE: Michael A. Canada, *pro se*

*OPINION*

Appellant's contention has merit. appellant told Mr. Berghefer to sound the day tanks and report to him. Appellant also told Mr. Berghefer not to transfer fuel before advising him of the soundings and that he would be with Mr. Berghfer while the fuel transfer was going on. Mr. Berghefer, went ahead with the fuel transfer by himself and never advised Appellant that he was about to transfer fuel.

Although the Operator of a vessel has a heavy responsibility to ensure the proper operation of his vessel, he may not be held negligent for the actions of others when he has taken all reasonable precautions to ensure the proper operations of the vessel. Appeal Decision [2178 \(HALL\)](#). Here, Appellant told the engineer what to do. The engineer, however, did not follow Appellant's orders. Appellant took reasonable preventive steps and was unaware that the transfer was taking place. This was not negligence.

*CONCLUSION*

The evidence is insufficient to support the charge and specification.

*ORDER*

The order of the Administrative Law Judge at Port Arthur, Texas, on 2 June 1981, is VACATED. The findings are SET ASIDE and the charge and specification are DISMISSED.

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

Signed at Washington, D.C., this 11th day of May 1984.

\*\*\*\*\* END OF DECISION NO. 2349 \*\*\*\*\*

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