UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 419639
MERCHANT MARINER'S DOCUMENT NO. Z-1272413
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: ARTHUR S. MELANSON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1997

ARTHUR S. MELANSON

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 6 August 1973, an Administrative Law Judge of the United States Coast Guard at Houston, Texas suspended Appellant's license for 2 months outright upon finding him guilty of inattention to duty. The specification found proved alleges that while serving as a Chief Mate on board the SS EXXON SAN FRANCISCO under authority of the license above described, on or about 24 June 1973 Appellant did cause the spill of approximately 10 gallons of heating oil into Houston Ship Channel, Exxon Docks, Bayton, Texas.

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

The Investigating Officer introduced in evidence an extract from the Shipping Articles, a copy of the ship's log, and the

testimony of the dockman, the dockman supervisor and the AB on deck.

In defense, Appellant offered in evidence his own testimony and that of EXXON'S Port Captain.

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. He then served a written order on Appellant suspending his license, for a period of 2 months outright.

The entire decision was served on 9 August 1973. Appeal was timely filed on 17 August 1973 and appellate brief was filed dated 18 December 1973.

FINDINGS OF FACT

On 24 June 1973, Appellant was serving as the Chief Mate on board the SS EXXON SAN FRANCISCO and acting under authority of his license while the ship was in the port of Baytown, Texas. On that morning Appellant was on the bridge in charge of loading operations. At 0545 ballasting was completed and Appellant informed the dockman that he was ready to load. The dockman responded that he would have to wait since the line was presently being used by another vessel. The Able Seaman at this time asked if he should open the deck valve for loading. Appellant instructed him to wait until he was told to open the valve. At 0600 the dockman called the Appellant and informed him that they were ready to transfer fuel to the vessel. Appellant replied in the nature of "Okay" or "Okay. Wait a minute. Okay." The dockman then ordered the pump started to transfer the fuel. At this time the deck valve was still closed. After about 5-10 seconds of pumping, the reducer coupling on the loading arm blew apart due to the pressure. Approximately one to two barrels of fuel spilled on the deck of the vessel and the dock, of which about 10 gallons went into the water.

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

(1) Several findings of the Administrative Law Judge are unsupported by the evidence or are incomplete or inaccurate. Specially

(a) finding of fact number two is a conclusion and should be stricken;

(b) finding of fact number six is misleading and prejudicial;

(c) finding of fact number seven is oversimplified and fails to accurately reflect the evidence in the record;

(d) finding of fact number eight is incomplete, misleading and factually incorrect;

(e) finding of fact number nine is incorrect

(2) There is no evidence that the ten gallon spill was harmful;

(3) The order of the Administrative Law Judge was unduly harsh.

APPEARANCE: For Appellant, David Baird, Jr., Esq.

OPINION

I

The thrust of Appellant's argument against the decision of the Administrative Law Judge is an attack on the Administrative Law

Judge's evaluation of the credibility of witnesses and the evidence presented at the hearing. These are matters which are committed to the discretion of the trier of fact, and his evaluation will not be questioned on appeal absent a clear showing that it is arbitrary and capricious. The record here does not disclose any basis for finding the Administrative Law Judge's evaluations to be arbitrary or capricious. The specific allegations put forward by Appellant are considered in order below.

(a) Finding of fact number two reads:

> That while so serving, Respondent did, on 24 June 1973, while said vessel was at Baytown, Texas, cause a spill of ten gallons of fuel oil and/or heating oil into the waters around Bayton, Texas, due to inattention to duty.

There is no merit to Appellant's contention that this states a conclusion rather than a finding of fact. It states the ultimate finding of fact upon which the Administrative Law Judge's decision and order are based.

(b) Finding of fact number six reads:

> Respondent was asked by his Able Seaman if the Able Seaman should open the valve on deck. Respondent ordered the Able Seaman to wait until the Able Seaman received the order from Respondent.

This is an evidentiary finding, pure and simple. Any implication of improper action on the part of the Appellant is only that warranted as a justified result of the stated fact. Any fact which leads to an adverse implication is prejudicial; the question is whether it is unjustly prejudicial - here it is not.

(c) Finding of fact number seven reads:

> About 0600 hours the same morning, 24 June 1973, Respondent was called on his two-way radio by the dockman. The dockman, who had twenty-eight years experience, said "We are ready to give you the fuel oil or heating oil that you have requested." Respondent replied "Okay."

Appellant complains that this finding is oversimplified because it

does not reflect the context on which the conversation took place, and it does not reflect testimony that the key word in commencing loading is "start" and that Appellant never used that word. If anything comes through clearly in the record, it is that there was no established procedure for commencing loading. Even Appellant stated that he never used a set phraseology; he merely used the word "start" somewhere in his conversation. This fact is highlighted in that after the incident, Exxon finally took steps to establish a set procedure. The fact is that Appellant's reply was ambiguous under the circumstances, and as the officer in charge of loading operations, it was incumbent upon him to communicate his desires in unambiguous terms.

(d) Finding of fact number eight reads:

> When the dockman realized that they could not load by gravity because the shore tank fuel was too low, the dockman pressed the button for the pump to start. After about ten seconds of pumping, the Respondent Chief Mate had still not given the order to his Able Seaman to open the valve on the ship.

Appellant contends that this finding is incorrect and misleading. Admittedly, the testimony was that the coupling broke within two or three seconds of the time pumping commenced; however, this error has no bearing on the ultimate issue. The fact that the dockman should have told Appellant that he was going to use the pump is immaterial to the issue of Appellant's inattention to duty. It is unquestioned that had Appellant not given an ambiguous response to the dockman's statement, the dockman would not have started the pump. The dockman's fault was contributory, but does not absolve the Appellant of his inattention to duty.

(e) Finding of fact number nine reads:

> The valve exploded and oil spilled. The valve thickness consisted of approximately one inch to one and one-fourth inches. When the valve exploded it threw oil on the deck, into the water, on the dock and all over the Able Seamen standing by to open the valve.

Appellant's point that it was the reducer coupling and not the valve which broke is well taken, however, this fact does not

materially affect the ultimate issued and the outcome of this proceeding.

II

Appellant next contends that there is no evidence of actual harm or damage resulting from the spill. There is no requirement to show actual damage as an element of proving that Appellant's inattention to duty caused a discharge of fuel or heating oil. Apparently, Appellant confuses the requirement of proof under the charge and specification and the requirement of proof in Administrative Civil Penalty procedures under section 311 (b)(6) of the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251, et. seq. Under the latter it is necessary to prove that a harmful quantity of oil has been discharged in order to assess a penalty. This standard is not applicable to the proof in the instant case. Even if this standard were applicable to this proceedings, the proof in the record is sufficient to find a harmful discharge under applicable federal standards, 40 CFR 110.3.

III

Finally, Appellant argues that the order of the Administrative Law Judge of two month's outright suspension is unduly harsh in view of his prior good record. Appellant is a licensed officer charged with a high degree of responsibility in discharging his duties. Here Appellant failed to carry out that responsibility and must accept the consequences. Congress has mandated that it is the national goal to eliminate the discharge of all pollutants into the navigable waters of the United States. In furtherance of this goal the policy has been established to issue meaningful orders and penalties in pollution incidents. In the instant case Appellant was in a position of high responsibility with a duty to insure that the loading of fuel was accomplished without a spill. In view of the above stated goal and implementing policy and Appellant's failure to properly perform his duty, the order in this case cannot be said to be excessive.

ORDER

The order of the Administrative Law Judge dated at Houston, Texas on 6 Agist 1973, is AFFIRMED.

C. R. Bender
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C., this 18th day of April 1974.

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harmful effect of, no necessity to show

Order of Examiner
in pollution incidents, policy concerning
not excessive

***** END OF DECISION NO. 1997 *****

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