

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT NO. (REDACTED)  
LICENSE NO. 389 286  
Issued to: RICHARD CANN

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

2014

RICHARD CANN

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, now 5.30-1.

By order dated 4 October 1973, and Administrative Law Judge of the United States Coast Guard at Houston, Texas, suspended Appellant's seaman's documents for one month outright plus four months on six months' probation upon finding him guilty of inattention to duty. The specification found proved alleges that while serving as chief Mate on board the SS VALLEY FORGE under authority of the document and license above captioned, on or about 11 August 1973, Appellant did wrongfully cause a spill of approximately one barrel of lube oil into the navigable waters of the United States, Houston Ship Channel, at Shell Oil Terminal, Deer Park, Texas.

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

The Investigating Officer introduced in evidence an affidavit of service, certification of shipping articles, the loading orders of the vessel and the testimony of five (5) witnesses.

In defense, Appellant offered in evidence his own testimony.

At the end of the hearing, the Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He entered an order suspending all documents, issued to Appellant, for a period of one month outright plus four months on 6 months' probation.

The entire decision and order was served on 23 October 1973. Appeal was timely filed on 1 November 1973, and perfected on 28 August 1974.

#### *FINDINGS OF FACT*

On 11 August 1973, Appellant was serving as Chief Mate on board the SS VALLEY FORGE and acting under authority of his license and document while the ship was in the port of Deer Park, Texas. During that day the vessel was loading cargo under the general supervision of Appellant in his capacity as Chief Mate. During that afternoon approximately ten different cargoes were being loaded simultaneously. Appellant was directly responsible for the "topping off" of the number five center port tank. He miscalculated the loading rate with the result that the tank reached capacity approximately one-half hour earlier than he expected. The result was a discharged of about one barrel of lube oil into the Houston Ship Channel, a part of the navigable waters of the United States.

About thirty minutes prior to the spill, a leak developed in an alcohol loading line. Appellant ordered this line shut down and summoned the Chief Engineer to effect repairs. This incident distracted Appellant from his attendance over the "topping off" of the tank which overflowed.

#### *BASES OF APPEAL*

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

- (1) The Administrative Law Judge improperly allowed the Investigating Officer's witnesses to view Appellant's testimony;
- (2) The Judge improperly failed to grant Appellant's motion to dismiss due to the Investigating Officer's interview of potential witnesses in the presence of the vessel's Master;
- (3) The Judge displayed a lack of familiarity with the vessel's tank arrangements;

(4) The Judge erred in finding that Appellant miscalculated the loading rate for the tank which overflowed;

(5) The Investigating Officer made erroneous remarks as to the loading rate miscalculation in his closing statement; and

(6) The Judge erred in finding the charge and specification proved.

APPEARANCE: Appellant, *Pro se*

#### OPINION

##### I

As to the first basis for appeal, suffice it to say that, prior to Appellant's testimony, all previous witnesses were released from witness status with the express concurrence of Appellant's professional counsel. Counsel made no objection to their presence and made no motion for their removal from the hearing room.

##### II

Appellant's motion to dismiss was properly denied by the Administrative Law Judge and not later renewed. While substantial irregularities in the pre-hearing interrogation of witnesses could conceivably support the granting of a motion to dismiss, there is no showing that such abuses occurred in this case. The mere presence of the vessel's Master during these interviews offers little display of prejudice to the person charged. At any rate, it is the sworn testimony of these witnesses at the hearing which is of importance. Impeachment of witnesses is accomplished at this stage via cross-examination, and the Judge had the responsibility to weigh the credibility of each.

##### III

The lack of merit inherent in Appellant's third contention is readily apparent. It is obviously impossible for a presiding Judge to be thoroughly familiar with the design of each vessel involved in a case before him prior to the hearing stage. It is one of the purposes of the hearing to convey to the Judge a precise description, where relevant, of places and things involved in the case. A review of the record indicates that this in fact is what occurred.

IV

Appellant testified that, whereas he had calculated the loading rate, approximately thirty to forty-five minutes prior to the discharge, at about 2,000 barrels per hour, the actual average rate was in the neighborhood of 2,500. He attributed this discrepancy to a change in the rate after his last calculation. Such a change would have necessarily been very radical in order to effect such a 25% difference in the average loading rate. Other witnesses testified that no such change could have taken or did take place. Furthermore, Appellant testified that, whereas he used a period of one hour for purposes of his calculations, he was not certain that a full hour had in fact passed between his last and penultimate calculations. Elementary mathematics demonstrates that a few minutes' discrepancy can create a substantial gulf between the actual and calculated loading rates. It is quite clear that the Judge's findings in respect of Appellant's miscalculation of the loading rate are supported by substantial evidence of a reliable and probative nature and cannot be disturbed on appeal.

V

Appellant objects to the Investigating Officer's summation argument in two respects. He complains that the latter characterized the dockman, Mr. Jackson, as stating that the loading rate did not in fact change. While the dockman did not make the exact statement, he did testify that the rate could have been lowered, but in no event increased. The Investigating Officer's comment was, therefore, in no way prejudicial.

Appellant further complains of the Investigating Officer's statement that a five minute error in the period used for calculating purposes would result in a one-half hour error in the calculated overall loading time. While this statement was not necessarily precise, the underlying principle is of obvious validity. Moreover, a closing argument does not stand on a par with the evidence of record. It is simply a summary of the Investigating Officer's view of the case. Therefore, imprecisions in a closing argument will stand as bases for appeal only where highly prejudicial or of obvious influences on the trier of fact. In light of the statement herein considered and in view of the totality of the record, it cannot be said that the closing argument in this case had such a prejudicial or influencing effect.

IV

There is substantial evidence of a reliable and probative

nature that Appellant was in overall charge of the loading operations, that he assumed direct responsibility for the topping off of the tank which overflowed and that, by reason of his failure to record the times and other figures which formed the bases for his calculations, he miscalculated the loading rate, which error resulted in a discharge of oil into the navigable waters of the United States. It was manifestly Appellant's duty to prevent that discharge and it cannot be said that the Judge erred in finding that his failure to do so amounted to inattention to duty under the circumstances of this case. To the extent that the leak in the alcohol line properly distracted Appellant, this factor was adequately considered by the Judge in framing his order.

*ORDER*

The order of the Administrative Law Judge dated at Houston, Texas, on 4 October 1973, is AFFIRMED.

E. L. PERRY  
VICE ADMIRAL U. S. COAST GUARD  
ACTING COMMANDANT

Signed at Washington, D. C., this 30th day of December 1974.

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