UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. (REDACTED)
Issued to: Raymond E. Gobel

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2060

Raymond E. Gobel

This appeal has been taken in accordance with Title 46 United States Code 239 (g) and Take 46 Code of Federal Regulations 5.30-1.

By order dated 9 January 1976, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana, suspended Appellant's seaman documents for 3 months outright upon finding him guilty of negligence. The specification found proved alleges that while serving as a tankerman on board the tank barge KE 41 under authority of the document above captioned, on or about 19 December 1975, Appellant wrongfully failed to properly supervise the loading of number six fuel oil for the number two starboard tank, causing it to overflow, thereby contributing to the pollution of the navigable water of the United States at mile 99.3 on the lower Mississippi River at Marrero, Louisiana.

At the hearing, Appellant was represented by non-professional counsel and entered a plea of guilty to the charge and specification.

The Investigating Officer read an affidavit of LTJG R.S. Ferrante that Appellant had been advised of the nature of the hearing, possible results arising therefrom, the charge and specification and his rights. However, no evidence was formally introduced.

In defense, Appellant made a statement on his own behalf. Appellant's employer, Harry Collins, President, Koch-Ellis Co.,

also made a statement on behalf of his employee.

At the end of the hearing, the Judge rendered a written decision in which he concluded that the charge and specification had been proved by plea. He then served a written order on Appellant suspending all documents issued to Appellant for a period of 3 months outright.

The entire decision and order was served on 14 January 1976. Appeal was timely filed on 23 January 1976.

FINDINGS OF FACT

On 19 December 1975, Appellant was serving as a tanker of his document while the barge was in the port of Marrero, Louisiana. Appellant was in charge of loading the barge at the Amerada Hess Corporation terminal. At 1720, while number six fuel oil was being loaded into the barge, the MV JOHN WALKER approached. When the JOHN WALKER came alongside, Appellant voluntarily assisted in typing up. During the time that Appellant was assisting the JOHN WALKER, ten barrels of fuel overflowed out of the number two starboard ullage hole, six barrels of which went into the Mississippi River. Appellant stated that he was away from his station for only two minutes, but that the JOHN WALKER could have been tied up without his assistance. The charge and specification were proved by virtue of Appellant's plea of guilty. Appellant was thoroughly advised as to the consequences of his plea and was offered an opportunity to change the plea, which he declined to do.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is contended (1) that the charge and specification did not contain specific charges against which Appellant could defend, (2) that Appellant was coerced or strongly influenced into overestimating the amount of spillage, (3) that Appellant was not aware that a guilty plea required some penalty be imposed by the Administrative Law Judge, (4) that the Administrative Law Judge erred by permitting hearsay statements to be placed in the record, and (5) that the Judge's order is broader than the charge and specification served on Appellant.

In the alternative, it is urged that the Commandant mitigate the penalty or remand the case to the Administrative Law Judge for a new trial.

APPEARANCE: At the hearing: Harry Collins, Appellant's employer. On the brief on appeal: Joseph V. Ferguson II, Esq., New Orleans, Louisiana.

OPINION

I

Counsel for Appellant contends that the charge and specification served on Appellant did not contain specific charges against which Appellant could defend. A thorough reading of the record reveals that this contention is without merit. The specification states that Appellant wrongfully failed to supervise the loading of fuel onto the tank barge. By his own admission, Appellant told the Administrative Law Judge that he did leave his station for several minutes to assist the JOHN WALKER in typing up alongside. He also admitted that the JOHN WALKER could have been tied up without his assistance and that if he had been looking in the tank which overflowed, the spill would not have occurred. Appellant was given a full opportunity to defend his actions and was informed by the Judge that if he felt his actions were not "wrongful" he should change his plea to "not guilty." Appellant stated that he was fully aware of the nature of the charge and that he wished to retain his original plea.

II

Counsel for Appellant contends that Appellant was coerced or strongly influenced into overestimating the amount of the spillage. At the hearing Appellant remarked that he didn't know exactly how much oil had spilled, but when asked to make an estimate he had been informed that it would be better to make an overestimate than an underestimate. However, Appellant did not say that he followed this recommendation. Instead, he stated that he looked at the oil and "I though if I poured a barrel of oil on the deck what it would look like, and I just thought ten sounded like a good number that would cover this much area and that was it." (Tr. 18) Appellant stated further that he also tried to figure how much oil had spilled by dividing the amount of oil that can be loaded in one hour (2,500- 4,000 barrels) by two minutes, the amount of time he estimated he was away from the tank. Later on, Appellant stated, "if I'm going to estimate . . . I'm not going to underestimate or overestimate, I'm going to give what I thought it was . . . I just gave what I considered a fair estimate." (Tr. 19) Therefore, the contention that Appellant was coerced into overestimating the amount of the spill is not supported by the evidence in the record.

III

Counsel for Appellant argues that Appellant was not aware that a plea of guilty required the Administrative Law Judge to impose a penalty. In fact, the imposition of a penalty is discretionary

with the Judge in all cases except revocation proceedings pursuant to narcotics convictions under 46 U.S.C. 239 (b). Therefore, the Judge was not required to impose a penalty unless he deemed it proper to do so.

IV

It is further contended that the Administrative Law Judge erred by receiving hearsay evidence. On the contrary, no evidence for formally received, the findings being based on Appellant's plea of guilty to the charge and specification. However, even if evidence had been received, the affidavit of LT Ferrante referred to in Appellant's brief on appeal would have been admissible despite its hearsay character. See 46 CFR 5.20-95 (a) which provides for a relaxation of the formal rules of evidence.

V

Counsel for Appellant contends that because of the precise wording of the Judge's Order, all documents held by Appellant, including his operator's license will be suspended outright. However, Appellant was not serving under the authority of his license at the time in question, nor was such a license required as a condition of his employment. The proceeding is not directed against Appellant's license, and the Judge's decision specifically addresses that point. "At the outset of the hearing, the Investigating Officer stated that it was not his intention to proceed against Mr. Gobel's operators license - number 25610 - and the said license is, therefore, not effected (sic) by this proceeding." (Decision and Order, Page 2.) Appellant may be assured that no action has been or will be taken against his license for this spill.

VI

I should like to point out that counsel's complaint that a copy of the Commandant's Decision in DAVIS (1978) is not available to him, is without merit. Copies of all R.S. 4450 Appeal Decisions are available locally to Appellant and his counsel, as provided by 46 CFR 5.30-25(b).

CONCLUSION

I conclude that the charge and specification have been proved by Appellant's provident plea of guilty. I further conclude that

the penalty imposed by the Administrative Law Judge is fair and proper and should not be mitigated.

The Order of the Administrative Law Judge suspending Appellant's merchant mariner's document No.(REDACTED), dated 9 January 1976 at New Orleans, Louisiana, is AFFIRMED.

E.L. PERRY
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C., this 11th day of June 1976.

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***** END OF DECISION NO. 2060 *****

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