

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S LICENSE NO. 429 370  
Issued to: Leo H. Wuesthoff

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

2071

Leo H. Wuesthoff

This appeal has been taken in accordance with Title 46 Code of Federal Regulations 5.30-1 and 3.

By order dated 20 May 1975, an Administrative Law Judge of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman documents for eight months outright upon finding him guilty of negligence. The specifications found proved alleges that while serving as a pilot on board the SS NORFOLK (Lib.), on 22 January 1975, Appellant did negligently cause the vessel to ground in the vicinity of Anchorage 25, Carquinez Strait, San Francisco Bay, and later on the same date, negligently failed to correctly ascertain the conditions of tidal currents thereby causing said vessel to collide with the south tower of the Benicia-Martinez Bridge causing severe damage to the support tower protective cribbing.

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 the testimony of six witnesses, as well as eighteen exhibits.

In defense, Appellant offered in evidence his own testimony, the testimony of eight other witnesses, and six exhibits.

After conclusion of the hearing, the Judge rendered a written decision in which he concluded that the charge and two specifications had been proved. He then served a written order on Appellant suspending all licenses issued to Appellant, for a period of eight months outright.

The entire decision and order was served on 20 May 1975. Appeal was timely filed on the same day.

#### *FINDINGS OF FACT*

The SS NORFOLK is a foreign flag tank vessel of Liberian registry and was bound for the Phillips Petroleum Company's Amoco Refinery situated on Suisun Bay, within the San Francisco, California, harbor. There is no federal statutory requirement that foreign flag vessels entering U.S. ports from a foreign voyage be under the navigational control of a federally licensed pilot. 46 U.S.C. 364, 215, 211.

The laws of the State of California require that incoming "foreign voyage" vessels carry state licensed bar pilots when traveling from the high seas to the Bays of San Francisco. Cal. Harbors and Navigation Code 1125 (WEST 1976). On 21 January 1975, the NORFOLK engaged a San Francisco bar pilot near the entrance to San Francisco Bay and proceeded into the quieter waters of the Bay. Later on the same date, the state bar pilot was relieved by the Appellant near Alcatraz Island. Appellant was under the employment of Phillip's Petroleum Corporation, and his assigned duty was to act as pilot for the vessel en route to the Amoco Refinery for offloading.

The Appellant held a Coast Guard issued master's license with pilotage endorsements for San Francisco Bay and its tributaries. In addition, he held commissions from several municipal port districts in California for pilotage in their respective harbors. There was no statutory requirement that the NORFLOLK carry a federal pilot during this operation. There were no regulatory requirements for a federal pilot as authorized by Section 101(5) of

the Ports and Waterways Safety Act, 33 U.S.C. 1221(5). Additionally, there were no state statutory requirements that the NORFOLK carry a compulsory state pilot during this latter operation. Neither did the local pilot commissions Appellant held apply to the area of this operation.

The NORFOLK being fully loaded was required to anchor to wait for proper tidal conditions to permit docking at her destination. Later, upon weighing anchor, it was discovered that she was aground in soft mud. With the assistance of two tugs she was eventually refloated.

The NORFOLK then continued her voyage until in the vicinity of her destination. With the tide flooding and visibility poor due to fog the vessel went out of control and collided with the protective fender system surrounding one of the support legs of the Benicia-Martinez Bridge. Damage to the bridge as a result of the incident was estimated to be in excess of half a million dollars.

The vessel was not damaged as a result of the grounding. The vessel was damaged as a result of its collision with the bridge, but not to the extent to cause a discharge of any of its cargo. Prior to and during both of these incidents, the Appellant was serving as pilot of the NORFOLK and in this capacity had full charge of the navigation of the vessel and concomitant responsibility for the safety of the ship and its crew. Charges were brought and the hearing conducted solely under the authority of R.S. 4442, 46 U.S.C. 214.

#### *BASES OF APPEAL*

This appeal has been taken from the order imposed by the Administrative Law Judge. Various grounds are urged, however, since the issue of jurisdiction will be dispositive it will not be necessary to discuss other issues.

APPEARANCES: John E. Droeger, Esq. and Robert Childs, Esq. of Hall, Henry, Oliver, and McReavy, San Francisco, California.

#### *OPINION*

Appellant argues that R.S. 4442, 46 U.S.C. 214, does not provide the statutory authority for the Coast Guard to administratively proceed against a Coast Guard issued federal pilot's license and that, presumably as a consequence, the hearing and its findings are void for lack of jurisdiction.

The Coast Guard has reviewed the recent court decision in *Dietze v. Siler*, Civil Action No.75-3501, (E.D. La., 14 June 1976), which is related and has decided that it will not appeal the Dietze decision to a higher court. Therefore, the Coast Guard, in accordance with its policy of uniformity of law enforcement, will follow the Dietze decision not only in the Eastern District of Louisiana but in all districts in those cases involving pilots.

#### CONCLUSION

Since the hearing below was brought solely under authority of 46 U.S.C. 214, I find that there was lack of federal jurisdiction to suspend or revoke Appellant's federal licenses.

#### ORDER

The order of the Administrative Law Judge, dated at San Francisco, California, on 20 May 1975, is VACATED.

O. W. SILER  
Admiral, U. S. Coast Guard  
Commandant

Signed at Washington, D. C., this 8th day of Sept. 1976.

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