

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. Z-571-247 LICENSE NO. 424782
Issued to: Charles A. SCHUESSLER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2073

Charles A. SCHUESSLER

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

By order dated 20 November 1975, an Administrative Law Judge of the United States Coast Guard at Houston, Texas, suspended Appellant's seaman documents for one month outright plus two months on six months' probation upon finding him guilty of the charge of "inattention to duty" while acting as a pilot of a steam vessel. The specification found proved alleges that while serving as a pilot on board the S.S. SKUKUZA (South Africa) on or about 19 July 1975, Appellant failed to insure that the attending M/V J. HARRIS MASTERSON was clear before maneuvering his vessel ahead in the Houston Ship Channel, thereby causing a collision with the M/V J. HARRIS MASTERSON.

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 three witnesses and ten exhibits.

In defense, Appellant offered in evidence the testimony of two witnesses and ten exhibits.

At the end of the hearing, the 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 documents, issued to Appellant, for a period of one month outright plus two months on six months' probation.

The entire decision and order was served on 22 November 1975. Appeal was timely filed on 2 December 1975.

FINDINGS OF FACT

On 19 July 1975, Appellant was serving as a pilot on board the SS SKUKUZA(S.A.) while the ship was being backed down from a slip at the Jacintoport Terminal into the main body of the Houston Ship Channel. Two tugs were assisting in the maneuver, one being the J. HARRIS MASTERSON which was situated on the port quarter. The SS SKUKUZA was in a light condition and consequently a portion of its propeller passed above the water's surface. Upon reaching the channel, the ship's engines were brought from slow astern to all stop. While the engines were at all stop, Appellant gave the order for the Tug J. HARRIS MASTERSON to "let go" and clear the ship. At the time of receipt of this order, over the radio, the tug was touching the starboard side of the SKUKUZA with its bow facing the stern of the ship. Within two minutes thereafter the ship's engines were brought to full ahead. Due to the position of the tug in relation to the movement of the ship, the tug operator was unable to move away from the ship in sufficient time to avoid the oncoming propeller. The resultant collision causes an estimated \$400,000 worth of damage.

During the maneuvers, Appellant had full control of and responsibility for the safe navigation of the vessel. After giving the release order, the Appellant did not maintain any voice contact with the Tug MASTERSON. Neither did he attempt to follow the tug's movements visually. Nevertheless, in rapid succession, he gave two engine ahead commands shortly after the release order.

Appellant holds a Coast Guard issued master's license with pilotage endorsements and a pilot's license issued by the State of

Texas. There was no statutory requirement that a Federal pilot be on board the vessel at the time of the incident. Appellant was charged and the administrative hearing was convened solely under the statutory authority of 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.

APPEARANCE: Ed Bluestein Jr., Esq. and Robert L. Walker of the law firm of Fulbright and Jaworski of Houston, Texas.

OPINION

Appellant urges 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 to the jurisdictional issue and had 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 Houston, Texas, on 20 November 1975, is VACATED.

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

Signed at Washington, D. C., this 15th day of Sept. 1976.

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