

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO Z-351109
LICENSE NO. 449452
Issued to: Spyros MOURIKIS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2087

Spyros MOURIKIS

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

By order dated 12 January 1976, an Administrative Law Judge of the United States Coast Guard at Houston, Texas, suspended Appellant's seaman documents for one month outright plus one month on three months' probation upon finding him guilty of negligence. The specification found proved alleges that, while serving as Master on board the SS CONNECTICUT under authority of the document and license above captioned, on or about 15 June 1975, Appellant did neglect to take the necessary precautions required by the ordinary practice of seamen (Article 29, Inland Rules of the Road), to wit: attempt to navigate a light vessel in a restricted channel during unfavorable weather, thereby causing a collision with the (Liberian) M/V ST PANTELEIMON, in the Houston Ship Channel, at Robertson Terminal, Galena 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 12 exhibits and the testimony of four witnesses.

In defense, Appellant offered in evidence the testimony of one witness.

The Administrative Law Judge introduced in evidence six exhibits.

At the end of the hearing, the Judge reserved decision. On 12 January 1976 he issued 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 licenses, issued to Appellant, for a period of one month plus one month on three months' probation.

The entire decision and order was served on 26 January 1976.

FINDINGS OF FACT

On 15 June 1975, Appellant was serving as Master on board the SS CONNECTICUT and acting under authority of his license while the ship was underway in the Houston Ship Channel.

The SS CONNECTICUT (o.n. 277291) is a United States registered tank vessel with a registered length of 646.4 feet and gross tonnage of 22,600.47. At 1331, local time, on the above date the CONNECTICUT was being shifted from the Manchester Terminal Dock to the Robertson Terminal docks. The vessel was without cargo and was, as a result, riding high in the water. Its drafts were 4'08" forward and 15'10" aft. The wind at the time the vessel departed Manchester Terminal was from the southeast at 15 to 25 knots. Shortly prior to the vessel's collision with the MV ST PANTELEIMON the wind appeared to witnesses to pick up. (Wind speed was estimated by one witness at this time as 35 to 38 knots. Area National Weather Service observations of the wind between 0955 and the time of the collision ranged from 6 to 23 knots with gusts to 27 knots. The forecasts for the area included winds from 8 to 25

knots and gusting. The winds observed by witnesses exceeded the local forecasts.)

The CONNECTICUT was being moved with the assistance of three 1700 horsepower tugs. It was common for vessels in a light condition to operate in the Houston Ship channel with less tugs assistance. At the time of collision, only one of these tugs had lines out to the CONNECTICUT while the other tugs were maneuvering to reposition themselves with respect to the tank vessel. The high winds from the southeast set the CONNECTICUT down on the M/V ST PANTELEIMON which was berthed on the north side of the channel. The port stern quarter of the CONNECTICUT struck the starboard stern quarter of the ST PANTELEIMON and ran along the starboard side of the latter vessel.

BASES OF APPEAL

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

1. Appellant was denied administrative due process of law by the action of the Administrative Law Judge in conducting a portion of the hearing without proper notice to the Appellant and without Appellant having an opportunity to be present.
2. The charge and specification was and is insufficient, overly broad, general, and vague, and does not form a proper basis for establishing a charge of negligence and resulted in the application of an erroneous legal standard by which the Appellant's conduct was measured.
3.
 - a. The findings of negligence against Appellant are unsupported by and contrary to, the evidence received at the hearing;
 - b. The Coast Guard is bound by the evidence of its own witnesses which strongly supported a not guilty finding.

APPEARANCE: Eastham, Watson, Dale, and Forney, Houston, Texas,
Marion E. McDaniel, Jr., Esq.

OPINION

I.

The single specification upon which the finding of negligence was made alleged that Appellant neglected to take the necessary precautions required by the ordinary practice of seamen. Authority cited within this specification was Article 29, Inland Rules of the Road. As was stated in Appeal Decision [2057 \(SHIPP\)](#):

"ARTICLE 29 of the Inland Rules creates no affirmative duty by the operator of a vessel. In summary, it says that compliance with the affirmative duties which are specified by the rules cannot be used to exonerate a seaman (master) from his negligence in failing to use ordinary care of prudence in the operation of a vessel. But, negligent operation of a vessel on the inland waters of the U.S. is not a violation of Article 29. The penalties provided for in 33 U.S.C. 158 and 159 cannot be utilized for purposes of `enforcing' Article 29.

Consequently, since Article 29 sets no definitive standard of care or duty, it should not be utilized as a specification in support of a charge of `negligence' in an administrative hearing under R.S. 4450, as it does not `specify' the acts or omissions upon which the charge of negligence is based."

II.

The basic language and style of the specification in this case is identical to the language which I rejected in *SHIPP*. They differ only in the language offered as elaboration of the basic specifications. Therefore, I rejected the previous one.

CONCLUSION

In view of my determination that the specification is inadequate, it is not necessary to consider the other issues raised by Appellant.

ORDER

The order of the Administrative Law Judge dated at Houston, Texas, on 12 January 1976, is VACATED.

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

Signed at Washington, D.C., this 17th day of December, 1976.

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