UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. LICENSE NO. 07319
Issued to: Hershel A. ROYSE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2108

Hershel A. ROYSE

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 6 December 1976, an Administrative Law Judge of the United States Coast Guard at Seattle, Washington suspended Appellant's operator's license for two months on six months' probation upon finding him guilty of negligence. The specification found proved alleges that Appellant, serving as operator on board the MULTNOMAH under authority of the license above captioned, on or about 4 September 1976, while said vessel was underway on the Columbia River, crossed the upstream sill of the Bonneville Lock and Dam, entering the navigation lock chamber against a red light and without authorization to enter, in violation of 33 CFR 207.718(d)(3) and 207.718(c).

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 five witnesses and six exhibits consisting of documentary evidence.

In defense, Appellant offered in evidence his own sworn testimony and the testimony of four other witnesses.

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 then served a written order on Appellant suspending all licenses and documents, issued to Appellant by the U.S. Coast Guard, for a period of 02 months on 06 months' probation.

The entire decision and order was served on 12 December 1976. Appeal was timely filed on 4 January 1977.

FINDINGS OF FACT

On 4 September 1976, Appellant was serving as operator on board the Tugboat MULTNOMAH and acting under authority of his license while the vessel was underway on the Columbia River in the vicinity of Bonneville Lock and Dam. He was serving under the authority of his duly issued United States Coast Guard License No. 07319 which permits him to serve as Operator of uninspected towing vessel upon the inland waters of the United States, not including the Western Rivers. He had worked on the river for 35 years and had an unblemished record prior to the time in question.

The Bonneville Lock System in operated by a lock operator whose job it is to control vessel passage through the locks, including which vessels may enter and the time of entrance. Normally, a vessel desiring to transit the locks will communicate his request to the lock operator via radio-telephone one half hour prior to the time transit is desired. There is a radio in the downstream and upstream control rooms and each lock operating carries a portable radio, thus permitting constant monitoring of communications by the lock operators. A system of red and green lights is used to communicate the lock operator's decision on whether a vessel may enter the lock. If a vessel operator is given a green light he may enter; if a red light is displayed, he must not. Access to the locks is through gates which are operated by the lock operators and which take approximately 3 1/2 minutes to open or close. Control is primarily exercised by radio telephone and the lights. The radios have proved very reliable in the past.

On 4 September 1966, the operator of the Tug KATHRYN B and her barge had properly radioed a request to the Bonneville Lock Operator for downstream lockage and had been permitted to enter the lock. When the KATHRYN B was secure inside the lock, the lock operator switched on the red light and commenced closing the gates. While the gates were closing, Appellant took his vessel into the lock in knowing violation of the lock operator's direction to not enter, *i.e*. the red light. When the lock operator became aware of the situation he stopped the gates, ran outside the control station and called appellant on the portable radio. When contact was established, the lock operator told Appellant that he was refused lockage and to back out. Appellant responded, "I was trying to contact you by radio," and then backed out of the lock after the gates were opened for that purpose. Neither the lock operator nor the powerhouse operator heard Appellant's alleged attempts to contact the lock operator although their radios were monitoring the proper channels (16 and VHF-FM).

Appellant and one of his witnesses testified that Appellant tried to radio the lock operator for permission to enter prior to entering.Appellant testified that the reason he entered the lock knowing he was prohibited from entering at that time was to go to the aid of a tug and log raft which Appellant suspected had gotten itself into some difficulty due to the current downstream.

He took this action despite the potential for very great damage to the lockage system had his vessel contacted the closing lock doors. This damage could have extended to a complete shutdown of the lock system (and river traffic) pending repairs.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that (1) the evidence is insufficient to support a finding of negligence, and (2) the arbitrator(sic) erred by not considering the defense of justification.

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OPINION

Appellant makes the somewhat related arguments that there is insufficient evidence of negligence in the record despite his admission that he caused his vessel to enter the lock in knowing violation of the "red light" because he allegedly was justified in doing so by the "emergency" downstream and by the immediacy with which he was required to react to it.

To some extent Appellant's justification argument is a variation of his argument that his conduct was reasonable under the circumstances and therefore not negligent. There is ample evidence in the record (and an admission by Appellant) to support a violation of the pertinent regulations, 33 CFR 207.718(d)(3).

The regulations is question codify a reasonable standard of care governing a vessel operator's entrance of a lock chamber. This standard of care is designated to prevent collisions between vessels within the locks, and, perhaps more importantly, collisions between vessel and the lock gates. In short it is a traffic safety standard.This standard, irrespective of its codification in the Code of Federal Regulations, is recognized by mariners on the river as reasonable and it is normally obeyed by them. See *Commandant Decisions* 1073, 1093, and 1515. Appellant admittedly did not abide by this standard in this case. Therefore, unless there is something sufficiently abnormal about the particular facts in this case which would make normally unreasonable conduct reasonable, Appellant's position can not be sustained.

Do the facts in this case render a conclusion of negligence inapplicable? The facts, supported by substantial evidence of record, amply justify a conclusion of negligence. Appellant's attempt to justify his action in violation of a safety regulation is based on his belief of an emergency downstream. The reality of an emergency downstream was not established on the record at the hearing notwithstanding Appellant's testimony and the testimony of Capt. TRUEDSON. It is the Administrative Law Judge's responsibility to hear the evidence and determine the credibility of witnesses and the facts. His determination in this respect must

be accepted unless it is clearly erroneous *i.e.* arbitrary and capricious. *Commandant Appeal Decisions* 1952, 1736. The Administrative Law Judge found that Appellant was not justified in his action, and also found that he did not act in accordance with the standard of a reasonable, prudent man under the circumstances. These findings are not clearly erroneous based on this record.

CONCLUSION

Appellant was negligent by entering the Bonneville lock chamber on the Columbia River against a red light without authority from the lock master. His license was subject to U.S. Coast Guard jurisdiction.

ORDER

The order of the Administrative Law Judge dated at Seattle, Washington on 6 December 1976, is AFFIRMED.

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

Signed at Washington, D.C., this 29th day of June 1977.

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