UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. Z-589874-D1
LICENSE NO. 468 989
Issued to: Mathew SANDLIN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2133

Mathew SANDLIN

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 16 June 1977, an Administrative Law Judge of the United States Coast Guard at New York, New York, suspended Appellant's license for three months on twelve months' probation upon finding him guilty of negligence. The specification found proved alleges that while serving as Master of SS LASH ITALIA under authority of the license above captioned, on or about 13 March 1976, Appellant neglected and failed to navigate the vessel with due caution which resulted in grounding of said vessel in Fort Sumter Channel, Charleston, South Carolina.

A specification of "Misconduct," alleging that Appellant had wrongfully failed to give notice of that grounding in timely fashion was dismissed as not proved.

At the hearing, Appellant elected to act as his own counsel and entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the testimony of witnesses and numerous voyage records.

In defense, Appellant offered in evidence several voyage records and the testimony of several witnesses.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then entered an order suspending Appellant's license for a period of three months on twelve months' probation.

The entire decision was served on 22 June 1977. Appeal was timely filed, and perfected on 21 December 1977.

FINDINGS OF FACT

On 13 March 1976, Appellant was serving as master of SS LASH ITALIA and acting under authority of his license.

At about 1720, local time, LASH ITALIA, in all respects ready for sea, departed its berth at Charleston, South Carolina, with a local pilot aboard. The draft of the vessel was measured at 37'3" forward, 38'2" aft, with a mean of 37'8.5." While the vessel was between buoys 16 and 14, Fort Sumter Channel, and in mid-channel, the pilot was disembarked at 1824.

The pilot had advised Appellant that the vessel must be kept on the range (119.5°t) in mid-channel to avoid grounding. The Channel, at the time, allowing for the stage of tide, had a controlling depth of 41'8" in the middle quarters, 34'1" in the outside quarter to the right of the departing LASH ITALIA, and 36'2" in the outside quarter to the vessel's left.

Speed was returned to 60 rpm on the pilot's departure. This would normally give the vessel about 13 knots.

Appellant personally had the conn and directed the vessel from the doorway on the port side of the navigating bridge, from which point he could observe the Fort Sumter range astern. At 1830 the vessel had buoy "14" abeam to port, and the mate of the watch saw that the vessel was somewhat to the left of the centerline of the channel. From observation of time and distance run between buoys, this officer had earlier deduced a speed made good of about nine knots. At buoy "14" the vessel was on a heading of 121°t, the same heading used by the pilot in coming down the channel to allow for leeway created by a wind of about 15 knots on the vessel's starboard side. Passing buoy "14" the vessel emerged from the shelter of the breakwater on its starboard side, exposing the vessel fully to the wind. Appellant attempted two small changes of heading to the right, and when response was inadequate, he ordered the rudder twenty degrees to the right. Advised by the steersman that the vessel did not respond he ordered full right rudder and directed the mate to "jingle" the engineroom.

The personnel in the engineroom took the jingle to indicate, possibly, "departure," knowing that the vessel had ben slowed to allow the pilot to get off. "Departure" would mean an increase of revolutions gradually to 80 rpm for sea speed. Since the engine watch was uncertain as to the meaning of the "jingle" under the conditions, the officer in charge immediately directed communication to the bridge, but before the call could be made the bridge called the engineroom and asked for 80 rpm. The throttles were immediately opened but the revolutions did not increase much, settling back to about 62. The engine watch detected shaft and screw reactions which led them to believe that the vessel was in mud.

On the bridge, immediately after ordering the "jingle" Appellant ordered a voice order to the engineroom for 8 rpm. The mate on watch noticed that the vessel had been slowing down, using buoy "8" ahead to port, as a mark for sighting. When Appellant ordered the engine stopped, at 0838, the mate recorded that the vessel was aground. He then took bearings of 110°t on buoy ""8" AND 161° on buoy "7," placing the vessel in the outer left quarter

of the channel on a heading of 123°t.

Report was made immediately to a shore station by voice radio advising of the grounding.

There was no failure of engine, steering mechanism, or gyrocompass prior to the grounding.

BASES OF APPEAL

This appeal had been taken from the order imposed by the Administrative Law Judge. Grounds for appeal are discussed in the "OPINION." below.

APPEARANCE: Appellant, *pro se*.

OPINION

I

Much that is groundless, irrelevant, or merely querulous must be overlooked in Appellant's assertions of error. Accusations of improper actions by Coast Guard personnel involved in the investigation of the grounding and claims of denial of the right to call witnesses have nothing to do with the merits of the case presented, heard, and decided. In fact, the witnesses whose testimony by deposition was "denied" to Appellant were all witnesses who would have dealt with a specification of a charge of Misconduct, that Appellant had not given notice of the grounding as soon as possible Coast Guard authorities at Charleston. Since the specification alleging this fault was dismissed on motion by the Administrative Law Judge for a failure of proof, there is absolutely no ground for complaint in that respect on this appeal. The only thing to be considered is the grounding itself.

II

The Administrative Law Judge quite correctly perceived that, when a vessel grounds in a place where the vessel by the commonly accepted dictates of piloting and good seamanship has no business being, there arises a presumption of fault on the part of the

person responsible for the piloting and the burden of establishing an alternative cause, other than fault, is placed upon the responsible person.

Here, there is no doubt that the vessel grounded. On a superficial view it might be thought that a grounding within the limits of a marked channel is not such as to put a burden of explanation on the responsible officer, but the situation here demonstrates otherwise. Fort Sumter Channel is clearly identified on the Charleston Harbor Entrance chart (C&GS 491; N.O. 11 228), the chart available and actually used on the occasion, as having controlling depths varying according to the quarter of the channel to be used. Appellant was chargeably on notice of the draft of his vessel. It is clear that the vessel was restricted in the use of the channel to the two inside quarters. To navigate in either of the outside quarters with the known draft was to invite, with almost absolute certainty, a grounding. Added to this was the undisputed evidence that the harbor pilot specifically warned Appellant before his departure from the ship that he would have to keep the ship in the center of the channel, on the Fort Sumter Range of 119.5°t. With these circumstances firmly established, the grounding of the vessel in the outside quarter becomes attributable, *prima facie*, to fault on the part of officer in charge of the navigation of the vessel.

Appellant urges any one of three responses to negate the inference to be drawn: (1) an engine failure, (2) a failure of steering mechanism, or (3) a gyro failure. Under many conditions, some one of these failures could well explain a grounding as not the product of personal error by the navigator, but, of course, the burden is on the proponent to introduce substantial evidence of such a failure with sufficient weight to overcome the appearance of fault. It is obviously not enough merely to assert that there may have been a failure or that, in the face of other known facts, there must have been a failure.

III

Here, Appellant's grounds for appeal are a disputatious quarreling with findings made by the Administrative Law Judge.

As to an "engine failure" he argues that there was at some

time on the day of the grounding, or thereabouts, a feed pump problem which necessitated a switching of pumps, that the Chief engineer recalls engine problems with the vessel but that the lapse of time had confused his memory as to when they had happened, and that therefore some such must have occurred prior to and contributing to the grounding. Supportive of this, he urges, is the fact that the 80 rpm ordered were never attained.

Contrary to this speculation is the clear testimony of engineroom personnel, including the chief engineer of LASH ITALIA, that there was at all times normal steam supply for the plant and no aberration in functioning of the engine. The failure to attain the ordered 80 rpm is proof in itself that the 60 rpm previously and normally required were being produced in customary fashion. One reason for the delay in the increase is the question in the engineroom as to what the "jingle" meant, and the obvious, direct cause of the failure thereafter to increase the revolutions was the mud into which the screw was already driving.

As to a "gyro" failure, there is not even a pretense of speculation offered. The heading of the vessel was accurately shown at all times, the heading at the time of becoming fast was almost exactly what had been previously steered, and the bearings taken after grounding accurately located the vessel. Again, there is reliable testimony that there was no sign or warning of gyro failure of any kind.

When Appellant disputes the Administrative Law Judge's finding that there was no failure of steering mechanism, he points to testimony of the pilot that the vessel had not been handling as he would have liked it. This comment, alone, could be dissipated by the notice that the vessel, fully loaded, did not have more than three and one half feet of water under the bottom, at best, when occupying one hundred feet of the less than five hundred feet of the usable quarters of the channel. Here too, also, there is the convincing direct testimony that no fault was in fact found with the steering mechanism before or after the grounding.

IV

One other point insisted upon strongly by Appellant is his claim that the Administrative Law Judge was clearly in error in

certain findings as to time. What is complained of is actually couched in the "Opinion" of the initial decision, where it was said, "I am satisfied that the SS LASH ITALIA did not answer her helm because she had taken the bottom." Appellant sees here a discrepancy in that this is a finding that the vessel was aground at 1833, in conflict with evidence that the vessel traveled a mile between 1830, when buoy "14" was abeam, to the point of grounding (which could not have been done in three minutes), and evidence that the vessel was moving ahead when the rudder orders were given and when, later, the engine orders were given at about 1835 and 1836.

There are two points to be observed here. One is that the statement to which Appellant objects is not a "finding of fact" at all; it is a comment placed in the "Opinion." The Administrative Law Judge, it appears, very carefully made a point of not precisely identifying a point in time as the exact moment of grounding. The other is that "taking the bottom" is not, as I see it, a commitment to a finding of stranding to the point of immobility. I read it as the equivalent of the expression "smell the bottom." In the phenomenon so characterized the vessel tends to be intractable and steering control may be greatly impaired.

The attempted elaboration of a theory of misapprehension as to fact just does not fit the case. There is no error in the findings of fact made and the theorizing that may be expended in attempting a second by second progress of the vessel to the point of grounding is wasted. What is indisputable is that the vessel, without a significant change of heading, was set by the wind, no longer impeded by the breakwater, laterally across the channel. By the time Appellant acted on the need for increasing resistance to the wind by adjusting his heading to the right, it was too late, and the vessel was already in such shoal water that his rudder movements were ineffective.

Appellant also sets up a straw man as evidence of the Administrative Law Judge's asserted misunderstanding of the case. The initial decision makes reference to the fact that there was apparently no after-conning station on LASH ITALIA, and suggests that use of another place to have afforded better vision of the Fort Sumter Range or retention of the local pilot might have served

to prevent grounding. Appellant attacks this as a complete misconception in that his vision was not obscured in any way, looking aft, and that it was reasonable to have dropped the pilot where he did to avoid exposing the pilot to hazardous transfer activities in the wind seaward of the breakwater. It may be that the speculations were gratuitous, but there is no finding made that he released the pilot too soon.

The admitted fact is that Appellant himself was responsible for the piloting of the vessel from 1824 on, and it plainly appears that, whatever Appellant might have done about looking at the range, the vessel did in fact clearly deviate from it to its left during the period for which Appellant was exclusively responsible.

Appellant has also made a point of insisting that he was denied due process because he was "not permitted" to testify in his own behalf. Although the argument is propounded with force and feeling, there is not the thinnest basis in fact to support it.

Appellant declares that twice during the proceeding he had indicated a desire to testify as to entries he had made in the "Official Log Book" and he construes the Administrative Law Judge's statements on those occasions as denying him the opportunity.

On the first occasion, depositions had just been identified and marked as exhibits in evidence for Appellant, when Appellant stated that he wished "to be placed under oath in order that he may state that all entries made in the official log book were made by him and as true and correct." R-451. The entries referred to were in evidence as an exhibit presented by the Investigating Officer and dealt with events of the morning of 13 March 1976, the preparations for getting underway that afternoon, and the events leading to the grounding. The entries, which are dated as to date of occurrence, do not reflect the time or date of their making. (The deck log of the vessel for the period covered was also in evidence.)

The Administrative Law Judge advised Appellant, in response to his statement, "...I would think that you won't have to testify to that, Captain. You make those in the course of your official duties and unless there's a question of it...." Appellant interrupted with, "Thank you..... Respondent now refers to [another

entry of the next date]..." The Administrative Law Judge continued:

> "...But I want you to feel, you know, as master of your vessel your entries are considered to be true. The Commandant says that entries made by the master concerning the acts of seaman are prima facie evidence. If there's any attack on your credibility that's another thing but at the moment you don't have to take the stand on that."

To which, Appellant replied, "Thank you." (R.-451).

Again (R.-525), Appellant referred to the same exhibit and read to the Administrative Law Judge the two provisions of present 46 CFR 5.20-107 concerning the use of and weight of official log book entries. After Appellant's description of the effect of this with regard to the exhibit, the Administrative Law Judge said, "That's Commandant's statement and that's the Regulation, yes. That's why I didn't swear you at that time." Appellant then immediately proceeded to argue from the evidence of the exhibit to the conclusion he sought on the merits.

Apart from these two instances, cited by Appellant as establishing that he was denied the right to testify, the Administrative Law Judge twice advised Appellant of his absolute right to testify in his own behalf. Once was at the outset of the hearing when he advised Appellant of the nature of the proceedings. Later (R-631), the Administrative Law Judge specifically repeated, "...one other thing, I must invite your attention to. In the opening session, you know, I told you that you have a right to testify in your own behalf or to remain silent, and if you remain silent, no inference as to guilt will be taken from the fact of your silence. But that's a decision for you to make. I only say that, not to force you or to put you under any pressure at all one way or the other. That's your decision. But the record must reflect that I have afforded you that opportunity..." Thereupon, after lengthy consideration, Appellant "rested his case."

There is not a shred of support for the allegation that Appellant was denied the right to testify.

V

Although not directory of a disposition of this case favorably to Appellant, an issue is raised in connection with the rejection of his claim to have been denied the right to testify that merits attention lest some future misunderstanding create problems.

When Appellant stated that he wished to reinforce under oath the entries in the official log book relative to the grounding of the vessel, the Administrative Law Judge correctly paraphrased the provisions of 46 CFR 5.20-107 concerning the weight to be accorded to the evidence in entries with which the regulation deals. The comment was, however, inappropriate in the context and could have been technically misleading. The regulation has nothing to do with the type of log entry made by Appellant in this matter. It is clearly concerned only with actions of seamen recorded pursuant to statute and the "substantial compliance" provision of the regulation specially cites 46 U.S.C. 702. This Code Section is distinctively and exclusively tied to 46 U.S.C. 701 and has no direct bearing upon official log book entries made pursuant to any other provision of law or for any other purpose. Since the regulation does not deal with the situation actually present at that point in the hearing, in a certain "instructional" sense, the ruling, for such it was, was an error.

As an error, it was however harmless, since it established for the Administrative Law Judge in his treatment of the evidence in question as great a test of weight as it would have been entitled to under any appropriate test. If the Administrative Law Judge was willing to accord to it the weight attached to pertinent entries by 46 CFR 5.20-107, the evidence received more favorable attention than it deserved.

"Grounding" or "stranding" of a vessel is not, in the first place, a matter required by statue to be recorded in the vessel's official log book. The only specifically-marine casualty required to be made subject of an official log entry by R.S. 4290 (46 U.S.C. 201), is collision. In addition, even in the case of collision, it is evident that, recognizing that the regulation cited is alien to the concept considered, the official log book entry is more likely

to limit or restrain parol evidence than it is to establish a more or less self-serving recital of blamelessness. It is evident without further demonstration that the more immediate records kept in the regular course of routine, such as deck and engine bell books, course recorder traces, and even rough logs, are entitled to far greater weight than would be a smoothly presented recapitulation of events recollected in tranquillity via official log book recording.

By his ruling in this instance, (and in context it was a ruling as to the log entry under discussion although the actual language used was otherwise), the Administrative Law Judge possibly made it more difficult for himself to reject as absolutely conclusive Appellant's record of the moment at which the vessel grounded. Under the circumstances, however, the precise moment of grounding is not of the essence here, with the fact and location of the grounding indisputably established, and the direct evidence available affords more than ample grounds for the findings concretely and actually made, however much Appellant may argue that his official log book entry establishes something to the contrary.

ORDER

The Order of the Administrative Law Judge dated at New York, New York, on 16 June 1977, is AFFIRMED.

J.B. HAYES
Admiral U. S. Coast Guard
Commandant

Signed at Washington, D. C., 25th day of September 1978.

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