

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE No. 462989
and
MERCHANT MARINER'S DOCUMENT Z-1244551
Issued to: Frederick J. MURPHY

DECISION OF THE VICE COMMANDANT
UNITED STATES COAST GUARD

2164

Frederick J. MURPHY

This appeal has been taken in accordance with 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 16 February 1978, an Administrative Law Judge of the United States Coast Guard at San Francisco, California, after a hearing at San Francisco, California, on 15 and 30 December 1977, and 24 January 1978, suspended Appellant's license for a period of two months on probation for six months upon finding him guilty of negligence. The single specification of the charge of negligence found proved alleges that Appellant, while serving as chief mate aboard SS EXXON PHILADELPHIA, under authority of the captioned documents, did on 1 December 1977, while said vessel was at Richmond Long Wharf, Chevron Oil Dock, Richmond, California, negligently fail to align the ballast transfer valves properly while ballasting the said vessel, thereby wrongfully discharging a harmful quantity of oil into the navigable waters of the United States.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and

specification.

The Investigating Officer introduced into evidence the testimony of three witnesses, seven documents, one deposition, and one blueprint containing diagrams of several piping systems aboard SS EXXON PHILADELPHIA.

In defense, Appellant offered no evidence, but did testify in mitigation after an oral finding of guilty had been entered.

Subsequent to the hearing, the Administrative Law Judge entered a written decision in which he concluded that the charge and specification as alleged had been proved. He then entered an order of suspension for a period of two months on probation for six months.

The decision was served on 21 February 1978. Appeal was timely filed on 22 February 1978, and perfected on 11 September 1978.

FINDINGS OF FACT

On the morning of 1 December 1977, Appellant was serving under the authority of his duly issued license and merchant mariner's document as Chief Mate aboard SS EXXON PHILADELPHIA (hereinafter PHILADELPHIA). PHILADELPHIA was moored at the Richmond Long Wharf, Chevron Oil Dock, Richmond, California. At 0405, ballasting of PHILADELPHIA was begun with Appellant in charge of this operation. At approximately 0500, oil was noticed in the water near PHILADELPHIA. Containment and cleanup operations were commenced and the Coast Guard was notified. At approximately 0630, two Coast Guard Petty Officers arrived on scene and observed the situation. Because of the disposition of this appeal, no further findings are necessary.

BASIS OF APPEAL

It is contended that the Coast Guard failed to prove Appellant guilty of negligence by substantial evidence of reliable and probative character.

APPEARANCE: McCutchen, Doyle, Brown & Enersen, San Francisco, California, by Mark O. Kassanin, Jack G. Gnebel, and Gregory V. Redlitz, Esq.

OPINION

Appellant contends that the Coast Guard failed to prove that the oil observed near PHILADELPHIA was discharged from PHILADELPHIA. With this contention I agree.

Both of the Coast Guard Petty Officers who observed the spilled oil testified. Each admitted that he had not observed the actual source of the oil discharge. Each further testified that no sample of the oil was taken, so no test could have been conducted to establish that the oil in the water had been discharged from PHILADELPHIA. Each admitted that, given the state of the tide that morning, the oil which they had observed could have been discharged earlier from one of the other vessels moored nearby and the could have drifted to PHILADELPHIA. No attempt was made by either to Investigate any of the other vessels moored near PHILADELPHIA. Hence, their testimony established that they had observed oil on the water near PHILADELPHIA, but nothing more.

The Investigating Officer introduced into evidence the testimony of an expert witness on the piping systems aboard PHILADELPHIA. The essence of his testimony was to the effect that if certain conditions were shown to exist, it was, at best, only "possible" that the oil in question had been discharge from PHILADELPHIA. In light of this response, and the ambiguous nature of the record as to the actual alignment of valves and pumps aboard PHILADELPHIA during the ballasting operation, I must conclude that the testimony of the expert witness added nothing to the Coast Guard case. (One major difficulty on review with this record needs to be addressed. the expert witness answered questions which required him to refer to a blueprint diagram of several of PHILADELPHIA'S piping systems. The record is replete with answers involving "this" pump, "this" line, "this" junction, and "this" valve. However, neither the Investigating Officer who had called the expert witness nor the Administrative Law Judge took action sufficient to insure that such answers would not result in confusion within the record upon review. While this failure has

not proven dispositive in this appeal, it nevertheless is imperative that references during oral testimony to blueprints, diagrams, charts, etc., be made clear for the record.)

Because it was not shown by substantial evidence of a reliable and probative character that oil was discharged from SS EXXON PHILADELPHIA, I conclude that this charge must be dismissed.

ORDER

The order of the Administrative Law Judge, dated at San Francisco, California, on 16 February 1978, is VACATED and the charge DISMISSED.

R.H. SCARBOROUGH
Vice Admiral, U. S. Coast Guard
VICE COMMANDANT

Signed in Washington, D.C., this 7th day of Sep. 1979.

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Evidence

absence of substantial
exhibits, failure to utilize properly at hearing
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