UNITED STATES OF AMERICA
UNITED STATES COAST GUARD v.
MERCHANT MARINER'S DOCUMENT BK-210721 and LICENSE NO. 479446
Issued to: Jack Selwyn CHAPMAN

SUPPLEMENTAL DECISION OF THE VICE COMMANDANT
UNITED STATES COAST GUARD

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Jack Selwyn CHAPMAN

The Decision on Appeal, No. 2127, in this case has been reconsidered on my own motion. It was held in the principal decision that because the expression "complement of officers and crew" appeared in the first paragraph of R.S. 4463 (46 U.S.C. 222) and the language in the second paragraph, allowing discretion to the master of a vessel to sail with a deficiency, spoke only of a deficiency in the "crew," there could be no allowable sailing of a vessel with a deficiency of a licensed officer. It was said, "A vessel may not, under this statute, be navigated at all with a deficiency of a required licensed officer."

From the enactment of section 14, of Act, Feb. 28, 18718 ch. 100, 16 Stat. 446 the statute from which R.S. 4463 was derived, until 1908, the law was concerned only with the problem of deficiency of licensed officers. Such a deficiency was tolerated under carefully prescribed circumstances. There was no reference to deficiency of other than licensed officers, presumably because such deficiencies were not considered significant at the time. In 1908 the statute was expanded to vest in the inspectors the authority to prescribe the requirements not only of licensed officers but also of the other seamen who might be found, in the judgement of the inspectors, necessary for the safe navigation of the vessel. The view expressed in the principal decision in this

case necessitates a belief that the amendment of 1908 was intended to allow a deficiency in the unlicensed members of the crew (who had never before been "required") but to cut off completely the possibility of the one form of deficiency with which the statute had been concerned for over thirty years.

That the amendment was not so construed at the time of its enactment is demonstrated by the documents. House Report 1226, 60th Congress, discussing the amending bill, made the following statement: "If for any cause a vessel about to depart is deprived of the services of an officer or other member of the crew without fault of the master or owner, the vessel may proceed...." When the "proviso," requiring the master to ship replacements, if obtainable, was added in 1913 (Act, Mar. 3, 1913, c. 118, section 1, 37 Stat. 732), the then Administrate, in Circular 245, published by the Department of Commerce, addressed the situation for the enlightenment of enforcement personnel as follows:

> "Where, however, in exceptional cases, such as when about to leave a dock, the vessel is deprived of any of the complement prescribed in the certificate...., the vessel may proceed...."

The term "complement," of course, is taken from the first paragraph of the statute and attempts no distinction between "licensed officers" and "crew" to be carried over into the second paragraph.

Further, under the classifications of R.S. 4612 (46 U.S.C. 713), the licensed officers, other than the master, and the unlicensed personnel both compose the "seamen" aboard a vessel, and for general purposes throughout the statutes the "seamen" aboard a vessel compose "the crew".

What I conclude is that because of the unvarying long understanding of the discretion conferred on a master in 1871 and apparently expanded in 1908, and under the general rule that "crew" of a vessel includes the licensed officers as well as the unlicensed personnel, there is good reason to continue the long-standing interpretation of the law as practiced and not to insist, without some exceptional benefit to be gained, on a technical distinction, for the application of one statute alone, between "licensed officers" and "crew." In modification of the principal opinion in this case I therefore hold that the allowance

for a master to exercise discretion in face of begin deprived of the services of a seaman employed aboard the vessel extends to the "complement" required by the certificate of inspection and not merely to the unlicensed persons in the crew. (This does not eliminate or reduce the burden undertaken by a master in choosing to exercise this discretion. The report required by the statute is essential and the explanation called for must be satisfactory. In a proceeding under R.S. 4450 the continuation of a voyage "shorthanded" establishes a rebuttable presumption of violation of the requirements of a certificate of inspection.)

The disposition previously made of this case had depended on the application of the statute hereby rejected. Accepting now that the deprivation of services of a licensed officer is encompassed within the statute, the case returns to the state that misconduct was found in the initial decision on the theory that the deprivation could be grounds for exercise of discretion only at an intermediate port, while Baltimore, the port at which the offense was alleged to have occurred, had been held to be the initial port of departure.

In Decision on Appeal No. 2136, I held that the 1908 amendment to R.S. 4463 had eliminated the "intermediate port" element of the statute and had extended its operation to even an initial port of departure on a voyage, as long as there was a "deprivation" within the meaning of the statute. The evidence presented in mitigation at hearing in the instant case tended to establish, *contra* the theory of the Administrative Law judge, that Baltimore had been an intermediate port anyway. A proper attention to the argument in mitigation should have resulted in a change of plea to one of "not guilty" since Appellant was in fact claiming protection under the statute to justify his navigating the vessel without a licensed engineer required by the vessel's certificate of inspection.

I can see no profit in remanding the case now for a full hearing on the actual merits, recognizing that the initial deprivation was at Norfolk, Virginia, not Baltimore, Maryland, and that several additional determinations would have to be made, *e.g.*: (1) since the case was not one for which there is a law requiring a written shipping agreement, whether there was a single "voyage" or "two voyages," (2) in either case, whether the initial deprivation at Norfolk would have been available as an occasion for

further exercise of discretion at Baltimore; (3) whether the deprivation was real as to Norfolk and possibly not as to Baltimore; and (4) whether the deprivation was in fact without the consent, fault, or collusion of Appellant. Since an admonition was found to have been appropriate under the initial treatment of the case, the matter is not worth referring back for a new hearing on issues not recognized before.

ORDER

The Order previously affirmed in Decision on Appeal No. 2127 is SET ASIDE and the charges are DISMISSED.

R. H. SCARBOROUGH
VICE ADMIRAL, U. S. COAST GUARD
VICE COMMANDANT

Signed at Washington, D. C., this 21th day of November 1979.

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