

IN THE MATTER OF LICENSE NO. 390 735
Issued to: Walter M. VIRDEN 644865-D2

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1928

Walter M. VIRDEN

This appeal has been taken in accordance with title 46 United States Code 239(g) and title 46 Code of Federal regulations 137.30-1.

By order dated 23 July 1970, an Administrative Law Judge of the United States Coast Guard at Long Beach, California, suspended Appellant's seaman's documents for three months outright upon finding him guilty of negligence. The specifications found proved allege that while serving as Chief Engineer on board the SS OBERLIN VICTORY under authority of the license above described, Appellant:

- (1) failed to take appropriate action, during the period between 6 June and 20 June 1969, to correct excessive boiler feed water salinity which resulted in tube rupture in the starboard boiler on or about 20 June 1969; and
- (2) failed to take appropriate action, during the period between 6 June and 27 June 1969, to correct excessive boiler feed water salinity which resulted in excessive damage to the vessel's port boiler and other machinery on or about 27 June 1969.

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

The Investigating Officer introduced in evidence the vessel's engineroom log and "Drew Log," a victory ship boiler operation and maintenance manual, a Drew boiler water treatment chart, lab test results on the boiler scale, the deposition of the vessel's Second Assistant Engineer and oral testimony by the First and Third Assistant Engineers, a Coast Guard Marine Inspector and an American Bureau of Shipping surveyor.

In defense, Appellant offered in evidence his oral testimony.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and both specifications had been proved. He entered an order suspending Appellant's license for a period of three months outright.

The entire decision was served on 24 July 1970. Appeal was timely filed on 29 July 1970.

FINDINGS OF FACT

From 2 June until 2 July 1969, Appellant was serving as Chief Engineer on board the SS OBERLIN VICTORY and acting under authority of his license while the ship was at sea and in port.

On 2 June 1969, when Appellant signed on as Chief Engineer, the vessel was in Norfolk, where considerable repairs were made to both boilers. Although considerable scale was noted and the boilers were in need of a thorough cleaning, the vessel proceeded to Sunny Point, N. C., where further repairs were made to both boilers and the main feed pump. On 7 June, the vessel departed for Vietnam via the Panama Canal. At this time the chloride content readings were 2.1 and 3.0 grains per gallon respectively on the port and starboard boilers.

On 11 June 1969 the vessel arrived at the Panama Canal, where various handhole gasket and tube leaks were repaired. The chloride readings had risen fairly steadily and were then at 2.8 and 3.6

grains per gallon respectively on the port and starboard boilers. On 12 June the starboard boiler was cut out for repairs, blown down and then lit off on 15 June. The next chloride reading on that boiler was 3.0 on 17 June. The salinity of the port boiler continued to rise to 3.4 on 15 June and it was cut out for repairs on 16 June, blown down and then lit off 17 June. The vessel transitted the Canal on 18 June, having taken on raw water.

On 19 June 1969, the chloride reading was 4.6 grains per gallon on the port boiler and 7.0 on the starboard boiler. No action was taken to reduce this salinity level and the next day the readings were 16.0 port and 7.4 starboard. The starboard economizer was then noted to be leaking and was bypassed. However, due to an inability to feed the boiler, it was placed back in operation at which time the starboard boiler carried over resulting in loss of the plant.

On 21 June the port boiler salinity reading was 16.4 grains per gallon and no action was taken to reduce this level. A superheater leak was noted in the starboard boiler and was subsequently secured. On 22 June the port boiler was placed on constant blowdown and new compound was added. An inspection of the starboard boiler revealed a split screen tube and sagging generator and waterwall tubes.

On 23 June the port boiler was still on constant blowdown with a salinity reading of 180 grains per gallon, whereupon the boiler was secured and given a heavy blowdown. The salinity was reduced to 26 grains, but it increased after six to eight hours of operation. The boiler was given a heavy blowdown on 24 June and two more on 25 June. On that day the salinity reading was 50 grains per gallon and the vessel had 300 tons of fresh water aboard. On the same day, a leak was noted in the firebox. On 26 June there was 235 tons of fresh water aboard and Appellant noted excessive use of fresh water and an internal superheater leak. The chloride reading was 80.

On 27 June the reading was in excess of 200 grains per gallon so the evaporator was blown down and shocked six times and the boiler was later secured for repairs. It was relit, a day later, on 28 June and, although the salinity level remained over 200 grains per gallon, the master requested on 29 June that the vessel

proceed on the port boiler. On 30 June there was only 73 tons of fresh water aboard and on 1 July the vessel was taken in tow.

An inspection by the Coast Guard and an A.B.S. surveyor revealed scale deposits in all main and auxiliary steam lines, throttle valves, regulatory valves, strainers and in the main turbine blading. The water sides of the tubes in both boilers were covered with scale of uniform thickness. The headers contained heavy scale accumulation in areas of lesser circulation necessitating extensive tube renewals due to warpage and rupture.

At no time during the course of the voyage were the main or auxiliary condensers checked for leaks despite the fairly constant condensate salinity of 0.4 grains per gallon as opposed to the recommendation in the boiler manufacturer's operating manual that the level be kept below 0.1. Appellant was at all times kept informed of the feed water and condensate salinity test readings. The water treatment chart indicated that a continuous blowdown should be used at boiler salinity levels in excess of 2.4 grains per gallon and that securing and heavy blowdown is advisable at levels in excess of 10 grains per gallon. While the OBERLIN VICTORY has no facilities for continuous blowdown connected to the evaporator, it does have a 1/8 inch copper line to the bilge as is normal for these ships. The only other method for continuous blowdown is through the larger lines from the mud drums, the use of which requires that the water be blown overboard.

BASES OF APPEAL

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

- (1) the Administrative Law Judge made numerous errors in his Findings of Fact and his rulings on the Proposed Findings and Conclusions submitted by the Investigating Officer and the Appellant;
- (2) the Conclusions of the Administrative Law Judge are not sustained by the evidence and are contrary to the greater weight thereof;
- (3) the responsibility for the damage to the vessel's

machinery lies with the owners and the master, both of whom were negligent in permitting the vessel to operate in its condition; and

(4) the penalty imposed upon Appellant is excessive.

APPEARANCE: George E. Shibley, Long Beach, California.

OPINION

I

Appellant's first contention is, in effect, a request for a *de novo* consideration of his case rather than a proper appellate review. But it is simply not the function of an administrative reviewing authority to act as a trier of fact and substitute its judgment for that of the Administrative Law Judge. Appellate review is properly confined to the correction of errors of law. The judge's findings of fact will be altered only if determined to have been arbitrary and capricious as a matter of law. In the instant case, it cannot be said that, as a matter of law, the findings of fact upon which the finding of negligence rests are arbitrary or capricious.

II

Likewise, it cannot be said that the Administrative Law Judge's conclusions are not sustained by the evidence. On the contrary, they are based upon reliable, probative and substantial evidence, which is the proper test on review. The administrative reviewing authority will not second-guess the judge as to the credibility of witnesses or the weight accorded the various items of evidence. Thus, although there be substantial evidence *contra*, the conclusions of the judge will not be disturbed if, as in this case, they are supported by substantial evidence of a reliable and probative nature.

III

While the evidence in this case does indicate an apparent lack of prudence on the part of the owners and the Master of the OBERLIN

VICTORY, this in no way relieved Appellant of his responsibilities concerning the vessel's propulsion machinery. He assumed his position as Chief Engineer with full knowledge of the conditions about which he now complains, and he sailed despite the knowledge that those conditions remained uncorrected. He chose this course of action rather than to leave the vessel or report the situation to the Coast Guard. Once underway and faced with steadily rising boiler salinity and constantly excessive condensate salinity, he failed to act in accordance with acceptable engineering practices. Proper action certainly should have been taken prior to transit of the Panama Canal. However, at no time were any acceptable engineering solutions attempted. Although the master requested to proceed on the port boiler on 29 June, the damage was extensive because Appellant failed to take appropriate action before the vessel put to sea and also before the vessel transitted the Panama Canal. Once at sea it was not improper for the master to attempt to remain under power.

IV

Appellant's contention regarding the severity of the Administrative Law Judge's order is equally without merit. Based on the continuous sequence of events over a long period of time and the repeated opportunities to cause appropriate action to be taken at Norfolk, Sunny Point and at the Panama Canal, I think the judge was quite reasonable. A Scale at 46 CFR 137.20-165, for the information and guidance of Administrative Law Judges, notes an average order of three months' suspension for ordinary negligence resulting in damage to the vessel. It appears that, based on the facts, it would not be too difficult to come to a conclusion that the acts in question were grossly negligent, which would perforce permit a more severe order.

ORDER

The order of the Administrative Law Judge dated at Long Beach, California, on 23 July 1970, is AFFIRMED.

C. R. BENDER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 22nd day of May 1973.

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