

IN THE MATTER OF LICENSE NO. 406071
Z-110994-D1 AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Charles Frederick Bishop

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1937

Charles Frederick Bishop

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 6 December 1971, an Administrative Law Judge of the United States Coast Guard at Houston, Texas suspended Appellant's seaman's documents for 6 months outright upon finding him guilty of negligence. The specification found proved alleges that while serving as Chief Mate on board the SS MOBIL LUBE under authority of the license above captioned, on or about 20 November 1971, Appellant negligently conducted a damage survey, in that he reported "no damage", when in fact, the stem of the vessel was holed in the Bos'n's Storeroom.

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 extracts from the bell book and the rough deck log of the vessel, some photographs and the testimony of the master and the Second Mate.

In defense, Appellant offered in evidence a drawing, some photographs and the testimony of a crewmember and himself.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He later entered an order suspending all documents issued to Appellant for a period of 6 months outright.

The entire decision was served on 23 December 1971. Appeal was timely filed on 7 January 1972.

FINDINGS OF FACT

On 20 November 1971, Appellant was serving as Chief Mate on board the SS MOBILE LUBE and acting under authority of his license while the ship was at sea.

At 1847 a minor collision occurred in the Neches River between the MOBIL LUBE and the lead barge of a four barge tow. The captain of the tug which was handling the tow notified the Master of the MOBIL LUBE that he had suffered no damage and was leaving the scene. Appellant, together with the Master and the Second Mate looked over the side and noticed some paint scratches and what appeared to be an indentation in the stem approximately 1 1/2 inches in depth and about 7 feet above the water line. They estimated the point of impact to have been near the joint between the stem and the deck of the bos'n's storeroom.

In response to the Master's orders, Appellant twice inspected the storeroom and the forepeak tank. On the first inspection, Appellant, accompanied by the Second Mate, discovered some paint chips and rust which appeared to have been knocked loose by the collision. As this debris was located at the estimated point of impact, they concluded this to have been the extent of the damage. Although the breasthooks above this point were laden with gear obstructing the view of the stem, no attempt was made to move this gear to permit a more thorough survey. After each inspection, Appellant reported to the Master that there was no damage.

In the meantime, the vessel had continued her voyage. At 0340 on 21 November, while outbound in the Gulf of Mexico, it was discovered that the forward compartments were flooded. The Master was forced to return some 70 miles to Sabine to effect repairs. It was discovered that the flooding resulted from an 18 inch hole in the stem about 8 feet above the bos'n's storeroom deck. This hole had been concealed by the gear stored on the breasthooks.

BASES OF APPEAL

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

- (1) the charge should not have been found proved because the Administrative Law Judge found specification proved only in part;
- (2) there is no evidence on the record to support the findings of negligence; and
- (3) the order of the Administrative Law Judge is overly severe.

APPEARANCE: Mehaffy, Weber, Keith & Gonsoulin, Beaumont, Texas

OPINION

I

As originally drafted, the single specification in this case read as follows: "wrongfully fail to carry out the lawful orders of the Master when ordered to conduct a damage survey following collision, in that you reported no damage, when in fact the stem of the vessel was holed in the Bos'n's Storeroom." The Administrative Law Judge correctly found that, while Appellant did not actually fail to carry out the order *per se*, he did conduct the

damage survey in a negligent fashion in that he reported no damage, when in fact the stem of the vessel was holed in the Bos'n's Storeroom. To say that this finding amounted to a correction of an inartfully drawn specification or a finding that the specification was proved only in part is to beg the real issue. The purpose of serving charges and specifications upon the person charged is to provide him notice of the matters of fact and law being put at issue by the Coast Guard. See *Kuhn v. Civil Aeronautics Board*, 183 F.2d 839, 841 (D.C. Cir., 1950), in which it was stated as follows:

"It is now generally accepted that there may be no subsequent challenge of issues which are actually litigated, if there has been actual notice and adequate opportunity to cure surprise. If it is clear that the parties understand exactly what the issues are when the proceedings are had, they cannot thereafter claim surprise or lack of due process because of alleged deficiencies in the language of particular pleadings.

Thus, the question is whether or not Appellant was, in fact, sufficiently apprised of the actual offense alleged by the Coast Guard. A review of the hearing record establishes beyond the shadow of a doubt that Appellant realized full well that his failure to discover the damage to the vessel was at issue. The scope of the questions asked and the testimony elicited on cross-examination of the Coast Guard witnesses and direct examination of Appellant's witnesses is evidence enough of this fact.

II

There is no merit to Appellant's contention that there is no evidence of negligence on the record. It is true that the witnesses testified that they considered Appellant's damage survey to have been thorough under the circumstances. However, the legal standard of negligence is not based upon the opinions of the fellow crewmembers of the person charged. The proper standard of care to be applied is that which would govern a reasonable man under the same circumstances. The potential for disaster, which confronts a vessel bound for the open sea with a punctured hull, is strong. It is simply not reasonable to limit the damage survey of a vessel which has been involved in a collision, however minor, to a small

interior area the position of which is fixed by a viewing of the vessel's exterior from an awkward angle. Appellant noted on the exterior of the stem what appeared to be an indentation, yet he abandoned his survey of the interior without having located an actual companion to that "dent". Under all of these circumstances, it cannot be said that the Administrative Law Judge erred in concluding that Appellant was negligent. A complete inspection of the stem area of the Bos'n's Storeroom would have taken only a short while and would have resulted in prompt discovery of the hole.

III

In complaining of the severity of the Administrative Law Judge's order, Appellant relies strongly upon a number of hypothetical occurrences which might have lessened the damage which his negligence brought on. To say that the happening of one more of these contingencies would have resulted in a lesser penalty for Appellant is to engage in pure guesswork. The penalty for negligence is not necessarily tied to the quantum of damage. In a case such as this, it would not be unreasonable for the Administrative Law Judge to take into account the degree of danger into which the negligent omission or commission placed the vessel, her cargo, and especially her crew. In the absence of a gross departure from the scale of average orders or a clear failure to weight extenuating circumstances or matters in mitigation, the order of the Administrative Law Judge will not be altered on review.

ORDER

The order of the Administrative Law Judge dated at Houston, Texas on 6 December 1971 is AFFIRMED.

T. R. SARGENT
Acting Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D. C., this 7th day of June 1973.

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Negligence

Failure to make proper collision damage inspection
Defined

Order of Examiner

Not tied to amount of damages
Held not excessive
Not bound by table of average orders

Standard of Care

Not established by other crewmembers
Failure to make proper collision damage
inspection

Charges and Specifications

purpose of
variance
notice, actual
sufficiency of

***** END OF DECISION NO. 1937 *****

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