

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT  
Issued to: Edward T. BETHEL 596330

DECISION OF THE VICE COMMANDANT ON APPEAL  
UNITED STATES COAST GUARD

2491

Edward T. BETHEL

This appeal has been taken in accordance with 46 U.S.C. 7702 and 46 CFR 5.701.

By order dated 6 May 1988, an Administrative Law Judge of the United States Coast Guard at Norfolk, Virginia, suspended outright Appellant's Merchant Mariner's License for three months, upon finding proved the charge of misconduct. In addition, Appellant's license was further suspended for six months, remitted on six months probation. The charge was supported by one specification, which was found proved.

The specification alleged that Appellant, while serving as the docking master on board the motor vessel SEA LION, under the authority of the captioned document, did at or about 0100 on 26 April 1987, did attempt to undock the vessel while under the influence of intoxicants.

The hearing was held at Philadelphia, Pennsylvania, on 27 January 1988. Appellant appeared at the hearing and was represented by lawyer counsel. Appellant entered, in accordance with 46 CFR 5.527(a),

answers of denial to the charge and specification.

The Investigating Officer introduced eight exhibits into evidence and called two witnesses.

Appellant introduced three exhibits into evidence and called five witnesses. Additionally, Appellant testified at the hearing in his own behalf.

The Administrative Law Judge admitted three exhibits identified as Judge's Exhibits.

After the hearing, the Administrative Law Judge rendered a decision in which he concluded that the charge and specification had been found proved, and entered a written order dated 6 May 1988 suspending Appellant's Merchant Mariner's License as previously set forth.

The complete Decision and Order (dated 14 April 1988 and 6 May 1988 respectively) was served on Appellant on 6 May 1988. Notice of Appeal was timely filed and considered perfected on 10 January 1989. Appellant's appeal is properly before me for review.

#### *FINDINGS OF FACT*

At all times relevant, Appellant was the holder of Coast Guard Merchant Mariner's License No. 596330. Appellant's license authorized him to serve as an operator of uninspected towing vessels upon the inland waters of the United States not including those waters governed solely by the International Regulations for the Prevention of Collisions at Sea of 1972 (72 COLREGS). Appellant's document authorized him to serve as a grade B tankerman and all lower grades.

On 6 May 1988, the Administrative Law Judge in Norfolk, Virginia, issued a Decision & Order suspending Appellant's document outright for one month with an additional suspension for two months. This additional two month suspension was not to be effective provided no charge under 46 U.S.C. 7703, 7704, or any other navigation or vessel inspection law was proved against him for acts committed within twelve months from the date of termination of the outright suspension. A copy of this Decision & Order was sent to the Appellant by certified

mail on 6 May 1988.

At or about 1930 on 5 December 1987, Appellant was serving as the operator of the towing vessel ENTERPRISE, which was pushing three loaded naphtha barges in tandem. At that time, Appellant was approaching the Conoco Clifton Ridge barge dock on the Calcasieu River, Louisiana. At or about 1935 on 5 December 1987, the lead tank barge, HOLLYWOOD 1204, being pushed by the towing vessel ENTERPRISE, operated by Appellant, allided with the fender system of the Conoco Clifton Ridge ship dock on the Calcasieu River.

The towing vessel ENTERPRISE is a 71 foot United States vessel of 1800 horsepower and 165 gross tons. It is owned by Marine Industries, Inc., 55 Waugh Drive, Norfolk, Virginia 77251.

The tank barge HOLLYWOOD 1204 is 225 feet in length and 727 gross and net tons. It has a maximum cargo weight of 274 short tons and a cargo capacity of 14,500 barrels. This tank barge was the first or lead barge in the tow navigated and maneuvered by the Appellant. It is owned by Marine Industries, Inc., 55 Waugh Drive, Norfolk, Virginia 77251. It is operated by Hollywood Marine, Inc., 55 Waugh Drive, Norfolk, Virginia 77251.

#### *BASES OF APPEAL*

Appellant raises the following issue on appeal:

(1) Whether the Administrative Law Judge clearly erred when he applied a burden of proof which was less than a preponderance of the evidence.

*Appearance by:* Jeffrey Moller, Esq.  
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#### *OPINION*

Because of the subsequent disposition of this case, it is

unnecessary to discuss the merits of Appellant's basis for his petition.

Upon review of the record, I find that the Coast Guard did not have jurisdiction over the Appellant. Under the provisions of 46 U.S.C. 7703, a license or merchant mariner's document may be suspended or revoked only if the individual was acting under the authority of his license, certificate or document when the chargeable action occurred. The term "acting under authority of license, certificate or document" is defined in 46 C.F.R. 5.57 as:

(a) A person employed in the service of a vessel is considered to be acting under the authority of a license, certificate or document when the holding of such license, certificate or document is:

- (1) Required by law or regulation; or
- (2) Required by an employer as a condition for employment...

In this case, the Appellant was charged with wrongfully controlling a coastwise engaged vessel without holding a federal pilot license for those waters as required in 46 U.S.C. 8502. Appellant did not hold the required pilot license and consequently violated the statute. However, there is no evidence in the record that any license or license endorsement held at the time by Appellant was in fact required by his employer as a condition for employment as a "docking master." In fact, the Administrative Law Judge specifically stated in his Decision:

[T]he Investigating Officer does not claim that the holding of a Federal pilot license here was required as a condition of Captain Patton's employment...Rather, he asserts that the express language of the statute, as a matter of law, requires that one who directs and controls a coastwise vessel not sailing on register under these circumstances hold a Federal pilot license.

Administrative Law Judge Decision and Order dated 20 May 1988, p.27. The Administrative Law Judge misses the point that not only was there no evidence that a Federal pilot license was required as a condition of employment, but there was no evidence introduced to indicate that

any merchant mariner license or document held by the Appellant was required as a condition of employment. Absent such evidence, there is no basis for jurisdiction.

*CONCLUSION*

Appellant was not holding a pilot license or endorsement on the date in issue for the waters in which the alleged misconduct arose. There is no evidence in the record that indicates that any merchant mariner license or document held by the Appellant was required as a condition of employment as "docking master." There is no jurisdiction over Appellant as defined in 46 U.S.C. 7703 and 46 C.F.R. 5.57.

*ORDER*

The Order of the Administrative Law Judge dated at Norfolk, Virginia, on 10 June 1988 is VACATED. The charge and specification are DISMISSED.

CLYDE T. LUSK  
Vice Admiral, U.S. Coast Guard  
Vice Commandant

Signed at Washington D.C. on this 15th day of December, 1989.

\*\*\*\*\* END OF DECISION NO. 2491 \*\*\*\*\*

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