

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE No. 54476
Issued to Pal Allen LENTZ

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2420

Pal Allen LENTZ

This appeal has been taken in accordance with 46 U.S.C. 7702 and former 46 CFR 5.30-1 (currently 46 CFR Part 5, Subpart J.).

By order dated 25 February 1985, an Administrative Law Judge of the United States Coast Guard at Long Beach, California, suspended Appellant's license for twelve months outright plus an additional three months on twelve months' probation upon finding proved the charge of negligence. The specification found proved alleges that Appellant, while serving as Operator aboard the M/V CAPT DARCE, under the authority of the captioned document, on or about 25 August 1984, while the vessel was underway in San Pedro Bay with the barge SPARTAN 110 in tow, negligently failed to maintain a proper lookout. A second specification, alleging a failure to navigate the CAPT DARCE with due caution, thereby causing an allision between the barge SPARTAN 110 and the anchored P/C GOOD ID, was found not proved.

The hearing was held at Long Beach, California, on 22 October 1984, 20 November 1984 and 6 February 1985.

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

specifications.

The Investigating Officer introduced in evidence five exhibits and the testimony of two witnesses.

In defense, Appellant testified on his own behalf and introduced the testimony of one additional witness.

After the hearing the Administrative Law Judge rendered a decision in which he concluded that the charge and specification alleging failure to maintain a proper lookout had been proved. A twelve month suspension of Appellant's license, remitted on twelve months' probation, had been imposed by the same Administrative Law Judge subsequent to a previous hearing concerning a separate offense. The offense found proved in this case was committed during the twelve month suspension period and, since the findings here established a violation of that probationary order, the Administrative Law Judge invoked the probationary suspension and entered a written order suspending all licenses issued to Appellant for a period of twelve months outright. In addition, due to the charges and specifications found proved in the instant case, the Administrative Law Judge suspended Appellant's license for an additional three months on twelve months' probation.

The complete Decision and Order was served on 27 February 1985. Appeal was timely filed on 11 March 1985 and perfected on 25 June 1985.

FINDINGS OF FACT

At all relevant times on 25 August 1984, Appellant was serving as Operator aboard the M/V CAPT DARCE, a 96.8 foot uninspected towing vessel, under the authority of his license which authorizes him to serve as Operator of Uninspected Towing Vessels. At approximately 0155 on 25 August 1984, the M/V CAPT DARCE got underway with the 230 foot tank barge SPARTAN 110 on a side tow for a voyage between Long Beach and Los Angeles Harbors, from Long Beach Berth 209 to Los Angeles Berth 190. The bow of the barge extended approximately 100 feet ahead of the CAPT DARCE.

Appellant was serving as lookout from his position at the helm. The Deck Engineer was also in the wheelhouse. Although he

had not been specifically designated as a lookout by Appellant (TR-14), he had been taught that when he was in the pilothouse and not engaged in specific ship's business, he was an additional lookout (TR-25). The Deck Engineer also had responsibilities encompassing deck and engineering operations. No lookout was posted on the barge. Weather conditions were clear and calm. Visibility was in excess of five miles, and vessel traffic was light. The barge was half loaded, and Appellant's vision was unobstructed by the tow.

It is customary for tug and barge traffic to cross between Los Angeles and Long Beach Harbors on a track line south of the Navy Mole and north of any commercial vessels at anchor in Commercial Anchorage "G." Appellant was proceeding along this track line.

On the afternoon of 24 August 1985, the Yacht GOOD ID, a 49 foot cabin cruiser of wooden construction, anchored along the track line described above, in Navy Anchorage "J," near its boundary with commercial anchorages "C" and "G." Navy Anchorage "J" is a designated anchorage ground (33 CFR 110.214(8)(ii) and recreational and commercial vessels are prohibited from anchoring there without first obtaining permission from the Captain of the Port. The GOOD ID did not obtain such permission.

Aboard the GOOD ID were its owner and a companion, both of whom remained on board after dark. All lights aboard the yacht were extinguished at approximately 2300 with the exception of one all-round white light mounted on but below the top of the mast which was mounted on the flying bridge. The visibility range of this light was well under one mile. (Inland Navigational Rule 22 (33 USC 2022) requires an all-round light to be visible for a distance of 2 miles.) The GOOD ID was not equipped with a radar reflector.

The CAPT DARCE was equipped with operational radar. During this transit Appellant observed the radar, which displayed other anchored vessels in the area. No radar targets were visible along the intended track of the CAPT DARCE.

At approximately 0207 the bow of the barge SPARTAN 110 allided with the anchored yacht. Neither Appellant nor the Deck Engineer saw the while light on the GOOD ID until after the allision was

inevitable. Appellant took prompt and appropriate evasive action to minimize impact. Following the casualty, the CAPT DARCE stood by and rendered assistance to both occupants of the yacht.

The proximate cause of the casualty was the failure of the GOOD ID to display an anchor light of proper visibility.

BASES OF APPEAL

This appeal has been taken from the order of the Administrative Law Judge. Appellant contends that the finding that he was negligent in failing to maintain a proper lookout is unsupported by the evidence and is contrary to the findings of the Administrative Law Judge. He also contends that the Commandant's policy concerning probationary sanctions improperly restricts the Administrative Law Judge's discretion. Because of the disposition of the first of these bases, the second is not discussed.

APPEARANCE: Carlton E. Russell, Esq., Ackerman, Ling, Russell and Mirkovich, 444 West Ocean Blvd., suite 1000, Long Beach, California 90802.

OPINION

The primary issue presented is whether, under the circumstances of this case, Appellant could maintain a proper lookout from his position in the pilothouse while acting as operator of the vessel. While I conclude that, under certain conditions, an operator at the helm of a vessel may also act as lookout, there are insufficient findings of fact and conclusions of law here to permit adequate review of the Administrative Law Judge's determination.

Concerning the duty to maintain a lookout, the pertinent statute, Rule 5 of the Inland Navigational Rules, 33 USC 2005, provides:

Every vessel shall at all times maintain a proper lookout by sight and hearing as well as by all available means appropriate in the prevailing circumstances and conditions so as to make full appraisal of the situation

and the risk of collision.

Senate Report 96-979, which accompanies the new Inland Navigational Rules, expresses Congressional intent concerning lookouts:

On vessels where is an unobstructed all-round view provided at the steering station, as on certain pleasure craft, fishing boats, and *towing vessels*, or where there is no impairment of night vision or other impediment to keeping a proper lookout, the watch officer or helmsman may safely serve as the lookout. However, it is expected that this practice will *only* be followed after the situation has been *carefully assessed on each occasion*, and it has been *clearly established that it is prudent to do so*. Full account shall be taken of all relevant factors, including but not limited to the state of the weather, conditions of visibility, traffic density, and proximity of navigational hazards. It is not the intent of these rules to require additional personnel forward, if none is required to enhance safety. S. Rep. No. 979, 96th Cong., 2d Sess. 7-8 (1980). (Emphasis supplied).

The Administrative Law Judge determined that, under the facts and circumstances of this case, "the lookout should have no other duties other than lookout and with a 230 foot barge made up alongside, the lookout should have been placed on the bow of the barge," and that Appellant's failure to so provide constituted failure to maintain a proper lookout. (Decision and Order at page 15). However, as the legislative history of Rule 5 makes clear, the helmsman may, under some circumstances, safely serve as the lookout. The Administrative Law Judge's findings of fact and conclusions of law do not make clear that he considered the factors listed in the legislative history in his determination that the lookout was inadequate. In light of the legislative history, findings are required to specifically indicate whether Appellant assessed the relevant factors, such as the proximity of other vessels and background lighting, and whether his decision that he, as the operator at the helm of the vessel, could also safely serve as lookout was prudent under the circumstances.

CONCLUSION

The finding of the Administrative Law Judge as to the charge of negligence is not supported by substantial evidence of a reliable and probative character.

ORDER

The decision and order of the Administrative Law Judge dated 25 February 1985 at Long Beach, California, is modified as follows:

The finding of the Administrative Law Judge as to the charge of negligence is SET ASIDE. The order suspending Appellant's license is VACATED. The case is REMANDED to the Administrative Law Judge for further proceedings consistent with this decision.

B. L. STABILE
Vice Admiral, United States Coast Guard
Vice Commandant

Signed at Washington, D.C. this *18th* day of *March*, 1986.

***** END OF DECISION NO. 2420 *****

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