UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 551102
Issued to: Francis M. CORVELEYN

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2434

Francis M. CORVELEYN

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

By order dated 7 March 1986, an Administrative Law Judge of the United States Coast Guard at Alameda, California, suspended Appellant's license for six months remitted on twelve months' probation upon finding proved the charge of Violation of Regulation. The specification found proved alleges that while serving as Master aboard the S.S. AMERICAN SPITFIRE, under the authority of the captioned document, on or about 17 December 1985, Appellant sailed from Midway Island in the Pacific Ocean with incompatible cargo stowage in hold no. 2. The specification further alleges that certain Class X-A explosives were incompatibly stowed with certain Class VII explosives, in that the two were separated by a structure made of wood boards that did not meet the minimum requirements for a partition bulkhead, in violation of 46 CFR 146.29-51(a) and (b), the chart accompanying 46 CFR 146.29-99 and 46 CFR 146.29-100, and the definition of a partition bulkhead at 46 CFR 146.29-11(c)(36). A second specification also alleging a violation of regulation was found not proved and was dismissed by the Administrative Law Judge.

The hearing was held at Alameda, California, on 28, 29 and 30 January 1986.

At the hearing Appellant was represented by professional counsel and denied the charge and specification.

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

In defenses, Appellant introduced in evidence ten exhibits, his own testimony, and the testimony of three additional witnesses.

After the hearing the Administrative Law Judge rendered a decision in which he concluded that the charge and specification had been proved, and entered a written order suspending all licenses issued to Appellant for a period of six months, remitted on twelve months' probation.

The complete Decision and Order was served on 13 March 1986. Appeal was timely filed on 8 April 1986 and perfected on 1 July 1986.

FINDINGS OF FACT

At all relevant times on 17 December 1985, Appellant was serving as Master aboard the S.S. AMERICAN SPITFIRE (hereinafter SPITFIRE) under the authority of his license which authorizes his to serve as Master of Steam and Motor Vessels, Any Gross Tons Upon Oceans; Radar Observer. The SPITFIRE is a United States flag freight vessel 579 feet in length, owned by United States Lines, Inc. At all times, the SPITFIRE was under a time charter to the Military Sealift Command (MSC), and was assigned to the Rapid Deployment Force of the United States Navy. The vessel was stationed at Diego Garcia in the Indian Ocean. Prior to December 1985, the SPITFIRE had been loaded with munitions at the U.S. Naval Base at Subic Bay, Republic of the Philippines.

The SPITFIRE was ordered by MSC to depart Diego Garcia at 0900 on 18 November 1985 and return to the United States. Appellant was sent by United States Lines to Diego Garcia to assume command of the vessel for the voyage. He arrived in Diego Garcia at about

0800 on 18 November 1985, relieved the previous Master, and sailed the SPITFIRE at 1000.

During the voyage, the vessel experienced heavy swells, and on 10 December, the Chief Officer discovered that some of the cargo in the upper deck of the No. 1 hold had broken loose, with several bombs rolling about in the square of the hatch. After inspecting the cargo conditions, Appellant contacted MSC authorities and advised them of the situation. MSC ordered the SPITFIRE to proceed to Midway Island, about 90 miles away, to secure the cargo as necessary.

After the ship's arrival in Midway, two groups of explosives experts from MSC and the Navy surveyed the condition of the cargo, and found that shoring around the square on the upper deck of No. 1 hatch, which had been installed when the SPITFIRE was loaded to keep the hatch square free of cargo, had failed. These individuals determined that it would be necessary to off-load, repackage and restow the bombs in the upper deck of No. 1 and No. 2 holds, and to tighten the shoring of cargo in other holds of the vessel.

All of the bombs from the upper deck of No. 1 hold, and some of the bombs from the forward end of the upper deck of No. 2 hold, were discharged to the dock, repackaged, and restowed. All of the cargo removed, including that removed from No. 2 hold, was discharged through No. 1 hatch. (There was no transverse bulkhead separating No. 1 and No. 2 cargo holds.)

In restowing the cargo in the No. 2 hold, no change was made to the existing shoring. The hatch square in No. 2 hold had been shored along the port and starboard sides and across the after end of the square. There was no shoring across the forward end of the square. This shoring did not meet the regulatory requirements for a "partition bulkhead." (46 CFR 146.29-11(c)(36). Class X-A cargo was restowed across the forward end of the No. 2 hatch square, immediately adjacent to Class VII cargo which had been previously stowed in the hatch square.

Additionally, previously stowed Class X-A cargo surrounded the No. 2 hatch square, separated from the Class VII cargo in the hatch square by the shoring described above.

Appellant was aboard the SPITFIRE during the off-loading and restowage of the cargo from No. 1 and No. 2 holds. He observed the operations, and reviewed the cargo stowage plans. He did not suggest any changes in the manner of stowage or the location of the various classes of cargo, nor did he request any additional shoring of the cargo or the construction of any partition bulkheads. The MSC supervisor present during the off-loading and restowage of the cargo assumed that the cargo had been stowed in a compatible manner when the vessel arrived at Midway, and did not question the compatibility of the various classes of cargo, since the same classes of cargo were restowed in the same areas of the holds.

The SPITFIRE departed Midway on 18 December 1985 and proceeded to its destination without incident. Subsequent to its arrival in the United States, a Coast Guard examination of the vessel and its cargo revealed incompatibility of the stowed explosives.

BASES OF APPEAL

Appellant contends that the charter party (the written agreement between the charterer and the vessel owner) tasked the Military Sealift Command and the Navy with the responsibility of loading cargo and that, accordingly, Appellant should be held harmless.

Appearance: G. M. Perrochet, Esq.; Arcet & Perrochet; 231 Sansome St., Sixth Floor; San Francisco, California 94104.

OPINION

Regulations covering the transportation of military explosives on board vessels are found at 46 CFR, Part 146. These regulations clearly impose upon the Master of a vessel a duty to insure that cargo is properly loaded:

> During the entire operation...it shall be the responsibility of the master of the vessel to assign a deck officer who shall be in constant attendance. It shall be these officers' responsibility to see that the provisions of the regulations in this part *insofar as such provisions apply to the vessel*, are complied

with. 46 CFR 146.29-23(c) (Emphasis added.)

The specific regulations allegedly violated by Appellant allow Class X-A explosives to be stowed with Class VII explosives if the two are separated by a partition bulkhead. 46 CFR 146.29-99(c), Note E. This requirement was not met in this case. Other Coast Guard regulations provide that in particular circumstances involving national defense, the Coast Guard may waive navigation and safety rules. *See* 33 CFR 19.06, 46 CFR 6.06. However, the record here is devoid of evidence of such a waiver.

Appellant argues vigorously that the provisions of the charter party place the responsibility for insuring that the regulatory requirements are met upon the United States, the charterer - not Appellant. This argument is not persuasive. A careful reading of the charter party reveals that, while it provides that the charterer is responsible for certain aspects of *cargo* loading and stowage that may affect the cargo, it clearly reserves responsibility for the *seaworthiness of the vessel* to the Master. I find no clear error or abuse of discretion in the Administrative Law Judge's determination that "the inherent danger from incompatibly stowed cargo would obviously affect the seaworthiness of the vessel..." (Decision and Order at 23). This responsibility for seaworthiness cannot be transferred to the cargo owner. 46 CFR 146.29-23(c), *supra*; *See Horn v. Cia de Navegacion Fruco, S.A.*, 404 F.2d 422, 433 (5th Cor. 1968); *Grace Lines Inc. v. Central Gulf Steamship Corporation*, 416 F.2d 977, 979 (5th Cir, 1969).

It os unquestioned that a violation of Coast Guard explosives transportation regulations (46 CFR 146.29-99(c), *supra*) occurred. It is also clear that it is the Master's responsibility to insure that these regulations are followed. Accordingly, The Administrative Law Judge's determination that the charge and specification were proved is supported by the record.

CONCLUSION

Having reviewed the entire record and considered Appellant's arguments, I find that Appellant has not established sufficient cause to disturb the findings and conclusions of the Administrative

Law Judge. The hearing was conducted in accordance with the requirements of applicable regulations.

ORDER

The decision of the Administrative Law Judge dated Alameda, California, on 7 March 1986 is AFFIRMED.

J. C. Irwin
Vice Admiral, U.S. Coast Guard
Vice Commandant

Signed at Washington, D.C. this *1st* day of *October*, 1986.

***** END OF DECISION NO. 2434 *****

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