

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: Hilton VANRIGHT 554273

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2449

Hilton VANRIGHT

This appeal has been taken in accordance with 46 U.S.C. 7702 and 46 CFR 5.30-1.

By order dated 5 June 1986, an Administrative Law Judge of the United States Coast Guard at Houston, Texas, suspended Appellant's license and merchant mariner's document for six months outright, plus an additional six months remitted on twelve months' probation upon finding proved the charge of misconduct. The charge was supported by two specifications, both of which were found proved. The first specification alleged that on or about 17 January 1986, Appellant, while serving as second assistant engineer aboard the SS OVERSEAS ALASKA, under the authority of the captioned documents, while the vessel was at sea and Appellant was on watch, wrongfully failed to obey the direct order of the first assistant engineer in that Appellant failed to leave the engine room area and go to the operating platform. The second specification alleges that Appellant, on the same date and while serving in the same capacity, wrongfully assaulted the first assistant engineer with a hammer, and assaulted and battered the first assistant engineer with his fists, resulting in injury to the first assistant engineer.

The hearing was held at Port Arthur, Texas on 18 March 1986 and

24 April 1986.

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

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

In defense, Appellant introduced in evidence one exhibit, his own testimony, and the testimony of one additional witness.

After the hearing the Administrative Law Judge rendered a decision in which he concluded that the charge and specifications had been proved, and entered a written order suspending all valid licenses and documents issued to Appellant for six months outright, plus an additional six months remitted on twelve months' probation.

The complete Decision and Order was served on 10 June 1986. Appeal was timely filed on 10 July 1986 and perfected on 17 October 1986.

FINDINGS OF FACT

Appellant is the holder of a Coast Guard license which authorizes him to serve as First Assistant Engineer of steam vessels of any horsepower.

On 17 January 1986, Appellant was serving as second assistant engineer aboard the USS OVERSEAS ALASKA under the authority of his Coast guard license. At about 0130, Appellant awakened the first assistant engineer and told him that he was having problems with the drain tank pumps and needed help. The first assistant engineer immediately went to the engine room, where he reset a tripped circuit breaker, then decided to activate a second pump. He told Appellant to open the discharge valve, but Appellant did not respond, and the first assistant engineer decided it would be faster to open the valve himself. To do so, he had to pass Appellant on a narrow walkway leading to the discharge valve, he tried to get by Appellant on the narrow walkway, Appellant pushed the first assistant back and told the first assistant not to touch him. Heated conversation followed, and the first assistant ordered Appellant to go up to the operating platform. Appellant did not comply.

At this point, the drain tank overflowed. While the first assistant was trying to correct the problem, Appellant was shouting that the first assistant was crazy and that the first assistant with his fists and picked up a hammer, waving it as if to strike the first assistant.

BASES OF APPEAL

Appellant raises three grounds for appeal:

1. The Administrative Law Judge erred in allowing amendment of the second specification.
2. Certain exhibits did not conform to the requirements of federal regulations, and were erroneously admitted.
3. Certain other exhibits were "fraudulently offered to the court" and should not have been considered.

APPEARANCE : Donald L. Boudreaux, Esq., Beaumont, Texas.

OPINION

I

Appellant first argues that the Administrative Law Judge erred in allowing amendment of the second specification. This specification originally alleged that Appellant had wrongfully assaulted and battered the first assistant engineer with his fist and a hammer. On motion of the Investigating Officer, the Administrative Law Judge allowed amendment of the specification to allege that Appellant wrongfully assaulted the first assistant engineer with a hammer, and assaulted and battered the first assistant engineer with his fists. Appellant contends that this amendment added a second offense where only one had originally been charged, and that the remedy must be dismissal.

I find no reversible error. The substance of the amendment was no to add an offense, but to lessen the severity of the alleged actions by deleting the allegation that Appellant battered the first assistant with a hammer. "An Administrative Law Judge may amend charges and specifications to correct minor errors. See 46 CFR 5.20-65.

[current version at 46 CFR 5.525]; Decision on Appeal No. [2332 \(LORENZ\)](#) Only if there is prejudice, a lack of notice or no fair opportunity to litigate, does he exceed his discretion. Decision on Appeal No. [2209 \(SIEGELMAN\)](#)." Appeal Decision [2393 \(STEWART\)](#). It is plain in this case that there was no prejudice, lack of notice or lack of opportunity to litigate, and indeed Appellant does not so contend. Appellant was aware of the government's case and was prepared to defend against it. Additionally, the Administrative Law Judge offered to grant Appellant additional time to respond to the amendment if requested. (Record at 22, 32.)

II

Appellant next contends that Investigating Officer's Exhibits 2, 3, 4, 10 and 11 were improperly admitted since they "do not conform to the requirements of 46 CFR 5.543(b) in that the certifying officer merely stated that the document was 'Certified to be a true copy of the original' and failed to further state that he had seen the original and had compared the copy with the original and found it to be a true copy and further failed to assign [sic] his duty station to the document." Appellant's Brief at 3.

Appellant's argument is without merit. Investigating Officer's Exhibits 2 (Certification of Shipping Articles), 3 (certified true copies of certain pages of the vessel's official logbook), and 4 (certified true copy of the vessel's Certificate of Inspection) were admitted at the hearing without objection. With respect to Exhibit 2, the Investigating Officer's certification is in substantial compliance with 46 CFR 5.543(b). Exhibit 4 is not covered by 46 CFR 5.543(b), which by its terms applies only to "extracts from records in the custody of the Coast Guard, shipping articles, and logbooks . . ." Although Appellant objected to the admission of Exhibit 11 (copy of vessel's engineering logbook) at the time it was offered on the ground of improper certification (Record at 117) this document was later admitted, with appropriate certification language, as Exhibit 19. Exhibit 10 (certified true copy of a page of the vessel's official logbook) was marked for identification and later admitted, with appropriate certification language, as Exhibit 17. Appellant did not object to the admission of either Exhibit 17 or Exhibit 19. Record of Proceeding on 24 April 1986 at 10.

III

Finally, Appellant contends that Exhibit's 13-19 were "fraudulently offered to the court" since Exhibit 13, a letter forwarding the other exhibits from the Coast Guard Marine Safety Office in Boston, MA to the Marine Safety Office in Port Arthur, Texas, where the hearing was held, was signed by the Senior Investigating Officer "by direction." Appellant argues that the "by direction" authority does not conform with the requirements of 46 CFR 5.543(b). That regulation, however, applies to certification of extracts from shipping articles, logbooks and other records in the custody of the Coast Guard. Exhibit 13 is merely a cover letter attaching copies of records which were in the custody of Marine Safety Office, Boston and was so identified at the hearing. Record of Proceeding on 24 April 1986 at 9. It is not a log entry requiring certification, nor was it offered as such.

Appellant argues further that the investigating officer in Boston could not have compared Exhibits 14 through 19 with the original at his "homeport" of Boston, since the OVERSEAS ALASKA was located in Texas at the time of the certification. This argument is without merit. Exhibits 14-19 are duplicates of the copies made from the original log entries and maintained in the records of Marine Safety Office, Boston. Appellant did not object to the admission of these exhibits at the time they were offered (Record of Proceeding on 24 April 1986 at 5 - 10), and has established no reason to exclude them.

IV

As discussed above, Appellant has raised a number of issues concerning the admissibility of documentary evidence. However, it should be noted that this case does not rise or fall on the documentary evidence. In addition to the 22 exhibits, the Investigating Officer presented the testimony of the first assistant engineer and the telephonic deposition of the chief engineer. Appellant presented the telephonic deposition of the oiler, his own testimony, and one exhibit. In finding the charge and specifications proved, the Administrative Law Judge found the testimony of the first assistant engineer, the chief engineer and the oiler more credible than that of Appellant. Decision and Order at 15.

It is the function of the judge to evaluate the credibility of witnesses in determining what version of events under consideration is correct. Appeal Decision [2097 \(TODD\)](#). See Appeal Decisions

2390 (PURSER), 2356 (FOSTER), 2344 (KOHAJDA).

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 order of the Administrative Law Judge dated 5 June 1986 at Houston, Texas, is AFFIRMED.

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

Signed at Washington, D.C. this 8th day of June 1987.

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Appeal Decisions Cited: [2209 \(SIEGELMAN\)](#), [2332 \(LORENZ\)](#),
[2356 \(FOSTER\)](#), [2344 \(KOHAJDA\)](#), [2390 \(PURSER\)](#), [2393 \(STEWART\)](#).

NTSB Cases Cited: None.

Federal Cases Cited: None.

Statutes Cited: None.

Regulations Cited: 46 CFR 5.20-65, 46 CFR 5.525, 46 CFR 5.543(b)

***** END OF DECISION NO. 2449 *****

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