

IN THE MATTER OF LICENSE NO. 208605
Issued to: Kosta Jeremic

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1565

Kosta Jeremic

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code 46 of Federal Regulations 137.30-1.

By order dated 8 November 1965, an Examiner of the United States Coast Guard at New Orleans, La., suspended Appellant's seaman's documents for three months outright finding him guilty of negligence. The specifications found proved allege that while serving as master on board the United States SS MANHATTAN under authority of the license above described, on or about 16, 18, and 19 April 1964, Appellant allowed his vessel to be navigated with draft "exceeding the maximum safe loading draft indicated by the latest verbal and charted notices of the U. S. Army Corps of Engineers," thereby contributing to grounding of the vessel.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence charts and other documents, and the testimony of five witnesses.

In defense, Appellant offered in evidence his own testimony and traces of dept surveys furnished him by the Corps of Engineers.

About one month after the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and three specifications had been proved. The Examiner then served a written order on appellant suspending all documents issued to him for a period of three months.

The entire decision was served on 13 November 1965. Appeal was timely filed on 19 November 1965. Appellant perfected his appeal on 6 April 1966.

FINDINGS OF FACT

On all dates in question in the charges, Appellant was serving as master on board the United States SS MANHATTAN and acting under authority of his license. SS MANHATTAN is a vessel of 899 feet in length, having a beam of 132 feet.

It can develop 43,000 horsepower on two shafts, with twin screws.

At Baton Rouge, La., the vessel was loaded with grain from 4 to 13 April 1964, so that the draft was 44 feet. On the latter date, the vessel departed Baton Rouge and pumped ballast so that on passing New Orleans draft was about 42 feet but not more than 42 feet nine inches.

Approaching Head of Passes on 14 April, under the direction of a pilot, the vessel grounded at 1511 on a mud lump. When the vessel was freed, with the help of tugs, it moved down river and grounded again on a mud lump prior to 2015, 14 April 1964.

Under the direction of a Bar Pilot the vessel proceeded into Southwest Pass, out bound. At 0713, 15 April 1964 the vessel

grounded on a mud lump in Pass off Burrwood. The vessel was freed and towed the River. It was turned around near Pilottown and again grounded on a mud lump at 1102, 15 April 1964.

On Captain McLean, a port official of the owners of MANHATTAN flew from New York to New Orleans and boarded MANHATTAN. After arrangements were made with U. S. Army Engineers, CAPT McLean and a Bar Pilot made a trip through the Pass on Corps of Engineers boat which took sounding on the morning of 16 April 1964. At 1230, 16 April 1964, MANHATTAN was refloated. At 1240 a Bar Pilot boarded. At tug, HUMRICK commenced to assist. At 1438, as efforts were being made to turn the vessel into Southwest Pass it grounded. Just before 1640 it was freed and proceeded down river. Shortly thereafter, the tug HUMRICK listed sharply so as to take water on her main deck. MANHATTAN maneuvered sharply to avoid capsizing HUMRICK and, as a result, grounded at Head of Passes at 1640, 16 April 1964.

Again on 18 April 1964 the Corps of Engineers sent a boat through the Pass to take sounding. The information acquired was given to the Bar Pilot and to the vessel.

MANHATTAN was freed at 1135, 18 April 1964, but at 1135, while heading down river toward the Pass, it grounded again. At 1208 the vessel was freed, went up river and turned around. At 1423, proceeding down river the vessel grounded again. At 2130, 18 April 1964, the vessel was again freed and anchored off Pilottown.

On 19 April 1964 the Corps of Engineers sent a boat to take sounding in the Pass. At 1505, 19 April 1964, MANHATTAN was again attempting to move down river when it grounded. It was freed at 2400, 19 April 1964, and anchored off Pilottown.

It remained aground until 28 April 1964.

To summarize the findings above, the groundings are listed and identified by number:

	Date	Time
(1)	14 April 1964	1511
(2)	14 April 1964	c. 2015

(3)	15 April 1964	0743
(4)	15 April 1964	1102
(5)	16 April 1964	1438
(6)	16 April 1964	1640
(7)	18 April 1964	1135
(8)	18 April 1964	1423
(9)	19 April 1964	1505
(10)	19 April 1964	2400

Further findings of fact are impossible, and, in view of the action to be taken, are not attempted.

BASES OF APPEAL

Because of my ultimate agreement with the grounds of appeal submitted, there is no need to set them out here. Some are discussed in the opinion.

APPEARANCE: Rault, Carroll, Yancey&Farrell, of New Orleans, La.
by Edward S. Bagley, Esquire.

OPINION

I.

The findings of fact set out herein have been pared to a minimum. The most important factor in my decision in this case is this: most of the evidence offered and accepted toward that Appellant acted *contra* the "latest verbal and charted notices of the U. S. Army Corps of Engineers" had to do with conditions in Southwest Pass.

One such piece of evidence was to the effect that a port official for MANHATTAN had been advised by a civil engineer of the Corps that it was recommended that no vessel drawing more than "project depth" attempt to navigate the Pass. This may be a useful, homily, as a reminder to check actual depths as affected by stage of the river and even of tide, but, even if communicated to the master as it was not shown to be, it is of no probative value in this case where the facts show a stage of river such as to exceed project depths.

Another was the advice of a pilot employed by the Engineers that forty two feet draft should not be exceeded in the Pass. (There is conflicting evidence in the record as to whether the vessel drew 41' 9" or 42' 9", but this need not be resolved.) This advice was shown to have been given to the same port official, but was not proved to have been communicated to the master.

Then, a pair of fathometer traces of Southwest Pass, especially obtained for immediate use by a Corps of Engineers boat and given to the ship, were introduced. The Examiner made no attempt to interpret these, except to comment that they showed the depths to be about the same as they were on the earlier date when MANHATTAN grounded in the Pass. Since no findings had been made as to depth on that date, this is of very little help.

The significant thing about all this is that of all the groundings which occurred, only one occurred in Southwest Pass and on the one the Examiner found that Appellant was not negligent.

II.

The only evidence in this record which could be held to constitute notice to Appellant as to depths in the areas where the ship grounded, in the cases in which Appellant was found negligent, is an Engineers' chart (Exhibit "B") for Head of Passes. The charted depths, especially when connected to date for stage of river, indicate ample water for the vessel in those areas.

III.

There is comment in the record that these groundings were "spectacular" and constitute a "record of consecutive groundings." Such comments, even if true, are no substitute for proof of negligence.

What we have here is undoubtedly a series of misadventures, but all the circumstances must be considered.

I may assume that Appellant acted with the consent of his owner, since the port official previously mentioned was on the scene after the first day's mishaps. Assistance of the Corps of Engineers was sought and cooperation was received.

Four different qualified Bar Pilots attempted to take the vessel out, and there is not a shred of evidence that any one of them considered the effort unduly hazardous. It seems to me a valid conclusion that no such pilot would knowingly jeopardize his reputation among masters and his fellow pilots, and of losing the confidence that others must necessarily have in him, by undertaking an unreasonable risk.

IV.

The premise of the Investigating Officer appears to have been that grounding sets up a presumption of negligence. This may be correct in such cases as when a vessel, apparently inexplicably, encounters a charted hazard. This not such a case, and the negligence must be affirmatively proved. I find that it was not.

CONCLUSION

I Conclude that there is insufficient proof by substantial evidence that Appellant was negligent in this case.

ORDER

The order of the Examiner dated at New Orleans, La., on 8 November 1965, is VACATED. The charges are DISMISSED.

W. J. SMITH
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 23rd day of June 1966.

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No presumption of negligence from repeated

Master

Notice to port agent no deemed notice to

Negligence

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Not shown by evidence
Positive evidence required

Notice

Applies only to specific channel(s)
To port agent not deemed notice to master

River or Channel

Advice re "project depth" held irrelevant
Evidence or depth held not probative
Notice relevant only to specific channel(s)

***** END OF DECISION NO. 1565 *****

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