

In the Matter of License No. 98879 and all other Seaman Documents
Issued to: PETER LIVANOS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1011

PETER LIVANOS

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 11 September 1957, an Examiner of the United States Coast Guard at Baltimore, Maryland, suspended Appellant's seaman documents upon finding him guilty of negligence. The specification alleges that while serving as Chief Mate on board the American SS SHINNECOCK BAY under authority of the document above described, on or about 10 June 1957, Appellant permitted the use of an unsafe gangway on the ship.

Appellant appeared at the hearing with counsel and entered a plea of not guilty. The ship's Boatswain and an able seaman testified for the Investigating Officer. Appellant testified in his defense. He stated that the gangway was serviceable and safe although the platform stanchions were loose and the gangway needed to be replaced with a new one or repaired.

After considering the evidence, the Examiner announced the decision in which he concluded that the charge and specification had been proved. An order was entered suspending all documents, issued to Appellant, for a period of one month.

The decision was served on 11 September 1957. Appeal was timely filed on 10 October and a supplemental brief was submitted on 10 December 1957.

FINDINGS OF FACT

From 25 March to 13 June 1957, Appellant was serving as Chief Mate on board the American SS SHINNECOCK BAY and acting under authority of his License No. 98879.

The SHINNECOCK BAY was equipped with two wooden gangways, one on the port side and one to starboard. Each gangway was made in two sections and the top section was bolted to a wooden platform which was secured to the ship at the main deck level. The gangway sections were fitted with brackets along each side for the installation of metal stanchions and each platform was fitted with four recessed screw holes for similar stanchions. The platform stanchions were threaded at the bottom while the stanchions for the sections of the gangways were square at the bottom. Each stanchion had an eyehole at the top and at its mid-section through which the manropes were reeved and drawn taut to act as a handrail when descending and mounting the gangways.

In January 1957, the starboard gangway was declared unfit by a Coast Guard inspector and a new gangway was purchased to replace it. But the new gangway was used to replace the port gangway because the old port gangway was too short when the ship was light. The old port gangway was retained on board for spare parts. The starboard gangway, which was supposed to have been replaced, was partially repaired and reinstalled. All of this took place before Appellant came on board as Chief Mate on 25 March 1957 and he was not told about it although it was his duty as Chief Mate to look after the condition of all the ship's deck gear. The starboard gangway was used on 9 June 1957 for the first time since Appellant began serving on the ship.

On 9 June 1957, the SHINNECOCK BAY arrived at Baltimore, Maryland, in a light condition. The docking pilot informed the Master that the ship would moor starboard side to. The ship docked starboard side to at a pier in the harbor and the Boatswain supervised the rigging of the starboard gangway leading aft as

ordered by Appellant. It would have taken about two hours to transfer the port gangway to the starboard side to be rigged. One inboard and three outboard stanchions on the lower section of the starboard gangway could not be installed because the brackets to hold them were missing. Since the screw holes in the platform lacked threads and were greatly enlarged, the platform stanchions were very loose and wobbled excessively. Consequently, the Boatswain did not install the after, outboard stanchion because he thought it would lean too far inboard over the platform when the manropes were drawn taut. The top and center manropes were reeved through the eyeholes in the stanchions and then secured as tautly as possible under the circumstances. But due to the lack of support where the five missing stanchions should have been placed, there was considerable play in the manropes at these points. Although the top manrope was normally about waist high, it crossed above the after, outboard corner of the platform at a distance of between one and two feet because the line was unsupported between the topmost, outboard stanchion on the upper section of the gangway and the forward, outboard stanchion on the platform. After being rigged out, the gangway was almost vertical for the distance of 30 to 35 feet between the main deck level and the pier.

After completing the job, the Boatswain reported to Appellant that four stanchions were not installed on the lower section of the gangway. Appellant replied that the gangway would be repaired as soon as they went to sea. The gangway was used frequently during the day without mishap. Appellant personally observed its condition on the day it was rigged, 9 June, but no repairs were made until two days later when Appellant told a seaman to secure two more stanchions to the lower section. Early on the morning of 10 June, one of the ship's cooks fell from the gangway and was fatally injured. There is some evidence that he was intoxicated and no direct evidence that the condition of the gangway caused the cook to fall. After this accident, a Coast Guard inspector again declared the gangway unfit and issued a requirement that it be replaced or repaired. The action in the instant case grew out of an investigation of the casualty mentioned above.

Appellant's prior disciplinary record with the Coast Guard consists of an admonition in 1954 for inattention to duty. He has been going to sea on American and Greek vessels for approximately 30 years.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the finding of negligence, by any standard, was contrary to the weight of the evidence because it was not established that the gangway was unsafe; the ordinary civil law test of negligence adopted by the Examiner was not correct since the degree of negligence required in this proceeding, which is penal in nature, is much greater and requires proof beyond a reasonable doubt; there would have been no action taken against Appellant except for the cook's accident which was due to his intoxication rather than the so-called unsafe condition of the gangway; in any event, the order of suspension is too severe.

In conclusion, it is respectfully requested that the findings and conclusions be reversed and the charge dismissed.

APPEARANCE: Edward Pierson, Esquire, of Baltimore, Maryland, of Counsel.

OPINION

As stated by the Examiner, the test of negligence to be applied in this case is whether Appellant failed to act as a reasonably prudent man of the same station and under the same circumstances would have acted. Criminal law standards are not applicable to these proceedings because the latter are remedial rather than penal. This is shown by the regulation (46 CFR 137.21-5), based on the pertinent provision in the Administrative Procedure Act, which states that the degree of proof required is substantial evidence - rather than proof beyond a reasonable doubt as in criminal actions. Hence, the degree of care required is that of a reasonably prudent man and the degree of proof of negligence required is substantial evidence.

According to these standards, it is my opinion that the above findings of fact are supported by the evidence and that such facts clearly indicate that Appellant did not exercise the care of a reasonably prudent man under the same circumstances.

As Chief Mate, Appellant was responsible to the Master for the

condition of the gangways. Admittedly, other persons were at fault for leaving a damaged gangway on the ship and the evidence does not show that Appellant was informed of the poor condition of the starboard gangway at any time after he came on board the ship as Chief Mate on 25 March 1957. Nevertheless, it was his duty to inspect the gangways and maintain them in good condition for future use. If this had been done, brackets from the old port gangway would have been secured to the lower section of the starboard gangway to hold the four stanchions which could not be used because there were no brackets to put them in. Also, something should, and could, have been done between 25 March and 9 June to rework the four stanchion holes in the starboard platform so that all the stanchions could be used and so that they would be held securely rather than be loose when inserted in the holes.

If such precautions had been taken by Appellant, it is believed that the starboard gangway would have been in a reasonably safe condition for use when rigged on 9 June. As it was actually rigged, it is my opinion that it was defective and unsafe because of the four missing stanchions on the lower section and the absence of the after, outboard platform stanchion. These conditions prevented the manropes from being drawn taut where they had no support over long spans, and the failure to use one of the platform stanchions resulted in the top manrope being not more than two feet above the outboard side of the platform where the distance to the pier was 30 to 35 feet. This was obviously a dangerous situation, particularly in this case where the gangway was hanging nearly vertically and would be difficult to negotiate under the best conditions. Such a low manrope at the highest point from the pier could not very well be used as a handrail to grasp as a guide or for support. The manrope also tended to be an obstacle over which a person might trip and fall - rather than acting as a guard such as it would have been if it had been properly raised to waist-high level at all places.

In addition to the failure of having taken reasonable advance precautions to insure the availability of a safe starboard gangway for use, Appellant was guilty of negligently failing to take corrective action on 9 June despite the short notice from the pilot that the starboard gangway would be used for the first time since Appellant commenced serving on the ship. He could have had temporary repairs made on the starboard gangway by ordering that wooden uprights be secured to the sides of the platform and lower

section in order to replace the loose and missing stanchions. Alternatively, Appellant should have required that the good port gangway be transferred to the starboard side. This would have taken about two hours according to Appellant's testimony. There is no doubt that Appellant had actual notice of the condition of the starboard gangway both from personal observation and the report made to him by the Boatswain after it was rigged. Appellant then admitted its defective condition by telling the Boatswain that it would be fixed when they got to sea. At the time Appellant said this, it was not too late to have made the necessary temporary repairs, but nothing was done.

The conclusion that the gangway was unsafe is further supported by the reports of Coast Guard inspectors to this effect both in January 1957 and after the cook's accident on 10 June 1957. Since the two reports coincide in this respect, the repairs made after the first report must have been minor in view of the fact that the starboard gangway was seldom used.

Conceivably, this proceeding would not have been initiated except for the fall of the cook which resulted in his death. Nevertheless, it is my opinion that Appellant's negligence has been clearly proved without any attempt to establish a causal connection between the condition of the gangway and the fatal accident. The order would probably have been much more severe than a one month's suspension if it had been found that Appellant's negligence was the proximate cause of the cook's death. Consequently, I think that the order imposed was a fair one.

In summary, I concur with the Examiner's ultimate findings that Appellant's failure to exercise due care concerning the following defects in the starboard gangway constituted negligence:

- a. The platform stanchions were loose and one of them was not in place.
- b. Four stanchions on the lower section of the gangway were missing because the brackets to hold them were gone.
- c. The above factors prevented the manropes from being taut in places and caused the manropes to be too

low on the outboard side of the platform.

ORDER

The order of the Examiner dated at Baltimore, Maryland, on 11
September 1957, is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Dated at Washington, D. C., this 17th day of March, 1958.

***** END OF DECISION NO. 1011 *****

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