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Issued to: JOSEPH OSCAR GORANSON

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

881

JOSEPH OSCAR GORANSON

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

By order dated 17 November 1954, an Examiner of the United States Coast Guard at Seattle, Washington admonished Joseph Oscar Goranson upon finding him guilty of misconduct based upon one specification alleging in substance that while serving as Chief Engineer on board the American SS SAN MATEO under authority of the license above described, between 26 May and 8 June 1954, he wrongfully failed to report the existence of unsafe machinery aboard the vessel to the Officer in Charge, Marine Inspection, Seattle; to wit, an unsafe reversing ram mechanism.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by counsel of his own choice. He entered a plea of "not guilty" to the charge and specification proffered against him.

At the conclusion of the hearing, having heard the arguments

of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and specification had been proved. He then entered the order admonishing Appellant.

FACTS

Because of the disposition to be made of this case, findings of fact on the merits of the case and the bases of appeal are unnecessary. Instead, a chronological statement of proceedings under R.S. 4450, as amended, involving Appellant is made here.

On 14 June 1954, Appellant was charged with Negligence on three specifications alleging in substance:

- 1) that between 26 May 1954 and 8 June 1954, he wrongfully operated and allowed to be operated the engine of SS SAN MATEO when he knew, or should have known in the exercise of his judgment as Chief Engineer, that the vessel was in a dangerous condition due to a faulty operation of the reversing mechanism;
- 2) that he wrongfully failed to effect necessary repairs to the reversing ram which constituted a dangerous operating condition; and
- 3) that he wrongfully failed to notify the United States Coast Guard that a dangerous condition existed aboard the vessel, as required by law.

On 23 June 1954, the Examiner dismissed the first two specifications as not proved. The third specification was dismissed by the Examiner on motion prior to the taking of evidence.

In his opinion, the Examiner stated with respect to the third specification:

"The motion of counsel for the person charge to strike the Third Specification is granted without prejudice for it is the belief of this Examiner that the allegation of failure set

forth therein does not under the law constitute an offense punishable under R.S. 4450 as amended."

As to his dismissal of the first two specifications, the Examiner declared:

"Consequently, I am constrained to the opinion that the weight of the evidence falls short of proof that this person charged, in his capacity as Chief Engineer, aboard this vessel was negligent in operating its engine, or allowing it to be operated, under the conditions described. Nor do I feel there was any wrongful failure on his part to effect repairs to the reversing mechanism when the testimony shows that, with but one exception, between May 31, 1954 and the time of the collision, the engine was operating safely and normally. I do not believe that the condition of the engine aboard this vessel, as described by witnesses and the evidence for a period of eight (8) days, was such as to have alerted the person charged so as to justify a holding that he negligently allowed the vessel to be operated when he knew, or should have known in the exercise of reasonable judgment, that the engine was in a dangerous condition."

On 21 July 1954, Appellant was charged under R.S. 4450, as amended, with misconduct on one specification alleging in substance that between 26 May and 8 June 1954, he wrongfully failed to report the existence of unsafe machinery aboard SS SAN MATEO to the Officer in Charge, Marine Inspection, Seattle; to wit, an unsafe reversing ram mechanism. On 17 November 1954, the Examiner found the charge and specification proved.

The Examiner stated in his Opinion:

"Was this machinery and equipment, between the dates in question, unsafe within the meaning of the word as it is used in the cited regulation? The answer to this question is of the utmost importance in determining the proper outcome of this case. Such answer lies, I believe, in whether or not it can be held that there were certain warning signs of danger of sufficient import so as to alert the person charged in his capacity as Chief Engineer as to a possibility that a defective, and, therefore, unsafe condition existed."

An order was entered admonishing Appellant. From that order Appellant appeals.

OPINION

It is noted immediately that the third specification under the charge at the first hearing is substantially identical with the specification of the second hearing. The fact that the Examiner, apparently erroneously, dismissed the third specification on motion, on the ground of legal insufficiency, is in itself no bar to a subsequent proceeding on a valid specification based upon the same episode. Such dismissal, however, should normally be unnecessary when there has been compliance with 46 " ; ^ 137.09-28. The decision in the first hearing does not indicate the basis for the Examiner's ruling which apparently made recharging the only method by which a hearing on the merits could be had on the precise issue of the failure to make a report to the Coast Guard.

However, it appears that the trial on the merits in the first hearing resulted in a finding that the reversing ram mechanism was, during the time in question, operating safely and normally, and that it could not be held that Appellant allowed the vessel to be operated when he knew or should have known that the engine was in a dangerous condition.

This finding goes to essential issues in the specification of the second hearing. For if the reversing ram mechanism was operating safely and normally to 8 June 1954, and if the Chief Engineer neither knew, nor should have known, of an unsafe condition, there remains nothing to be considered with respect to filing a report.

CONCLUSION

It is concluded that a legally sufficient disposition was made, at the first hearing, of the essential issues raised in the second.

ORDER

The order of the Examiner entered at Seattle, Washington, on 17 November 1954 is hereby VACATED. The charge and specification are DISMISSED.

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

Dated at Washington, D. C., this 30th day of April 1956.

***** END OF DECISION NO. 881 *****

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