

In the Matter of License No. 98752 Merchant Mariner's Document No.
Z-309161 and all other Licenses and Documents
Issued to: MICHAEL LIVANOS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

921

MICHAEL LIVANOS

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 25 January 1956, an Examiner of the United States Coast Guard at Portland, Oregon suspended License No. 98752 and Merchant Mariner's Document No. Z-309161 issued to Michael Livanos upon finding him guilty of inattention to duty based upon three specifications alleging in substance that while serving as Master on board the American SS ANNIOC under authority of the license above described, between 15 August and 2 September 1955, he operated the vessel without having the deck line marks painted as required by 46 CFR 43.05-25 (First Specification); on or about 2 September 1955, he failed to enter the vessel's draft figures and load line marks in the Official Logbook in violation of 46 CFR 97.15-5(a) (Second Specification); on 9 and 17 October, he failed to enter in the Official Logbook the time of opening or closing of hatches in violation of 46 CFR 97.15-20(c) (Third Specification). Appellant was also found guilty of negligence based upon one specification alleging that, on or about 2 September 1955, he put to sea from San Pedro, California on a voyage to Korea with the

port and starboard load line marks of his vessel submerged, thereby operating said vessel in an overloaded condition.

At the hearing, Appellant was given in 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. Counsel's motion to transfer the hearing to the east coast of the United States was denied by the Examiner. Appellant entered a plea of "not guilty" to the charges and each specification proffered against him.

The Investigating Officer made his opening statement. He then introduced in evidence the testimony of five members of the crew and numerous documentary exhibits.

In defense, Appellant offered in evidence his sworn testimony and that of two members of the crew. Appellant also submitted documentary evidence.

At the conclusion of the hearing, having considered the written arguments of the Investigating Officer and Appellant's counsel, the Examiner announced his decision and concluded that the charges and four specifications had been proved. He then entered the order suspending Appellant's License No. 98752, Merchant Mariner's Document No. Z-309161, and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of three months.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On a foreign voyage including the period from 15 August to 8 November 1955, Appellant was serving as Master on board the American SS ANNIOG and acting under authority of his License No. 98752.

The ANNIOG is a Liberty-type freight vessel with a total depth of 37 feet, 5 3/4 inches, from which her freeboard and draft are measured. As shown by her load line marks, which are in accord

with her International Load Line Certificate, the ship is permitted a minimum amidships freeboard, in salt water, of 9 feet 8 3/4 inches in summer load line zones. This limits the draft at the load line mark to a maximum of 27 feet 9 inches in summer load line zones in salt water. The ANNIOC's Load Line Certificate shows that she is allowed an additional submergence of 7 inches in tropical load line zones (maximum mean draft 28 feet, 4 inches; minimum freeboard 9 feet, 1 3/4 inches) and permitted an additional submergence of 7 1/4 inches for all freeboards when the ship is in fresh water. The freeboard is measured from the upper edge of the deck line to the upper edge of the appropriate line of the ship's load line markings. The capacity plan of the vessel states that the maximum tons per inch immersion (TPI) is 48 7 tons.

While the ship was at New Orleans, Louisiana on 15 August 1955, Appellant ordered the port and starboard deck line markings chipped in order to obtain more accurate freeboard measurements while loading a cargo of coal. Since it was necessary to secure the ship for sea there was no reasonable opportunity to repaint the deck line markings before the ship departed for San Pedro, California about two hours later with a cargo of 9883 tons of coal destined for the Far East. The salt water mean draft upon departure was 28 feet 4 inches. The deck line markings were painted when the ship arrived at San Pedro on 2 September 1955. The draft upon arrival at the latter port was 25 feet 9 inches forward. 29 feet aft 27 feet 4 1/2 inches mean.

There is no fresh water allowance permissible at San Pedro with respect to load line limitations. The waters immediately off San Pedro are in a seasonal area where either the tropical or summer load line limitations apply depending upon the time of year. From 1 March to 30 June and 1 November to 30 November this is a tropical zone. From 1 July to 31 October and 1 December to 28/29 February, this is a summer zone where 7 inches less submergence is permitted for this ship than in tropical zones. 46 CFR 43 40-1(f)(5)(ii) A summer load line zone extends to the west of this seasonal zone. See 46 CFR 43 40-1 and the chart in Load Line Regulations (CG 176) for the boundaries of load line zones and the dates applicable in the seasonal areas.

While moored starboard side to at San Pedro on 2 September 1955, the ANNIOC received on board 7317 barrels of bunker fuel oil;

6.7 barrels was computed to weigh one ton. At approximately 1100, the tropical fresh water line ("TF) of the star board plimsoll mark was completely submerged and the port tropical fresh water line was partially below the water about 1215 the Chief Mate noted from the dock that the draft of the ship corrected for a one degree starboard list was 26 feet 6 inches forward. 32 feet 2 inches aft 29 feet 4 inches mean. The fueling operation was completed at 1315. Upon departure from San Pedro on 2 September, the Master erroneously entered the draft in the rough deck logbook as 26 feet 1 inch forward, 30 feet 7 inches aft, 28 feet 4 inches mean. (The mean draft entered was the maximum salt water mean draft permissible for the ship in tropical zones) This is the only page of the rough deck log not signed by the Chief Mate. Appellant did not measure the freeboard before leaving San Pedro. The draft figures and load line marks were not at any time, prior to the vessel's return to the United States, entered in the Official Logbook as required by 46 CFR 97.15-5.

The ship arrived at Mokpo, Korea on 27 September 1955. This is in a summer load line zone as was the entire trip. The arrival draft, according to the testimony of the Chief Mate, the Second Mate and the local surveyors report, was 26 feet 10 inches forward, 29 feet 02 inches aft, 28 feet mean (corrected for the density of the water). About 4400 barrels of fuel had been consumed since leaving San Pedro.

On 9 October 1955 at Mokpo, Korea and on 17 October 1955 at Hiroshima, Japan, cargo hatches of the ship were opened. Appellant failed to enter the time of the opening and closing of these hatches, prior to arrival in the United States, as required by 46 CFR 97.15-20(c).

Appellant has no prior record.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that:

1 The Examiner erred in failing to grant Appellant's motion to change the place of hearing

2 The Examiner erred in failing to grant Appellant's motion

for a two-day continuance of the hearing

3 With respect to the First Specification under the charge of inattention to duty, 46 CFR 43 05-25 does not require that the deck line be painted. In any event, Appellant ordered that the deck line be painted at the first opportunity which was at San Pedro. Thus, it was painted as soon as it was "reasonable and practicable" (46 CFR 43 01-10) to do so

4 Concerning the Second and Third Specifications under the charge of inattention to duty, Title 46 U S C 202 permits required Official Logbook entries to be made up to 24 hours after the vessel arrives at her final port

5 With respect to the negligence specification alleging that the port and starboard load line marks were submerged upon departure from San Pedro, the Examiner erred when he admitted in evidence, over objection, an alleged copy of a surveyor's report made at Mokpo, Korea, and he failed to consider the Chief Engineer's testimony as well as the engine room logbook, both of which indicate that the vessel had 500 tons of salt water ballast in her double bottom tanks. Computations based on the latter information show that the vessel was properly loaded when she left San Pedro which is in the tropical local line zone.

For these reasons, it is recommended that the Commandant dismiss the charges or mitigate the order

APPEARANCES Messrs Matthiessen, Wood and Tatum of Portland Oregon by John R Brooke, Esquire of Counsel

APPEARANCE ON APPEAL Arthur E Tarantino, Esquire of Washington, D. C. of Counsel

OPINION

Appellant's contention concerning the two motions denied by the Examiner (points 1 and 2) and the time within which Official Logbook entries may be made (point 4) need not be discussed since they were ably disposed of by the Examiner in his decision. He pointed out that 46 U S C 202 says "every entry in the official log

book shall be made as soon as possible after the occurrence to which it relates" and he correctly stated that the Official Logbook would be of little value with respect to the type of entries referred to in the Second and Third Specifications if such entries were not required to be made until 24 hours after the vessel arrived at her final port. Concerning the Second Specification it is further noted that in addition to the regulation mentioned above (46 CFR 97.15-5) the statute (46 U. S. C. 85e) states that the draft and load line figures shall be entered by the Master in the Official Logbook "before departing from her loading port or place for a voyage by sea . . ." The conclusions that the Second and Third Specifications under the charge of inattention to duty were proved are affirmed

Pursuant to statutory authority (46 U S C 85 88) the ANNIOC was surveyed by the American Bureau of Shipping and issued an International Load Line Certificate which provides for maximum mean drafts and minimum freeboards in different load line zones. It is unlawful for a vessel on a foreign voyage to be so loaded as to submerge the applicable markings (46 U.S.C. 85c).

Since the position of the deck line must be known in order to accurately measure a vessel's freeboard, it is obvious that the deck line is an essential part of the load line markings to which 46 CFR 43.05-25 applies. Hence, the latter regulation requires that the deck line be painted. But under the prevailing circumstances, it is my opinion that Appellant was not guilty of inattention to duty for failing to have the deck line painted while the ship was between New Orleans and San Pedro. The painting was done at the first opportunity when it was safe to do so. This was at San Pedro on 2 September. Therefore, I concede merit to Appellant's contention (point 3) that the First Specification under the charge of inattention to duty should be dismissed. The ultimate finding that this specification was proved is reversed and the specification is dismissed.

The specification under the charge of negligence alleges that the vessel was overloaded when she departed from San Pedro on 2 September. Since the testimony of the Chief Mate, which was accepted by the Examiner as the trier of the facts, constitutes substantial evidence in support of this specification, Appellant's contentions (point 5) pertaining to computations based on the

condition of the ship upon arrival at Mokpo are immaterial to the issue. In view of Appellant's statement that San Pedro is in a tropical load line zone, it is again noted, and I take official notice of the fact, that this is a seasonal area which was a summer load line zone on 2 September. (See Findings of Fact above for seasonal dates.)

The maximum permissible mean draft for the ANNIOG in summer load line zones is 27 feet 9 inches in salt water. There is no allowance for fresh water at San Pedro where the mean draft was 29 feet 4 inches an hour before fueling was completed. The latter statement is based on the personal observations of the Chief Mate and is substantially corroborated by another member of the crew who observed, from the main deck, that the port plimsoll mark was down to the tropical fresh water mark. since the mean draft was 29 feet 4 inches, the average improper submergence of the applicable port and starboard load lines was 19 inches. Even if this time of year had been the tropical load line season for this area, the ship would have been overloaded to the extent of a 12-inch average submergence of the applicable load line markings

The accuracy of the Chief Mate's testimony that the mean draft was 29 feet 4 inches is corroborated by the ship's mean draft of 27 feet 4 1/2 inches (which was not questioned prior to the hearing) on arrival at San Pedro added to the additional submergence caused by the 7317 barrels of bunker fuel received on board. At 6.7 barrels per ton, this amount of fuel weighed 1092 tons. At the rate of 48.7 tons per inch immersion, 1092 tons would cause the ship to go down 22 1/2 inches. These calculations indicate that the mean draft at San Pedro was 29 feet 3 inches - 18 inches too much.

Approximately 4400 barrels or 657 tons of fuel were used on the trip between San Pedro and Mokpo. This would account for a decrease of about 13 inches in the draft of the ship. Although there are too many variable factors on such a long trip to base any definite conclusions on this alone, it seems to have some significance that this 13 inches added to the corrected Mokpo arrival draft of 28 feet indicates that the San Pedro departure draft was in the vicinity of 29 feet 1 inch. In turn this tends to support the statement on the Mokpo surveyor's report that there was no water ballast on board as opposed to testimony that there was 500 tons of salt water in the double bottom tanks.

Figures accepted by Appellant conclusively establish that the ship was loaded beyond the salt water tropical load line mark. The mean draft was the maximum permissible in tropical zones upon departure from New Orleans, 7317 barrels of fuel was received at San Pedro and 4400 barrels were consumed on the 25 day trip from San Pedro to Mokpo. Then obviously the ship was loaded beyond the tropical mark at San Pedro to the extent of the difference in submergence caused by 7317 barrels less the amount consumed during the 18 days between New Orleans and San Pedro, which amount would be less than the consumption on the longer trip between San Pedro and Mokpo. At the rate of 4400 barrels for 25 days, the ship would use about 3170 barrels in 18 days. The difference between 7317 barrels and 3170 would cause a submergence of approximately 12 inches. This agrees substantially with the observation made by the Chief Mate at San Pedro.

Appellant's computations based on the deadweight scale of the vessel are not persuasive since such a scale can only be used as a rough guide to determine the draft of the vessel. Also, changes may have been made in the ship after the time the deadweight scale was prepared when the vessel was built approximately 12 years ago.

For these reasons it is my conclusion that the specification alleging overloading was proved by substantial evidence

Load lines are fixed so as to indicate the point to which vessels may be loaded without depriving them of a sufficient percentage of reserve buoyancy to insure safety. Since the failure to comply with these requirements might well endanger ships, cargoes, and the lives of the entire shipboard personnel. Masters are bound to observe a very high degree of care in order to be certain that there is strict compliance with these statutes and regulations. It has been held that seamen are justified in demanding their discharge and leaving their ship when the vessel has been excessively loaded. *The SIRIUS* (D. C. Calif., 1891), 47 Fed. 825.

In view of the possible serious consequences of this overloading on a lengthy voyage, the order of three months suspension is not considered to be excessive.

ORDER

The order of the Examiner dated at Portland, Oregon on 25
January 1956 is AFFIRMED.

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

Dated at Washington, D. C., this 9th day of October, 1956.

***** END OF DECISION NO. 921 *****

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