

In the Matter Merchant Mariner's Document No. Z-64081 and all other
Licenses and Documents
Issued to: ORLANDO FUSCO

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

946

ORLANDO FUSCO

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

By order dated 6 July 1956, an Examiner of the United States Coast Guard at New York, New York, suspended Merchant Mariner's Document No. Z-64081 issued to Orlando Fusco upon finding him guilty of negligence based upon a specification alleging in substance that while serving as Chief Boatswain on board the American SS INDEPENDENCE under of the document above described, on or about 21 April 1956, he failed to determine that the limit switch roller wheels on #10 and #20 lifeboat davits, which roller wheels had been removed by his orders, were properly replaced, thereby contributing to a casualty to #10 and #20 lifeboats.

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 and he entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of the Chief Mate and a Boatswain's Mate on the INDEPENDENCE at the time of the casualty in question.

In defense, Appellant offered in evidence his sworn testimony. Appellant admitted that it was his responsibility to supervise all work done on deck but that he forgot to see that the roller wheels were replaced because he was busy doing other work.

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 suspending Appellant's Merchant Mariner's Document No. Z-64081, 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 on nine months probation.

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

FINDINGS OF FACT

On 20 and 21 April 1956, Appellant was serving as Chief Boatswain on board the American SS INDEPENDENCE and acting under authority of his Merchant Mariner's Document No. Z-64081 while the ship was at sea.

On 20 April 1956, Appellant told Boatswain's Mate Giammarino to have the limit switch roller wheels on #10 and #12 lifeboat gravity davits removed, cleaned and replaced. Appellant knew that a drill was scheduled for the afternoon of 21 April. Giammarino removed the roller wheels at approximately 0800 on 20 April. They were cleaned but were not replaced prior to the drill although Appellant reminded the Boatswain's Mate to do so. Appellant did not follow his customary practice of checking to see that the roller wheels were replaced.

The purpose of the limit switches is to provide an automatic cut-off of power from the electric winches after the boats are two-blocked and the davit heads are in their stowed position. The limit switches on gravity davits will not operate properly unless the limit switch roller wheels are in place.

Shortly after 1500 on 21 April 1956, a routine fire and boat drill was held. The #10 and #12 lifeboats were lowered with no personnel in them. The boat captains (Second and Third Officers, respectively) failed to observe that the roller wheels were not on the davits. After the two boats two-blocked and the davit heads were hoisted to their stowage positions by the winches, the limit switches did not cut the power. The continued strain snapped the after fall on the #10 lifeboat and both falls on the #12 lifeboat. The latter fell into the sea and was badly damaged. The damage to the #10 lifeboat was considerably less than to the #12 lifeboat. There were no personnel injuries.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the intervening negligence of the boat captains in failing to observe that the limit switch roller wheels were missing was the proximate cause of the casualty. Since the damage would not have occurred except for the latter factor, it is respectfully submitted that the decision of the Examiner should be reversed.

APPEARANCE: Messrs. Cooper, Ostrin and DeVarco of New York City by Herbert J. DeVarco, Esquire, at the hearing and Lawrence P. Ashley, Esquire, on appeal.

OPINION

Appellant was the person responsible for the supervision of work on deck. Since he issued orders to his Boatswain's Mate which temporarily would cause equipment to be not only imperative but dangerous, it was clearly negligent for Appellant to fail to make certain that his orders had been carried out completely. This is especially true since Appellant knew about the scheduled drill on 21 April and no precautions were taken to warn others that the roller wheels had been removed from the davits. Hence, I agree

with the statement of the Examiner that Appellant failed to use due care in supervising the work of his Boatswain's Mate.

I do not agree with Appellant's contention that the intervening failure of the boat captains to realize that the roller wheels were not in place relieved Appellant of blame. It has been stated previously in the Commandant's decisions that these administrative proceedings are remedial in nature and the primary purpose is to protect lives and property at sea against actual and potential danger. There is no attempt to determine liability for damages as in civil litigation. Hence, the proper criterion as to what constitutes negligence is whether the person charged acted imprudently under the circumstances rather than whether such conduct was the proximate or a contributing cause of a casualty. See Commandant Appeal Decisions Nos. [586](#), [728](#), [730](#) and [868](#) relating to the above.

Therefore, the allegation that Appellant 's negligent acts of omission contributed to the casualty is found not proved. The specification is found "proved in part" in accordance with 46 CFR 137.09-65. This is sufficient to justify the entirely probationary order of suspension imposed by the Examiner.

ORDER

The order of the Examiner dated at New York, New York, on 66 July 1956, is AFFIRMED.

A. C. Richmond
Vice Admiral, U. S. Coast Guard
Commandant

Dated at Washington, D. C., this 8th day of January, 1957.

***** END OF DECISION NO. 946 *****

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