In the Matter of License No. 133764 and all other Seaman Documents
Issued to: HAROLD E. SHARPE

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1093

HAROLD E. SHARPE

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title Code of Federal Regulations 1379.11-1.

By order dated 13 June 1958, an Examiner of the United States Coast Guard at Houston, Texas, suspended Appellant's seaman documents upon finding him guilty of the charge of negligence. The specification, which was found proved subsequent to a plea of guilty, alleges that while serving as Master on board the United States SS HESS MARINER, a tank ship, under authority of the document above described, on or about 10 May 1958, Appellant failed to properly maintain a lookout at all times at or near the bow of the vessel while navigating at sea during the nighttime in violation of 46 CFR 35.20-20. There was no casualty during the absence of the lookout from the bow.

At the hearing, Appellant appeared without counsel and entered a plea of guilty to the charge and specification. The Investigating Officer made his opening statement and Appellant made an unsworn statement intended to present mitigating circumstances.

Appellant stated that he had given the Chief Mate permission to remove the bow lookout periodically for a ten or fifteen minute

job in connection with making the tanks gas-free during the four-day voyage from Jacksonville to Galveston for drydocking; the Mate on watch was notified by the Chief Mate when the lookout left the bow on the night of 10 May 1958; the ship was not in congested waters, the radar was in operation and the Mate on watch kept a lookout watch during the entire four hours that the lookout was absent; the rough deck logbook shows that both the visibility and the weather were very good at the time in question.

Appellant further stated that he considered the navigation of the vessel to have been absolutely safe under the circumstances although he did not have any knowledge that the lookout was absent for four hours until two weeks after the incident when the union made a report of this matter as a last resort in an attempt to remove the Chief Mate from the ship after other means had failed. Appellant added that there may have been an error of judgment short of negligence on his part of the exercise of poor judgment by the Chief Mate in taking the lookout off the bow for four hours; but that he did not think there was any neglect of duty or neglect of the practice of safety at sea.

After this statement, the Investigating Officer stated, in argument, that he thought the Chief Mate had been careless in not notifying Appellant when the lookout was not on watch. Appellant was questioned about his record and answered that it had not been blemished in his twenty years at sea. The Examiner then concluded that the charge and specification had been proved by plea. An order was entered suspending all documents, issued to Appellant, for a period of three months on twelve months' probation.

OPINION

The two issues urged on appeal are that the order is excessive in view of Appellant's prior clear record and the facts alleged do not constitute a failure to use reasonable care under the circumstances.

The charge of negligence is based on a violation of the first sentence of 46 CFR 35.20-20 which reads:

> Lookouts. Tankships - Ocean and coastwise. All tank ships navigating the ocean during the nighttime shall have a lookout at all times at or near the bow.

Similarly, all ocean and coastwise passenger, cargo and miscellaneous vessels are required by regulations to have a lookout at all times at or near the bow during the nighttime. 46 CFR 78.30-1, 97.27-1.

As applied to this case, negligence may be defined as the failure to exercise such precautions or degree of care as a reasonably prudent Master would exercise under the same circumstances. In other word, a Master is not required to make the right decision at all times in order to avoid being guilty of negligence; but he must exercise reasonable care according to the standards of the ordinary practice of good seamanship rather than to indulge in acts of imprudent seamanship. Hence, by making a wrong choice among alternatives, a Master commits an error of judgment which does not amount to negligence if his choice was one which a competent and prudent Master might reasonably have made under the prevailing circumstances. However, many laws and regulations merely emphasize the general standards of good seamanship established by the courts on the basis of the general principles of maritime law which, in turn, are the outgrowth of, and built up from, the practices of mariners over a period of hundreds of years and the requirements of due care to prevent collisions at sea. See *Commandant's Appeal Decision* Nos. 1073, 1091; *Griffin on Collision* (1949), secs. 2, 4.

Since it has been held that the mere showing of a violation of a regulation does not constitute negligence per se*(Kernan v. American Dredging Co.* (1958), 355 U.S. 426), the Examiner should have changed Appellant's plea to not guilty, as provided for in 46 CFR 137.09-45, when Appellant persisted in stating that his conduct was not negligent. This position is reiterated on appeal when Appellant contends that the facts alleged do not constitute a failure to use reasonable care under the circumstances. If Appellant had been charged with misconduct rather than negligence, then the admitted violation of the regulation would have been sufficient to support the charge since the additional factor of reasonable care would have had no bearing on the proof of the charge.

Nevertheless, it is my opinion that the failure to change the

plea did not constitute material prejudice to Appellant's case because this regulation falls within the category of the many laws and regulations mentioned above which simply emphasize the standards of care required for many years. In 11 *Corpus Juris* Collision, secs. 175-183, hundreds of cases are cited in support of the proposition that it is a general rule of the maritime law that all vessels underway at sea are required to have a constant and vigilant lookout stationed in the forward part of the ship at night. This is the rule that is covered by the above regulations applicable to all ocean and coastwise passenger, tank cargo and miscellaneous vessels simply for the purpose of giving clear notice to seamen of the existing standard of care required, with respect to lookout, in order to avoid being guilty of negligence. Among the many old Supreme Court decisions which repeatedly refer to the need for constant lookout in the forward part of the ship are *Chamberlain v. Ward* (1858), 21 How. (62 U.S.) 548. 570; *The Ottawa* (1865), 3 Wall. (70 U.S.), 268, 273; *The Ariadne* (1871), 13 Wall. (80 U.S.) 475, 478; *The Oregon* (1895), 158 U.S. 186, 194. It is stated in *The Ariadne* that a moment's negligence on the part of the lookout may involve the loss of the vessel; and, in *The Ottawa*, that an officer on watch is not a proper lookout.

Since Appellant did not comply with this standard of care, he failed to exercise reasonable care and prudence, as a matter of law, regardless of whether the present day practices of some otherwise prudent Masters is to the contrary. As indicated by the regulation and the law, the absence of a lookout for any lingth of time, no matter how brief, was negligence rather than an error of judgment falling short of negligent conduct. Appellant was left no choice as a result of the repeated emphasis by the regulations and the courts on this point.

The manner in which this incident apparently was brought to the attention of the Coast Guard is unfortunate but strict compliance with the rules and regulations of prevent collisions does not permit it to be overlooked. Nevertheless, the order imposed by the Examiner will be modified in view of the numerous mitigating circumstances presented, particularly Appellant's previously unblemished record for a period of twenty years.

ORDER

The order of the Examiner dated at Houston, Texas, on 13 June 1958, is modified to an admonition. Appellant is hereby advised that admonition will be made a matter of official record.

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

Dated at Washington, D. C., this 26th day of March, 1959.

***** END OF DECISION NO. 1093 *****

Top