



NMA REPORT #R-405, Revision 1

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Edited by Capt. Richard A. Block

124 North Van Avenue
Houma, LA 70363-5895
Phone: (985) 851-2134
Fax: (985) 879-3911
www.nationalmariners.us
info@nationalmariners.us

Asserting our right "...to petition the Government for redress of grievances."

Amendment 1, U.S. Constitution, Dec. 15, 1791

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RELINQUISHING CONTROL OF YOUR VESSEL

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INTRODUCTION

It is an established tradition in the "oil patch" in particular and in the towing industry in general to earn your pay by "doing whatever it takes to get the job done". In this spirit, many towing vessel officers do not question the absence of a fixed watch schedule, quibble about working a couple of extra hours beyond the legal 12-hour maximum, or letting a good deckhand get practice in steering the boat while they grab some zzzz's on the settee, especially when dog tired.

Extending these thoughts a little further leads mariners to forget about setting any watch schedule, chip and paint all day and run all night when required, go on watch the moment the company carryall reaches the dock, and to ignore the need for sleep to combat fatigue. Some mariners are willing to accept that it's just "part of the job".

Well, before you settle into this sort of a hazardous routine you should understand that the Coast Guard views these actions in a very different light. First of all, it is always the Master's responsibility to set a watch schedule that complies with law and regulation. It is the owner's responsibility to provide a properly credentialed crew that is adequate to do the job, whatever that job may be, even on an "uninspected" towing vessel. The case that follows is an example of what kind of a mess you can find yourself in if you don't follow the rules and something goes wrong.

WHO CAN STEER THE BOAT?

The law⁽¹⁾ is very definite about who is allowed to steer a commercial vessel ó at least a vessel of at least 100 gross register tons. "An individual having a rating of less than Able Seaman may not be permitted at the wheel in ports, harbors, and other waters subject to congested vessel traffic, or under conditions of reduced visibility, adverse weather, or other hazardous circumstances." [1] 46 U.S. Code §8702(d)]

Congress was serious about requiring a person with experience to be at the wheel in difficult conditions. "The owner, charterer, managing operator, agent, master, or individual in charge of a vessel operated in violation of this section or a regulation prescribed under this section is liable to the United States Government for a civil penalty of \$10,000.⁽¹⁾ This figure was raised from \$500 to \$10,000 and gives you an idea of what "serious" means! [1] 46 USC §8702(e).]

TOWING VESSEL LICENSES

Towing vessels may be either under 100 gross register tons or over 100 GRT.

The new towing vessel officer regulations require a deckhand to first obtain an Apprentice Mate/Steersman endorsement and complete a knowledge-based professional examination before he even begins to train in the pilothouse and then only under the supervision of a person with a Mate/Pilot or Master endorsement.

An endorsement as Apprentice Mate/Steersman of Towing Vessels is **not** an endorsement that allows its holder to operate a towing vessel by himself. It is, in effect, a learner's permit that a mariner can obtain only after a total of 18 months of documented sea service of which 12 months must have been obtained on towing vessels.

To obtain this learner's permit you must go through the Coast Guard's full license application paperwork process and take a license exam based upon your book knowledge of the job and regulations a Mate or Master of Towing Vessels must follow. You can start this process any time after you have accumulated the required sea service.

This procedure also requires that you take an exam before you can enter a company's training program. If your company does not have a training program, you may want to change jobs and work for an employer that has such a program. This exam is an updated version of the test formerly given for the old Operator of Uninspected Towing Vessels license. You may study at home and take this exam at the Coast Guard's Regional Exam Center (REC) or take a Coast Guard Approved Course with a built in exam.

After you pass the exam, you are **now** eligible to begin your pilothouse training. However, you are **not** allowed to operate a towing vessel on your own! You must serve as an Apprentice Mate/Steersman for 360 8-hour or 240 12-hour working days in a training capacity on a towing vessel to be eligible for advancement (upgrade) to Mate/Pilot. Yet, you cannot actually advance in the industry until you satisfactorily complete a Towing Officer Assessment Record (TOAR) before a USCG-accepted Designated Examiner (DE) and turn that report into the Regional Exam Center. At that time, you will receive a Mate of Towing Vessels license that allows you to stand a navigation watch and run a towing vessel on your own.

COMMANDANT DECISION ON APPEAL #2387

We received the following "Decision on Appeal" from a Coast Guard Investigating Officer (IO) several years ago.⁽¹⁾ In this case, towboat Captain Michael James Barrios was brought before an Administrative Law Judge (ALJ) after his unlicensed deckhand Linton Dardar ran his tow consisting of two cement barges into a railroad bridge. Barrios hired a lawyer to defend him before the ALJ and, later, to appeal the decision of the ALJ to suspend his license. Captain Barrios' appeal to the Vice Commandant was not successful. This means that if you are involved in an incident that closely parallels this accident, you will not be successful either! ⁽¹⁾*The Coast Guard internet website contains several thousand "decisions on appeal" on various topics.]*

We reprinted the Decision and Order and underlined the principal points of the Coast Guard's argument. Keep in mind that the Coast Guard can apply these points in this case in any future cases of this nature.

Lesson: Something is wrong if you need sleep so badly that you must turn control of your vessel over to a deckhand (etc.) and nod off for forty winks. Even a catnap on a settee in the pilothouse can get you into trouble as the master of the OSV STATE COMMAND discovered in the mid-1970s when his deckhand, with orders to wake him at the sea buoy, managed to wedge his 185-foot offshore supply vessel (OSV) beneath a production platform near the sea buoy at the entrance to the Atchafalaya River entrance channel south of Morgan City, LA.

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S LICENSE NO. 37602
Issued to: Michael James BARRIOS

DECISION OF THE VICE COMMANDANT
ON APPEAL UNITED STATES COAST GUARD

2387
Michael James BARRIOS

This appeal has been taken in accordance with 46 USC 7702 and 46 CFR 5.30-1.

By order dated 10 February 1984, an Administrative Law Judge of the United States Coast Guard at New Orleans, LA suspended Appellant's license for one month plus an additional three months remitted on twelve months probation upon finding proved the charge of misconduct. The specification found proved alleged that Appellant while serving as Operator on board the M/V KATIE CHERAMIE under authority of the license above captioned, on or about 20 December 1983, while underway in Lake Wimico, Jackson River and Apalachicola River, FL, did relinquish the actual direction and control of said vessel to a person not licensed by the Coast Guard as an operator or second-class operator of uninspected towing vessels; a violation of 46 CFR 157.30-45.

The hearing was held at New Orleans, LA, on 1 February 1984.

At the hearing, Appellant was represented by professional counsel, and entered a plea of not guilty to the charge and specification.

The Investigating officer introduced in evidence two exhibits and the testimony of one witness.

In defense, Appellant offered in evidence his own testimony. After the end of the hearing, the Administrative Law Judge rendered a written Decision and Order in which he concluded that the charge and specification had been proved. He then served the written decision and order on Appellant suspending License No. 37602 for a period of one month plus three months on 12 months' probation.

The Decision and Order was served on 22 February 1984. Appeal was timely filed and perfected on 27 February 1984.

FINDINGS OF FACT

On 20 December 1983 Appellant was serving as operator on board the M/V KATIE CHERAMIE, and acting under authority of his license while the vessel was underway on the Apalachicola River, with a tow consisting of two cement barges. At approximately 0030 on 20 December 1983 Appellant relinquished control of the M/V KATIE CHERAMIE and her tow to Linton Anthony Dardar who was serving as an unlicensed "mate". Appellant then left the wheelhouse, went to his cabin, and went to bed. Mr. Dardar holds no license authorizing him to operate uninspected towing vessels, and has no formal training as to operating this type of vessel. He was not given any directions or instructions for navigating the Apalachicola River on the evening in question.

At approximately 0300 20 December 1983, approximately 2½ hours after Appellant turned over watch to Mr. Dardar, the lead barge of the M/V KATIE CHERAMIE's tow allided with the Apalachicola Railroad Bridge fender system.

BASES OF APPEAL

This appeal is taken from the order imposed by the Administrative Law Judge. It is urged that Appellant should not be held responsible for turning direction and control of the vessel over to an unlicensed individual because the owner of the vessel rather than Appellant as operator is the person responsible for insuring the proper manning of the vessel.

APPEARANCE: W.J. Larzelere, Jr., Attorney at Law, 600 Carondelet Street, New Orleans, LA 70130.

OPINION I

Appellant urges that since the manning requirements for uninspected towing vessel are primarily the responsibility of the owner and not that of the operator, he should not be held responsible for turning over direction and control of the vessel to an unlicensed individual. I do not agree.

The result in this case is controlled by Appeal Decision 2292 (COLE) in which I held that the operator of an uninspected towing vessel is properly held responsible for turning over direction and control of the vessel to an unlicensed individual. I will not repeat the analysis in COLE here.

The operator of an uninspected towing vessel is responsible for the safe operation of that vessel during the time that he is on watch. This includes insuring that the vessel is in both a safe and legal condition when he relinquishes direction and control. It would be obviously improper for an operator to leave the wheelhouse of a vessel at the end of his watch without a relief, leaving the vessel underway with no one in the wheelhouse. It is also improper for him to leave the wheelhouse at the end of his watch with the vessel underway and no legally qualified operator in control.

Appellant further asserts that it is unreasonable to hold him responsible for turning direction and control to the unlicensed Mr. Dardar because, had he failed to do so, he may well have lost his job. Although this may be true, it does not excuse Appellant participation in permitting the illegal operation of the M/V KATIE CHERAMIE.

OPINION II

Appellant further urges that the sanction is excessive. I do not agree.

Appellant as the operator of the vessel, had a heavy responsibility for its safety and legal operation. Turning over direction and control to an unqualified individual is a serious breach of that responsibility. The hazard to commerce, the maritime community, and maritime environment caused by such action is apparent from the allision that ultimately resulted.

Appellant further asserts the hardship that will result to him from loss of employment. This, however, is not cause to reduce an otherwise reasonable order. Appeal Decision 2323 (PHILPOTT). Considering the seriousness of the offense and danger created by it, I find that the Administrative Law Judge's order is entirely reasonable.

CONCLUSION

The findings of the Administrative Law Judge are supported by substantial evidence of a reliable and probative nature. The hearing was conducted in accordance with the requirements of applicable regulations. The sanction imposed is not excessive.

ORDER

The order to the Administrative Law Judge dated at New Orleans, LA, on 10 February 1984 is AFFIRMED. s/B.L. Stabile, Vice Admiral, U.S. Coast Guard, Vice Commandant
Signed at Washington, DC, this 23rd day of April 1985.

CHARGES OF MISCONDUCT AND NEGLIGENCE

[Source: By Tim Farley, U. S. Coast Guard Office of Investigations and Analysis (G-MOA). This Article appeared in Proceedings of the Marine safety Council, April/June 2002.]

In May 2000, a 95-gross ton, 80-foot uninspected steel-hulled, self-propelled UTV (uninspected towing vessel) was employed to tow a 289-ton dredge barge and another tug from Chicago, Ill., to Sault Ste. Marie, Mich., typically a three-day voyage.

Prior to entering the St. Mary's River system en route to Sault Ste. Marie, the vessel failed to file the vessel sailing plan to the Coast Guard Vessel Traffic System (VTS) as required by 33 Code of Federal Regulations (CFR), Part 161.19. This requires that, 15 minutes before transiting the prescribed VTS area, the vessel must report to the VTS the vessel's name, type, position, destination and estimated time of arrival, intended route, time and point of entry and if there is any dangerous cargo onboard the vessel or its tow. In this case, the required sailing plan was ultimately filed with the VTS only after the vessel had been in the prescribed VTS area for about two hours and the vessel had already transited approximately 18 miles of the waterway.

As a result of this incident, an investigation was initiated and the towing vessel was examined, revealing numerous violations of federal regulation, including inadequate vessel manning for the intended voyage, safety equipment deficiencies and navigation safety violations. The investigation also revealed that, during the voyage the licensed operator of the vessel had turned over the navigational watch of the tug and tow to an unlicensed and unqualified individual so that he could sleep.

Because of these violations, the Coast Guard took administrative action against the operator's Coast Guard license for the following reasons:

1. **Violation of a law or regulation and misconduct** by failing to ensure the vessel was properly manned as required by 46 CFR §15.610 prior to undertaking the voyage from the port of Chicago to the port of Sault Ste. Marie. During this voyage the operator was the only properly licensed operator on the vessel.
2. **Misconduct** in that during the voyage, the licensed operator of the vessel relinquished the navigational watch and actual direction and navigational control of the vessel to an unlicensed and unqualified individual so that he could get some sleep.
3. **Negligently** allowing the vessel to be operated without the required equipment such as an emergency position indicating radio beacon (EPIRB), currently corrected navigation charts, navigation publications, lifesaving equipment, anchor ready for letting go, navigation lights, very high frequency (VHF) FM radio and bell. In this regard, the actions of the operator, who was responsible for the material condition of the vessel during the voyage, were not those that a reasonable and prudent person of the same station, under the same circumstances, would have performed.

4. Incompetence regarding a possible physical impairment.

The individual charged by the Coast Guard had been a mariner for more than 50 years. He was licensed as a Master of Near Coastal Motor Vessels of not more than 200 gross tons restricted to uninspected towing vessels for domestic voyages. He also was licensed as an operator of uninspected towing vessels upon the Great Lakes and Inland Waters and had an unlimited Radar Observer endorsement.

Initially the voyage of the UTV and tow took a northern direction from Chicago following the west side of Lake Michigan about three to four miles from shore. The UTV had onboard a new EPIRB, which was not mounted but remained in its original container.

The UTV and tow entered the St. Mary's River system en route to Sault Ste. Marie during the early hours of the morning. The licensed operator left the pilothouse to sleep and turned over the watch to an unlicensed individual who assumed the piloting of the vessel and its tow. Prior to leaving the bridge, the licensed operator indicated that he instructed his unlicensed relief regarding the proper route to take up-bound in the river in order to avoid down-bound large 1,000-foot ore freighters. The unlicensed individual was told to turn at a specific mid-channel buoy and proceed up the Round Island Course and "keep to the red side" following the red buoys. The unlicensed individual was instructed to go up the starboard side of the channel, which comes on to the Winter Point Ranges. He was also instructed when to make a proper report to the Coast Guard VTS.

Instead of following the piloting directions given by the licensed vessel operator, the unlicensed individual piloted the vessel on the wrong side of the channel, proceeding up the down-bound or port side of the channel. Later, another crewmember awakened the licensed operator and alerted him to a problem with the vessel's voyage. The licensed operator immediately recognized the error, assumed control of the vessel and turned the vessel and tow around to exit the down-bound channel. He then piloted the vessel and tows up through the correct channel. The Coast Guard VTS never was informed of this error or the tow's location.

Later, the Coast Guard VTS heard a weak call on the radio stating that it was a tug and barge in tow. The tug switched to a different radio and contact was lost. The VTS watchstander made a call to the tug on VHF Channel 12, to no avail. Shortly thereafter, contact was made with the tug by cellular telephone. The caller was the operator of the UTV reporting that the vessel's radio was not operating properly. The vessel advised the VTS of its estimated time of arrival to Sault Ste. Marie.

After the vessel arrived at the dock in Sault Ste. Marie, the Coast Guard commenced an inspection of the vessel. This revealed that the UTV did not have the required up-to-date navigation charts, navigation publications such as the Coast Pilot, life preservers for each crewmember, personal flotation devices, lights, or sound signal devices.

During the administrative hearing before the Administrative Law Judge, the licensed operator of the UTV argued that the charge against him for failing to report to the VTS should be dropped because the tug's radiotelephone equipment was inoperative. He felt that the VTS regulations allow for situations like this and state that the master of the vessel shall exercise due diligence to restore the radio to its proper operating condition. The operator indicated that the radio was repaired as soon as possible once the vessel arrived in Sault Ste. Marie.

The Administrative Law Judge responded to the licensed operator's argument that: "While all of that is true, it ignores the dictates of the regulation and the facts relevant to the [UTV's] entry into the VTS area of the St. Mary's River.

At the outset of this analysis, I must reiterate that I have found that Respondent was operating the [UTV] under the authority of his license and thus I must conclude here that he was for the purposes of this charge the Master of the [UTV] at all relevant times. As the Master he was charged with the duty of compliance with 33 CFR § 161.19.

Just after entering the VTS area of the St. Mary's River at 0230 hrs on May 18, 2000 Respondent left the bridge of the [UTV] to sleep. He left in charge, [the unlicensed individual], a man who Respondent knew had no knowledge of the St. Mary's River system. Respondent knew [the unlicensed individual] had never navigated the area before. He knew [the unlicensed individual] lacked sufficient skills plotting a course. Respondent even left instructions with [the unlicensed individual] when to call in to the VTS which was not done. A completely unqualified person was piloting the [UTV]. And, Respondent's decision proved potentially fatal by [the unlicensed individual] navigating the down-bound channel where the [UTV] could have collided with a 1,000-foot ore freighter in the dark hours of the early morning.

Moreover, Respondent knew or should have known (given his many years of experience) the regulation required that within 15 minutes after entering the VTS area a sailing plan was to be called into the VTS. No call was even attempted until about 0411 hrs, more than an hour and half after entering the VTS area.

I must conclude that Respondent violated 33 CFR §161.19 and thus 46 USC §7703(1)(A)."

The Coast Guard also charged the licensed operator with **misconduct** for failing to ensure that the UTV was properly manned as required by 46 CFR §15.610. Additionally, the vessel operator was charged with turning over

navigational direction and control of the vessel to an unlicensed and unqualified individual. The Administrative Law Judge considered these two charges as they were essentially the same issue.

The licensed individual did not dispute these charges and the Administrative Law Judge ruled that: "I must agree with the [Coast Guard Investigating Officer]. Respondent's most serious relinquishment of direction and control of the vessel occurred when it entered the VTS area of the St. Mary's River system. Respondent knowing that [the unlicensed individual] had no knowledge of the area, was not particularly skilled in plotting a course, turned the helm over to [the unlicensed individual] and retired to sleep. This proved seriously mistaken. Again, [the unlicensed individual] went up the wrong channel (up the down-bound channel). Upon discovery and awakening, Respondent had to resume control, reverse the vessel's course, exit the area, and return to the proper channel. I find the specification proven.ö

The Coast Guard also charged the licensed operator, as the master of the vessel and the responsible person in charge, with **negligently** allowing the vessel to be operated without required equipment such as an EPIRB, navigation charts, navigation publications, lifesaving equipment, anchor ready for letting go, navigation lights, VHF FM radio and bell. Allowing the vessel to sail without this navigation and safety equipment is not an action that a reasonable and prudent person of the same station, under the same circumstances, would fail to perform.

The Administrative Law Judge ruled that: "The Respondent did not seriously contest this charge, or at least has not filed any closing argument addressing these allegations. In short, Respondent's failure to address or defend these allegations tacitly admits them.

öThe record evidence is quite plain that the [UTV] did not have the proper navigation charts and publications. It did not have various lifesaving equipment, such as personal flotation devices, or sufficient life preservers on board. The EPIRB device was onboard but still in the original container and thus not mounted and ready for deployment in the event of a capsizing of the vessel.

öI have found that Respondent was in reality the master of the [UTV]. He was placed on that vessel because the owner of the vessel had confidence in him to see that its voyage and tow to its destination would run smoothly. As the master he is the individual primarily charged with the care and safety of the vessel and crew. Commandant Decision on Appeal (CDOA) 2098 (Cordish)⁽¹⁾. öIn order to ensure the proper management and safety of his vessel, and crew, the master must keep himself well informed of any defects in the vessel, which could pose a significant hazard to life or property.ö CDOA 2307 (Gaboury). öAbsence of proper personal flotation devices, mounted EPIRB when more than four miles off shore as this vessel was at time, poses significant hazards which cannot be overlooked.ö I find this specification proven."

With regard to the Coast Guard's charge that the licensed individual was physically incompetent to serve as a master or operator of a towing vessel, the Administrative Law Judge determined that there was insufficient evidence to conclude physical incompetence and dismissed the charge and specification.

The Administrative Law Judge concluded that all of the charges in the complaint except for the allegation of physical incompetence had been proved. Given the nature and severity of the charges, the Administrative Law Judge suspended the respondent's license for a minimum of six months.⁽²⁾ [⁽¹⁾These and other Commandant Decisions on Appeal are on the Internet at:www.uscg.mil/hq/g-cj/appeals/index.htm. ⁽²⁾The vessel's operating company was assessed multiple civil penalty fines by the Coast Guard for the numerous infractions uncovered during the investigation of this case.]

COMMANDANT DECISION ON APPEAL #2293
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[Introduction: The Coast Guard is not sympathetic to towing vessel operators who undertake voyages of more than 12-hours duration in any 24-hour period without a second licensed operator on board. Although the Administrative Law Judge's opinion was appealed, the appeal did very little good. This decision has stood for almost 20 years.]

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 15270
issued to: FRANK H. COLE

DECISION OF THE VICE COMMANDANT ON APPEAL

UNITED STATES COAST GUARD

#2292

FRANK H. COLE

This appeal has been taken in accordance with Title 46 U.S.C. 239(g) and 46 CFR 5.30-1.

By order dated 22 July 1981, an Administrative Law Judge of the United States Coast Guard at Jacksonville, Florida suspended Appellant's captioned license for two months, plus six months on twelve months' probation, upon finding him guilty of misconduct and negligence. The specifications of Charge I (misconduct), found proved, alleged that while serving as operator/person in charge on board the United States M/V GREEN COVE O.N. 587880, under authority of the license above captioned, from 16 March 1981 to 24 March 1981, Appellant wrongfully undertook a voyage in excess of 12 hours with one licensed operator and did wrongfully absent himself from the wheelhouse for a period of approximately 1½ hours on 23 March 1981, leaving the responsibility of navigation of the vessel and tow to an unlicensed deckhand.

The specification of Charge II (negligence), found proved, alleged that while serving as above on 23 March 1981, Appellant failed to post a proper watch in said vessel's pilot house thereby contributing to the collision between its tow and M/B FL 8158 BN, with loss of life.

The hearing was held at Jacksonville, Florida on 18 May 1981.

At the hearing, Appellant was represented by professional counsel and entered a plea of not guilty to the charges and each specification.

The Investigating Officer introduced in evidence a number of documentary exhibits and the testimony of five witnesses.

In defense, Appellant offered in evidence his testimony.

After the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charges and specifications had been proved. He then served a written order on Appellant suspending License No. 15270 and all documents issued to Appellant for a period of two months plus six months on twelve months' probation.

The entire decision was served on 30 July 1981 via registered mail. Appeal was timely filed on 19 August 1981 and perfected on 21 October 1981.

Findings of Fact: Between 16 March and 24 March, Appellant was serving as an operator on board the United States M/V GREEN COVE and acting under authority of his license. The vessel was continuously underway for at least one period in excess of 12 hours out of 24 between Jacksonville, Florida and Freeport, Grand Bahamas. Appellant was the only licensed operator on board for this voyage.

Appellant absented himself from the wheelhouse for approximately 1½ hours on 23 March 1981 leaving the operation of the vessel and its tow to an unlicensed mate. The vessel was in the Intracoastal Waterway, Halifax River, Florida. While Appellant was absent a collision occurred between the tow and a motorboat resulting in loss of life. The mate, although never licensed, had more than 48 years of tow boat experience.

Bases of Appeal: This appeal has been taken from the decision of the Administrative Law Judge. In his original appeal, Appellant concedes that the facts admitted during the hearing were sufficient to prove violations as alleged in Charge I and its specifications, but maintains that they were "technical" violations. It is urged that the competency of an unlicensed individual, should overcome the "technical" requirement of having a license. Appellant also contends that the evidence presented was insufficient to prove that he wrongfully absented himself from the wheelhouse of the vessel for a 1½-hour period. Appellant further agrees that a written admonition would be an appropriate sanction under the circumstances. In a supplement of his appeal, Appellant contends that all charges and specifications should be dismissed for lack of Jurisdiction based on Decision on Appeal No. 2249 (DURAND).

Appearances: Howell, Howell, Lilies, Braddock & Milton of Jacksonville, Florida by Joseph P. Milton, Esq.

Opinion: With respect to Charge II and its specification there is merit to Appellant's insistence that there was no subject matter jurisdiction. An operator is subject to charges for professional activities peculiar to his licensed status solely for the period during which he is directing and controlling the vessel pursuant to his license. See Appeal Decision No.s 2262 (SHERMAN), 2249 (DURAND) and 2153 (McKINNEY).

In this case, Appellant was not in control of the vessel when the collision occurred. Therefore, he cannot be held responsible for any failure to post a proper lookout at that time. See also Appeal Decision No. 2122 (RODIECK).

However, Charge I and its specifications relate to Appellant's role in proper manning and control of the vessel. The substance of the charge is a violation of 46 U.S.C. 405(b)(2).

In addressing the issue of jurisdiction in this case, the Administrative Law Judge in his opinion stated: "Therefore, until the Commandant decides otherwise, I elect to hold that where an individual is required to hold an operator's license as a condition of his employment as captain or master, the Coast Guard has jurisdiction...for acts or omissions committed in the performance of his duties as captain and master..."

It is common practice in the maritime industry to refer to operators of uninspected towing vessels as "captain." Neither the term "captain" nor "master" is mentioned in the law. The responsibilities of an operator and master are quite different. Fulfilling the manning requirements of a vessel is the responsibility of the master. However, the manning requirements spelled out in 46 U.S.C. 405(b)(2) are not the responsibility of an operator of uninspected towing vessels. The legislative history of 405(b)(2) and a careful reading of the statute itself establish that the operator's license is a control not a management license. That being the case, to obtain jurisdiction, even under the condition of employment test, conduct which could place the license in jeopardy must relate to control of the vessel. It is questioning whether ensuring vessel manning is included. See also Decision on Appeal 2169 (FOSSANI).

However, in addition to the manning requirement, 46 U.S.C. 406(b)(2) provides that "An uninspected towing vessel in order to assure safe navigation shall, while underway, be under the actual direction and control of a person licensed by the Secretary to operate in the particular geographic area..." The cited statute addresses control of a vessel. The conduct of Appellant impacted on the control of the vessel. This provides the basis for Coast Guard jurisdiction. Decision on Appeal No. 2058 (SEARS), sets forth guidelines for relinquishing control to an unlicensed operator. If one licensed operator is permitted to relinquish control, indiscriminately to an unlicensed individual, the statute would be meaningless.

The responsibility for violating this section of the statute should be placed on the operator. Appellant stipulated that he relinquished control to an unlicensed individual and went to his cabin from 0930 until 1100 but argues that, although unlicensed, the individual was more experienced than Appellant. However, the relevant test is the issuance of a license by the Coast Guard. The statute requires this. He was properly found guilty of Specification 2 of Charge I.

Conclusion: Specification 2 of Charge I alleging misconduct is proved. Specification I of Charge I and Charge II and its Specification are not proved. Since the specification found proved and those not proved resulted from one continuous event rather than separate events, the sanction as announced by the Judge is appropriate.

Order: The findings of the Administrative Law Judge with regard to Specification I of Charge I and Charge II and its Specification are set aside. The order of the Administrative Law Judge dated 22 July 1981 at Jacksonville, Florida as MODIFIED IS AFFIRMED.

B. L. Stabile

Vice Admiral, U. S. Coast Guard

Vice Commandant

Signed at Washington, D.C., this 4th day of March 1983.