

CASE NOTES

Officer's certificate suspension — drinking at sea

TNT ALLTRANS

Court of Marine Inquiry, 30 June 1986.

Sheppard J delivered the decision of the Court of Marine Inquiry. The matter involved the grounding of the *TNT Alltrans* on 25 March 1985 while on a voyage from Gladstone, Australia to New Zealand. The decision itself is extremely detailed, but in summary, the Court concluded that—

The grounding of the vessel resulted from the failure of the officer of the watch [Mr Warnholtz, the Second Officer] at 0100 hours or any later time, to change the course of the vessel from 092 degrees True to 101 degrees True. He failed to make the change of course because he suffered amnesia for at least the period 0100 hours to 0400 hours and possibly longer. His amnesia was due to the combined effect of intoxicating liquor imbibed in the last hour before the commencement of his watch just after midnight and excessive tiredness. An independent cause of the grounding was the failure of the lookout, Mr Pearl, to call the master or another officer when he perceived that Mr Warnholtz was under the influence of liquor.

As a result, Sheppard J recommended that the second officer's certificate be suspended, in effect, for a period of two years from the date of the casualty. Mr Warnholtz had not in fact been at sea since the casualty and the Court of Marine Inquiry has therefore recommended that the certificate be suspended until 31 March 1987. The court did not make any other recommendations for the suspension or removal of certificates of any other officer or member of the crew.

The court did however make certain recommendations in relation to drinking at sea in an endeavour to control the amount of drinking which is done. These recommendations are of significance to shipowners generally, and we reproduce the text of the recommendations in full. As the court pointed out, however, any system which is introduced will fail unless it is supervised by vigilant and responsible officers. The recommendations made by the court are as follows—

- (a) Forbidding drinking in cabins or any other parts of the vessel except the bars;
- (b) Encouraging the drinking of low alcohol beer;
- (c) Requiring deck officers, lookouts and duty engineers not to drink any liquor for a period, say six hours, before commencing duty;
- (d) Requiring such personnel, as they come on duty, to sign a statement that they have not imbibed liquor during a prescribed number of hours preceding the commencement of their watch. The statements should be provided for by regulation and the making of a false statement

- punishable. The statements could be made an adjunct to the Official Log, and thus be available for official inspection from time to time;
- (e) The regular examination of all bar sheets by both the Master and the Chief Officer; and the retention, for an appropriate time, of those sheets and of copies of bar accounts. In this case no evidence enables me to attribute any of the partly opened bottles of spirits and other liquors in the officers' bar to any person;
 - (f) The setting of a ceiling by the operator on the amount of liquor that could be brought aboard a vessel at any one time, and a ceiling on the amount of liquor which the vessel should be carrying;
 - (g) Bars should not be open 24 hours per day. Some limit should be set upon the hours. These could be from 11am to 11pm; I do not think they should be longer.

The court also turned its attention to the absence of offences in relation to ships which, do however, exist in relation to pilots of aircraft or drivers of trains or motor vehicles while under the influence of alcohol. The court has suggested that the law in relation to the operation of ships should be amended so that it contains similar provisions to those which apply to other forms of transport. The court has suggested that such offences would carry penalties which would include cancellation or suspension of certificates of competency whether or not the vessel was in danger or likely to be so.

Conflicting evidence was given during the course of the hearing as to the sobriety of the second officer. The court did not accept the evidence of Mr Warnholtz as to the limited amount of alcohol which he drank before going on watch. It did however accept that his condition was not such as to have required the master or chief officer who were on the bridge when Mr Warnholtz commenced his watch to have noticed his condition. A considerable amount of evidence was also given as to the lack of sleep which Mr Warnholtz had experienced during the preceding day. Evidence was given by many witnesses that they found it difficult to sleep when the vessel was at sea because of its propensity to roll. The court found that this was caused by the nature of the cargo carried, and more particularly, by the vessel's regular course across the Tasman sea. It found that the vessel was not badly designed and that a vessel built for the sort of trade in which the *TNT Alltrans* was engaged would be constructed in much the same way as the *TNT Alltrans*. Mr Warnholtz had admitted that he had an opportunity of sleeping between 1500 and 2230 hours prior to the casualty. The court referred to the many years of experience which Mr Warnholtz had as an officer and the obligation which he had to discipline himself to come to terms with his sleeping difficulties.

The court also made some comments in relation to the new procedure introduced by way of amendments to the Navigation Act in 1979. Section 372, which was repealed, gave the Court of Marine Inquiry the power, *inter alia*, to cancel or suspend certificates of competency of any master or ship's

officer. Sections 373 to 375B were also repealed and contained provisions consequential to those of section 372. Sheppard J stated that he accepted that the nature of the Court's functions is now clearly administrative in character rather than judicial. Under the Navigation (Orders) Regulations an authorised officer could cancel or suspend certificates. However, he could only take action in relation to a certificate on the basis of findings made by a Court of Marine Inquiry on relevant questions of fact.