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(voice of John Hughes Cooper):

Good morning to Captain and crew alike and welcome to the Admiralty Docket. This is John Hughes Cooper with a glimpse into your rights and responsibilities at sea and upon the navigable waters.

Today our subject is drug use by the helmsman of a merchant ship.

All agree that punishment is appropriate for drug use on the job by one directing the course and speed of a merchant ship which causes maritime disaster. Most agree that off the job drug use causing maritime disaster should also be punished. But what about drug use on vacation which results in a positive employer drug test and a negative Coast Guard drug test after a shipping accident?

The recent case of Exxon Shipping Company v. Exxon Seamen's Union is instructive.

On April 7, 1989, the EXXON WILMINGTON, a 635 foot oil tanker, ran aground in the Mississippi River in Louisiana. After the accident, under Coast Guard regulations and under Exxon's Alcohol and Drug Use Policy, Exxon Tested the captain, pilot, and helmsman for drugs and alcohol. Because the Coast Guard and Exxon use different screening levels, two sets of tests were conducted by two different laboratories.

Helmsman Morris Foster tested negative at the Coast Guard screening level but positive for marijuana at Exxon's Drug Policy screening level. Finding Foster's positive test a violation of its Drug Policy, Exxon fired Foster.

Exxon's Drug Policy was contained in its collective bargaining agreement. Disputes under the collective bargaining agreement are resolved through a grievance procedure which, in this case, culminated in arbitration. The arbitration board unanimously found that Foster's use of marijuana had been conclusively established and found that Foster had violated Exxon's Drug Policy, but concluded that termination was an excessive penalty. The arbitrators found no evidence that Foster had used or possessed drugs on company business or premises and credited testimony by an expert that an individual might be expected to test positive for marijuana 15 days after using it. The board ordered suspension rather than termination for Foster, citing no evidence that Foster was impaired at work.

In disagreeing with the Arbitration Board, the Court observed, "The distinction between on and off duty use is of limited value here because Foster falls neatly into neither category. He tested positive on duty for marijuana use that may have occurred off duty. More importantly, this distinction obscures the goal of . . . safe operation of vessels."

Coast Guard regulations require drug testing and impose stiff penalties on employees who fail drug tests. Through testing and penalties, the regulations seek to deter employees from operating vessels with impaired faculties. Whether an employee uses drugs on or off duty is relevant only to the extent it bears on impairment of employee vessel operators. The Court concluded that the test results served as a more accurate indicator of safe operation than

the location of Foster's drug use.

The Coast Guard regulations do not distinguish between on and off duty drug use. Instead, they provide that an individual who tests positive for drugs "shall be denied employment as a crewmember or removed from duties which directly affect the safety of the vessel's navigation or operations as soon as practicable and shall be subject to suspension and revocation proceedings against his or her license, certificate of registry, or merchant mariner's document...." 46 C.F.R. §16.201(c).

The Court concluded that employees operating vessels under the influence of drugs or other intoxicants pose an intolerable safety hazard.

More next week on The Admiralty Docket. Until then, remember your rights and responsibilities may change as you approach the shore and may God Almighty grant you pleasant sailing.

(second voice with Send Lawyers, Guns and Money):

The Admiralty Docket is written and narrated by John Hughes Cooper who specializes in admiralty law litigation with the law firm of Cooper & Raley. The legal principles discussed are general in nature. Laws change and even similar circumstances may call for application of different laws. If you have a question for a future edition of The Admiralty Docket please write to John Hughes Cooper at P. O. Box 1248, Charleston 29402.

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