
JURISDICTION : CORONER'S COURT OF WESTERN AUSTRALIA
ACT : CORONERS ACT 1996
CORONER : SARAH HELEN LINTON, DEPUTY STATE CORONER
HEARD : 8 FEBRUARY 2022
DELIVERED : 9 FEBRUARY 2022
FILE NO/S : CORC 467 of 2021
DECEASED : CHEN, PEI YAO

Catchwords:

Nil

Legislation:

Nil

Counsel Appearing:

Senior Constable C Robertson assisted the Coroner.

Case(s) referred to in decision(s):

Nil

Coroners Act 1996
(Section 26(1))

RECORD OF INVESTIGATION INTO DEATH

I, Sarah Helen Linton, Deputy State Coroner, having investigated the disappearance of Pei Yao CHEN with an inquest held at the Perth Coroner's Court, Court 85, CLC Building, 501 Hay Street, Perth on 8 February 2022, find that the death of Pei Yao CHEN has been established beyond all reasonable doubt and that the identity of the deceased person was Pei Yao CHEN and that death occurred on 6 October 2014 in the waters of the Indian Ocean near B-7 Anchorage Point approximately 13 miles from Port Hedland, Western Australia, as a result of drowning in the following circumstances:

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INTRODUCTION

1. Mr Pei Yao Chen was working as the Bosun aboard the cargo bulk carrier ship Cape Splendor in September/October 2014. The vessel had sailed from China to Port Hedland, Australia, for the purpose of exporting iron ore. It dropped anchor at B-7 Anchorage Point, approximately 13 miles from Port Hedland, on Saturday, 27 September 2014. There were 22 crew on board, including Mr Chen.
2. On Monday, 6 October 2014, Mr Chen was tasked by the Chief Mate to prepare the ship for berthing. This task included erecting an accommodation ladder along the side of the vessel. The bottom of the ladder rested about two metres above the water level and Mr Chen remarked to other crew members that he could see a lot of fish near the bottom of the ladder. During the lunch break, Mr Chen decided to try to go fishing at the base of the level. While on the ladder with his fishing gear, Mr Chen lost his balance and fell into the water.
3. Three lifebuoys and a life jacket were thrown to Mr Chen by crew members and he was seen trying to swim to them. The Master of the vessel was alerted to the 'man overboard' incident, and he ordered that the vessel's rescue boat be launched. As the rescue boat rounded the stern of the vessel, Mr Chen disappeared from sight beneath the surface of the water. The crew searched the area where he was last seen, but could find no sign of him. The authorities were notified and the WA Police coordinated a marine search and rescue effort, which continued until the afternoon of 8 October 2014, but no sign of Mr Chen was found.
4. In early 2021 a report was prepared by a police officer from the Missing Persons Team for the attention of the State Coroner. Mr Chen was identified as a long term missing person. The author of the report indicated that all evidence pointed to Mr Chen being deceased.
5. On the basis of the information provided by the WA Police in relation to Mr Chen's disappearance, I determined that pursuant to s 23 of the *Coroners Act 1996* (WA), there was reasonable cause to suspect that Mr Chen had died and that his death was a reportable death. I therefore made a direction that a coroner hold an inquest into the circumstances of the suspected death.¹
6. I held an inquest at the Perth Coroner's Court on 8 February 2022. The inquest consisted of the tendering of documentary evidence compiled through the police investigation conducted into Mr Chen's disappearance, as well as hearing evidence from a police officer, Sergeant Jenny Farman, who had reviewed the report.

BACKGROUND

7. Mr Chen was born in Fujian, a province in the south east of China, on 27 March 1973. He was 41 years of age when he disappeared in October 2014. Mr Chen first went to sea in 1994.

¹ Section 23 *Coroners Act* Direction of Deputy State Coroner Vicker dated 19 March 2019.

8. The Cape Splendor was a Singaporean registered ship and was owned and managed by a Singaporean company, U-Ming Marine Transport. The company had a fleet of 41 ships, of which the Cape Splendor was one, to carry out its core business of dry bulk shipping.²
9. Mr Chen joined U-Ming Marine as an able seaman in 2001, and first sailed as a Bosun for the company in 2010. He joined the crew of the Cape Splendor in November 2013, along with the Captain and Chief Mate, prior to its delivery from the shipyard in January 2014. The Cape Splendor had successfully completed seven voyages between Port Hedland and China before this incident.³
10. Mr Chen had received a Medical Clearance to certify he was fit for sea going on duty on 20 November 2013, indicating he had no known significant health conditions that would affect his ability to work safely on board the vessel.⁴
11. There were 22 crew, including the Captain, on board when the vessel made its way to Port Hedland in September 2014. There was no suggestion Mr Chen had any personal issues with any of the crew members.
12. The vessel arrived at its destination off the coast of Port Hedland on Saturday, 27 September 2014 and anchored at the B-7 anchorage point. While at anchor, the ship's crew went about their routine duties of cleaning, painting and minor maintenance tasks, while awaiting a berth to load their shipment of iron ore. During the morning of 5 October 2014, the Captain of the vessel, Captain I-Chag Chang, received information that the ship was scheduled to berth in the early hours of 7 October 2014.⁵
13. At 6.45 am on 6 October 2014, at their daily meeting to plan work, the Chief Mate gave Mr Chen a number of tasks in preparation for the ship's berthing. The tasks included preparing the mooring lines and accommodation ladder.⁶
14. Later that morning, Mr Chen and two able seamen donned lifejackets and began preparing to rig the port side accommodation ladder. It was unhoisted and swung out from the ship's side and they positioned the handrails and lowered the ladder to a height of about two metres above the water, so that the stanchions and side ropes could be correctly set.⁷
15. While rigging the port accommodation ladder, Mr Chen remarked to the others that there were many fish visible around the bottom of the ladder. By about 11.30 am, the work rigging the ladder was completed and the crew stopped for lunch. They left the

² Exhibit 1, Tab 4.

³ Exhibit 1, Tab 4.

⁴ Exhibit 1, Tab 1 and Tab 12.

⁵ Exhibit 1, Tab 4.

⁶ Exhibit 1, Tab 4.

⁷ Exhibit 1, Tab 4.

ladder in the lowered position while they took their lunchbreak, which was scheduled for two hours.⁸

'MAN OVERBOARD'

16. It was usual for the crew, including Mr Chen, to spend some of their recreation time at anchor fishing from the ship's deck. However, fishing during the lunch break was unusual as it was often too hot on the deck in the exposed sun during the middle of the day. However, on this day the accommodation ladder was rigged and in the ship's shadow, so Mr Chen decided to try to fish from the bottom of the ladder.⁹
17. At 12.38 pm, Mr Chen went to the cabin of another crew member, Able Seaman Abin Liu. Mr Chen asked Mr Liu for help. Mr Liu changed into work clothes and then went out onto the deck at about 12.45 pm. He saw Mr Chen already on the lower platform of the accommodation ladder. Mr Chen was bare chested, having tied the sleeves of his overalls around his waist, and was wearing slip-on shoes. He was getting fishing gear ready from a bucket that he had placed on a ladder step nearby. Mr Liu descended the ladder and then asked Mr Chen if he was comfortable with the angle of the platform. Mr Chen replied that he was. Despite the ship's procedures requiring crew to wear lifejackets when preparing the pilot/accommodation ladder, neither man was wearing a lifejacket at this time.¹⁰
18. Shortly after, Mr Chen was standing with both hands occupied with the fishing gear when the accommodation ladder moved. Mr Chen lost his balance and fell backwards off the platform into the water. Mr Liu quickly went back up the ladder to the deck and threw a nearby lifebuoy towards Mr Chen in the water. The lifebuoy fell about 20 metres short of Mr Chen's location. Mr Chen tried to swim towards the lifebuoy but he was being carried away by the current and could not reach it. The currents in the area are known to be very strong. Mr Liu went to the ship's office and at 12.50 pm he telephoned the Captain's cabin and informed him of the man overboard.¹¹
19. The Captain immediately used the public address system to broadcast an emergency call to all crew. Some crew members went to the deck and others went to the navigation bridge to keep a lookout and assist the officer on watch. The Captain and Chief Mate went to the deck and could see Mr Chen, who was now about 50 metres away from the ship's stern. He was trying, unsuccessfully, to swim towards three lifebuoys and a lifejacket that were now in the water, after the crew had thrown them in to try to help. Instructions were given to crew members to launch the ship's rescue boat, and the boat was in the water by 12.55 pm, with the Chief Mate, the First Engineer and the Ship's Carpenter on board. At this stage, Mr Chen was still visible in the water from the deck and the bridge. However, as the ship's rescue boat rounded the stern of the vessel, Mr Chen slipped from sight beneath the water.¹²

⁸ Exhibit 1, Tab 4.

⁹ Exhibit 1, Tab 4.

¹⁰ Exhibit 1, Tab 4.

¹¹ Exhibit 1, Tab 3 and Tab 4.

¹² Exhibit 1, Tab 4.

20. At 1.00 pm the Captain reported the man overboard to the Port Hedland Shipping Control Tower, which then broadcast an urgency message (Pan-Pan) to all ships in the port and at anchor indicating that a man had fallen overboard from Cape Splendor. Soon after, the rescue boat had reached a spot amongst the flotation aids that the crew had thrown in, but there was no sign of Mr Chen. The rescue boat crew continued searching amongst the aids and surrounding area while communicating by radio with the crew on board the ship, who had a better vantage point. Mr Chen could not be located.¹³
21. Mr Chen had last been seen by crew from the Cape Splendor around 1.10 pm, before he went under the water. It was noted in a later review of the circumstances that Mr Chen was fit and healthy and was able to swim, but there were a number of factors that may have affected his ability to keep afloat that day, including:¹⁴
- the shock of falling into the sea;
 - the weight of his sodden overalls;
 - possible entanglement with his fishing gear;
 - ingestion of sea water when trying to swim to the life buoy; and
 - the effort required to swim against the current in the prevailing sea and swell conditions.

THE FORMAL SEARCH FOR MR CHEN

22. The Control Tower notified responsible authorities, including the Port Hedland Harbour Master and the Joint Rescue Coordination Centre (JRCC) in Canberra. The JRCC assumed initial coordination of the incident response and provided details of a search area, before handing over responsibility for the search to the Fremantle Water Police, who are the marine search and rescue authority in Western Australia. A number of local organisations were asked to assist in the search, including the Port Hedland Volunteer Marine Rescue Service and a marine pilot transfer helicopter. By 1.30 pm, the helicopter was searching the area surrounding Cape Splendor and shortly after, the first boat arrived in the search area. In all, the helicopter, six boats from Port Hedland, the rescue boat from the Cape Splendor and the rescue boat from another ship anchored nearby, searched the waters. They continued the search for the rest of the afternoon until last light, but no sign of Mr Chen was found.¹⁵
23. The search resumed at first light on 7 October 2014 and continued all day until darkness. Specialist medical advice from Dr Paul Luckin indicated that there was little or no chance that Mr Chen would have survived beyond that evening. Nevertheless, at first light on 8 October 2014, two boats resumed the search for Mr Chen, concluding at midday when the search was formally suspended. No sign of Mr Chen was found at any time during the search.¹⁶

¹³ Exhibit 1, Tab 4.

¹⁴ Exhibit 1, Tab 4.

¹⁵ Exhibit 1, Tab 4.

¹⁶ Exhibit 1, Tab 3 and Tab 4.

24. A report prepared by Senior Constable O'Meara, who was the Water Police search coordinator for the incident, indicated in a report that the probability of detection if Mr Chen had been floating on the surface of the water was 99%, but once he went below the surface, it would have been almost impossible to sight him.¹⁷

ATSB INVESTIGATION REPORT

25. The Australian Transport Safety Bureau (ATSB) conducted an investigation into the suspected fatality, concentrating on any safety issues or system problems raised by the incident. The Final ATSB Safety Report was issued on 9 February 2016.¹⁸
26. The ATSB provided a detailed account of the events surrounding Mr Chen falling into the water and the unsuccessful search that followed.
27. The ATSB investigators found the man overboard emergency response by Cape Splendor's crew, port authorities and others was rapid and appropriate, and the search and rescue then coordinated was extensive, thorough and exhausted all opportunities for finding him.¹⁹
28. The primary concern was how Mr Chen came to fall into the water in the first place. It was noted in the investigation that the ship's safety management system including procedures and permits to safely undertake work over the side of the ship, including when rigging accommodation ladders. However, the investigators found that the crew's usual practices were contrary to the procedures and the crew did not appear to appreciate the importance of fall prevention when working over the side. Further, and notably, they did not generally consider that safe work precautions applied during recreational activities, such as fishing.²⁰
29. When Mr Chen went down to fish during a period of rest, it appeared the dangers involved were not adequately considered by him or the other crew member involved. Mr Chen had reportedly followed the required safety precautions, such as wearing a lifejacket and personal protective equipment when rigging the ladder, but the same risks and the need to mitigate them were ignored as he was undertaking a recreational activity.²¹
30. In conclusion, the ATSB investigation identified the primary safety issue was that the Cape Splendor's safety management system "procedures for working over the side of the ship were not effectively implemented. As a result, the ship's crew routinely did not take all the required safety precautions when working over the side. Further, they did not consider that any such precautions were necessary if going over the side when not working."²²

¹⁷ Exhibit 1, Tab 2 and Tab 3.

¹⁸ Exhibit 1, Tab 4.

¹⁹ Exhibit 1, Tab 4.

²⁰ Exhibit 1, Tab 4.

²¹ Exhibit 1, Tab 4.

²² Exhibit 1, Tab 4, p. 15.

31. Prior to the release of the ATSB's Final Report, U-Ming Marine Transport advised the ATSB that it had taken further safety action to address this safety issue, including prohibiting fishing from accommodation ladders and posting warning signs adjacent to the ladders, as well as using what had been learned from this incident to implement improved training based courses and enhance the safety culture across the fleet. In the Final Report, the ATSB indicated it was satisfied the safety action taken would reduce the risk of a similar accident occurring and assist in improving the safety culture on all the company's transport ships. Changes had also been made to enhance man overboard rescue procedures, although the efforts to recover Mr Chen were considered to be prompt and appropriate at the time.²³
32. The ATSB also issued general safety advisory notices to shipmasters, owners and operators to promote the importance of an effective safety culture and safety awareness during both work and recreational activities.²⁴

POLICE INVESTIGATION

33. Acting Sergeant Wiltshire, Detective Darren Royle and two other police officers from the Port Hedland Police Station attended the vessel on 6 October 2014 and took written statements from the Captain and Mr Liu about the incident. Mr Chen's personal details and next of kin details were also obtained and personal items from which Mr Chen's DNA could be extracted, if remains were later found. Mr Chen's cabin was searched and his passport was seized. The attending police officers found no evidence to suggest there was a criminal element to Mr Chen's disappearance.²⁵
34. The police investigation concluded Mr Chen most likely went below the water's surface due to exhaustion caused by attempting to swim against the fast-flowing current. Once under the water, it was almost impossible to see him, and as time went on, marine creatures and natural environmental factors may have carried his body away. It was felt that all avenues to locate him had been properly exercised.²⁶
35. On 7 October 2014 the shipping agent arranged for Mr Chen's next of kin in China to be advised 'face to face' of Mr Chen's disappearance. Senior Constable Paul Crawshaw from the Water Police also contacted the Chinese Consulate in Perth and Canberra to advise them of the situation and to request that they enable contact between the WA Police and Mr Chen's family. On 8 October 2014, Mr Chen's brother, Mr Ziewn Chen, contacted Water Police, as requested.²⁷
36. On 1 July 2021, Senior Constable Robertson sent an email to Mr Ziewn Chen indicating that there is no new information in relation to his brother's disappearance and an inquest was scheduled to be heard in due course. Senior Constable Robertson

²³ Exhibit 1, Tab 4.

²⁴ Exhibit 1, Tab 4.

²⁵ Exhibit 1, Tab 2.

²⁶ Exhibit 1, Tab 3.

²⁷ Exhibit 1, Tab 2, p. 7.

offered to provide additional information, if required. No response has been received to date.

37. Mr Chen's family have not provided any information to the police to contradict the conclusion of the police that Mr Chen died on 6 October 2014.
38. WA police officers conducted routine 'proof of life' checks with State and Federal government agencies, who reported there had been no contact with Mr Chen.²⁸
39. A recent review of the evidence obtained during the investigation led by Senior Constable Burr from the Homicide Squad, Missing Persons Team, to conclude that Mr Chen most likely died after succumbing to fatigue when attempting to swim back to the Cape Splendor on 6 October 2014.²⁹

CONCLUSION

40. I am satisfied beyond reasonable doubt that Mr Chen died shortly after he fell into the water on 6 October 2014. The evidence is sufficient for me to be satisfied, on the balance of probabilities, that he drowned and the death occurred by way of accident.

S H Linton
Deputy State Coroner
9 February 2022

²⁸ Exhibit 1, Tab 2.

²⁹ Exhibit 1, Tab 2.