

In the Matter of License No. 155074
Issued to: TIMOTHY E. O'LEARY

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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TIMOTHY E. O'LEARY

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By order dated 18 November, 1953, an Examiner of the United States Coast Guard at Cleveland, Ohio, suspended License No. 155074 issued to Timothy E. O'Leary upon finding him guilty of inattention to duty based upon a specification alleging in substance that while serving as Master on board the American SS PIONEER under authority of the document above described, on or about 2 October, 1953, at 2258, while said vessel was in the Upper St. Clair River, he violated Rule 26 of the Pilot Rules for the Great Lakes (33 U.S.C. 291) by failing to reduce the speed of his ship to within a half mile of the upbound German MV WALLSCHIFF and Appellant was in doubt as to whether his passing signal was understood by the WALLSCHIFF, thereby contributing to a collision between the WALLSCHIFF and the PIONEER.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by attorneys of his own selection and he entered a plea of "not

guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence several documentary exhibits in addition to the testimony of the Third Mate, Wheelsman and Chief Engineer of the PIONEER.

At this point, counsel for Appellant made a motion to dismiss on several grounds. The Examiner reserved his decision on the motion but he denied the motion when he rendered his decision.

In defense, Appellant offered in evidence his own sworn testimony and the expert testimony of Captain John C. Murray who is an authority on navigation in the Great Lakes area.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order suspending Appellant's License No. 155074 and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of nine months - three months outright suspension and six months on twelve months probation from the date of the termination of the outright suspension.

From that order, this appeal as been taken, and it is urged that:

POINT I. The sole point of issue is Appellant's management of his vessel from the time he sounded the first danger signal until he ordered full speed astern.

POINT II. The physical situation was such that Appellant had a period only slightly in excess of one minute in which to act between the time when he sounded the first danger signal and saw the WALLSCHIFF head across the river and the time when the collision occurred.

POINT III. The charge and specification should have been

dismissed at the close of the Investigating Officer's case. There is no evidence in the record as to what constituted bare steerageway for this vessel in the St. Clair River; but there is evidence that there was insufficient time to appreciably reduce the speed of the PIONEER after she sounded the danger signal.

POINT IV. The uncontradicted evidence offered by Appellant completely justified his management of the PIONEER. The evidence shows that any reduction in the engine speed of the PIONEER would have resulted in complete loss of control and the stern would have been swung far to starboard by the swift current until the vessel was broadside in the river. This would have created danger of collision with the ship astern of the PIONEER and would not have lessened the risk of collision with the WALLSCHIFF.

POINTS V AND VI. Appellant's position is supported by the uncontradicted evidence in the record. The Examiner should not have rejected the testimony given by Captain Murray who is recognized to be an expert navigator on the Great Lakes.

POINT VII. By reason of the special circumstances existing at the time the first danger signal was sounded by the PIONEER, the navigational situation clearly was governed by Rule 27 rather than Rule 26. The only possibility of avoiding collision was for Appellant to maintain maximum control over his vessel by not altering her engine speed. The PIONEER was *in extremis* from the time Appellant sounded the first danger signal and the WALLSCHIFF altered her course.

In conclusion, it is submitted that the decision of the Examiner should be reversed.

APPEARANCES: Messrs. McCreary, Hinslea and Ray, of Cleveland, Ohio, by Lucian Y. Ray and Theodore C. Robinson, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 2 October, 1953, Appellant was serving as Master on board

the American SS PIONEER and acting under authority of his License No. 155074 while the ship was downbound on the St. Clair River enroute from Lake Huron to Lake Erie with a cargo of 9,004 tons of iron ore.

The PIONEER is a conventional Great Lakes bulk carrier with a single screw and powered by a reciprocating engine capable of developing 1600 horsepower. She is 504 feet in length, 54 feet in beam and 31 feet in depth. Her draft at the times in question was several inches less than 20 feet.

At 2256 on 2 October, 1953, the PIONEER passed Fort Gratiot Light (which marks the upper entrance to the St. Clair River) and approached the Blue Water Bridge which crosses the river approximately 2500 feet below Fort Gratiot Light. The PIONEER was making her normal full speed of about 11 miles per hour through the water as she followed the usual downbound course of 207 degrees true steering on the Fort Gratiot Range. There was a following current of about 5 miles per hour which gave the PIONEER a speed over the ground of approximately 16 miles per hour. It was a dark night but the weather was clear and visibility was good. Appellant was in command of the navigation of the PIONEER. The Third Mate and wheelsman were also in the pilothouse.

The St. Clair River bends to the left, looking downstream, below the Blue Water Bridge. The downbound course changes from 207 and 183 degrees true at a point 500 feet below the bridge; and it changes again at a point 2500 feet below the bridge to 161 degrees true. Due to the strength of the current, it is not necessary to use the rudder to change the course of a downbound vessel to the left in order to follow the bend of the river. The current will carry the stern to the right and cause the bow to go to the left when the rudder is amidships.

At about 2258, the PIONEER passed under the bridge in midchannel and Appellant ordered the steering wheel amidships. At the bridge, the river channel is about 800 feet in width and it widens to more than 1,000 feet below the bridge.

At about the time the PIONEER reached the bridge, Appellant observed an upbound vessel below the bridge and close to shore on the American (westerly) side of the river. This vessel was

subsequently identified as the German MV WALLSCHIFF which is 206 feet in length and 32 feet in beam. She was carrying 325 metric tons of sheet steel. Another downbound vessel was about 5,000 feet astern of the PIONEER at this time.

When the PIONEER was just below the bridge and approximately 3,000 feet distant from the WALLSCHIFF, Appellant sounded a two-blast signal for a starboard to starboard passing and ordered the wheelsman to put the wheel to the left to increase the PIONEER's swing in that direction.

This two-blast signal was in accordance with the Great Lakes Pilot Rule 24 which gives the descending steamer the right of way and the obligation to initiate a passing signal, to indicate which side she elects to take, before the vessels approach within one-half mile to each other.

The PIONEER continued to swing to the left awaiting an answer from the WALLSCHIFF. When no reply was received after about 30 seconds, Appellant sounded a danger signal of five short blasts and the general alarm aboard the ship. There was no alteration of speed ordered by Appellant although the distance between the two vessels was then approximately 2,000 feet. Immediately after the danger signal was sounded, Appellant observed that the WALLSCHIFF was turning to her right and starting to head diagonally across the river on a course of approximately 045 degrees true. Appellant ordered hard left rudder and sounded another two-blast signal followed by an additional danger signal. When the other vessel did not reply or alter her course and appellant realized that collision was inevitable, he ordered the engines of the PIONEER full speed astern and the wheel amidships. The two vessels were then about 200 feet apart and a few seconds later the bow of the PIONEER struck the port side of the WALLSCHIFF at an angle of 90 degrees. The collision occurred about 2500 feet below the Blue Water Bridge and near the middle of the river. The WALLSCHIFF was holed and she sank after she was pushed into shallow water by the PIONEER.

Appellant has no record of prior disciplinary action during the twenty-five years he has held a Great Lakes Master's license.

OPINION

After carefully reviewing the record in this case, I am not satisfied that the evidence supports the charge. In my judgment, it would have been futile for Appellant to have given the order to reverse the engines of the PIONEER at the time when he sounded the first danger signal. Such action probably would have resulted in the loss of control of the vessel due to her speed, the current at this point and other peculiar navigational features involved. this charge and specification will be dismissed.

ORDER

the order of the Examiner dated at Cleveland, Ohio, on 18 November, 1953, is REVERSED, VACATED AND SET ASIDE. The charge and specification are hereby dismissed.

A. C. Richmond
Vice Admiral, United States coast Guard
Commandant

Dated at Washing, D. C., this 10th day of August, 1954.

***** END OF DECISION NO. 758 *****

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