

In the Matter of License No. 9986
Issued to: EDWARD H. EATON, JR.

DECISION OF FINAL ORDER OF THE COMMANDANT
United States Coast Guard

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EDWARD H. EATON, JR.

This case comes before me by virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations 137.11-1 on appeal from an order entered 17 January, 1949, by an Examiner of the United States Coast Guard at Norfolk, Virginia, suspending Appellant's License No. 9986 as Master for a period of twelve months from that date, upon finding him guilty of negligence. The order provided that the first six months' suspension should be effective forthwith and the remaining six months should not become effective if no charge under R.S. 4450 is proved against Appellant for a period of twenty-four months from 17 July, 1949.

Specifically, Appellant was charged with negligence for that while serving as Master and Pilot of the SS DISTRICT OF COLUMBIA under authority of his duly issued license on or about 31 October, 1948, he failed to navigate said vessel at a moderate rate of speed in thick fog, and as a result collision ensued between said vessel and the SS GEORGIA causing the death of one person. At the hearing, Appellant was represented by counsel and entered a plea of "not guilty" to the charge and specification. A motion was made by Appellant's counsel that the proceedings be dismissed because the Coast Guard is without jurisdiction or right to disturb or affect the license of Appellant on the authority of *Bulger vs. Benson*,

262 Fed. 929; 251 Fed. 757. This motion was overruled and the case proceeded to a determination.

Only one witness was called by the Investigating Officer to prove the charge and specification; Appellant voluntarily testified in his own behalf and called six additional witnesses whose testimony was primarily addressed to Appellant's long and excellent record in the service of the Norfolk and Washington Steamboat Company; he also offered a file of letters which had been sent to him without solicitation by a number of persons whose standing in the community is irreproachable reflecting their opinion of Appellant's capabilities, seamanship and character.

From the suspension order supra this appeal has been taken and it is now urged:

1. The Examiner erred in that he imposed an excessive penalty for what he expressly found to be a case of ordinary or slight negligence;
2. The Examiner erred in *not* finding that Anchorage Area "A" in Hampton Roads is improperly laid out, in that it cuts into the fairway at an angle and unnecessarily obstructs and hazards navigation;
3. The Examiner erred in connection with finding No. 53 ("That Captain Eaton made a customary practice of running from Old Point Comfort to Norfolk through said Anchorage Area "A")
in *not* making an additional finding based upon uncontradicted evidence that it is the customary practice of the large majority of vessels entering Hampton Roads, and particularly of the Washington, Baltimore and Cape Charles boats which regularly stop at Old Point Comfort of passing through the corner of Anchorage Area "A".
4. The Examiner erred in *not* making a finding to the effect stated in his opinion, that the tanker GEORGIA unnecessarily and in violation of law entered Hampton Roads from Chesapeake Bay at night when the fog was dense; that she intended to anchor in the explosive anchorage but became lost, nearly went aground and felt her way to the nearest anchorage which she knew to be

improper; and that she anchored in a position known to be exposed to and in the path of shipping in Hampton Roads; and

5. The Examiner erred in connection with finding No. 31 /("That on the morning of October 31st, 1948, she - the SS DISTRICT OF COLUMBIA - arrived at her wharf at Old Point Comfort at 0607, some twenty-three minutes prior to her advertized schedule of arrival.")

in *not* making an additional finding that a current of at least one and a half knots was favorable to the DISTRICT OF COLUMBIA throughout the entire voyage from Washington down the Potomac River and Chesapeake Bay on the night immediately preceding the collision.

Based upon my careful study of the record prepared in this case, I hereby make the following

FINDINGS OF FACT

On 31 October, 1948, this Appellant was serving as Master and Pilot of the SS DISTRICT OF COLUMBIA under authority of his duly issued Master's License No. 9986. At that time, the vessel was on a voyage from Washington, D.C. to Norfolk, Virginia, and in the usual course of that voyage, called at Old Point Comfort en route for the purpose of landing freight and passengers.

The southbound passage on this occasion prior to arrival at Old Point Comfort had been uneventful, and normal weather and sea conditions were encountered; the vessel arrived at Old Point Comfort at about 0607 and remained there until 0700 when its lines were cast off and it maneuvered to a course which would bring it to Norfolk. This course required that the vessel pass through a position of a well-defined anchorage ground identified as Anchorage Area "A" in Hampton Roads.

After clearing the dock at Old Point Comfort, Appellant ordered the engine telegraph placed at full speed ahead and the telegraph remained in that position until after collision occurred.

When the vessel left the landing, Appellant was on the bridge attended by the Chief Officer and Quartermaster; a lookout was

stationed on deck near the bow. The vessel was clear of the dock at about 0702 and promptly encountered fog conditions which became rapidly worse until it was impossible to discern objects for a greater distance than "one or two ship lengths." Regulation fog signals were being sounded by the DISTRICT OF COLUMBIA and a very short time before collision, the bell of a ship at anchor was heard bearing 4 or 5 points off the starboard bow and within one-half or three-fourths of a minute thereafter the bow of the SS GEORGIA appeared out of the fog too close for Appellant to take any action for avoidance of collision.

The bow of the GEORGIA contacted the starboard side of the DISTRICT OF COLUMBIA about 100 to 150 feet from the stem. One passenger on the DISTRICT OF COLUMBIA was killed as a result of the collision.

The GEORGIA had picked up its pilot off Cape Henry and was destined to the Texas Oil Dock. Because of consistently thick fog conditions, the pilot of the GEORGIA had brought her to anchorage off Old Point Comfort around 0200 on the morning of 31 October, and thereafter carried out the regulation fog signals for a vessel at anchor. The GEORGIA was at rest when the collision occurred, and sustained extensive physical damage; there were no lives lost or personal injuries sustained by personnel on that vessel. The testimony of the witnesses on the GEORGIA indicates the visibility prevailing at and immediately before the collision was lower than the estimate of this Appellant.

OPINION

I am profoundly impressed by the record insofar as it concerns Appellant's prior performance and character. I am, also, conscious of the hazards attending steamship operation and the need for continuing a voyage under circumstances that make such continuation precarious.

But the rule which is involved in the determination of this case permits no deviation from its terms and requires "Every vessel shall, in a fog * * * * go at a moderate speed having careful regard to the existing circumstances and conditions.

"A steam vessel hearing apparently forward of her beam, the

fog signal of a vessel the position of which is not ascertained, shall, so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over."

If it be conceded that the engines of the DISTRICT OF COLUMBIA had not attained full power in a forward direction, the testimony seems to clearly demonstrate that immediately before the collision, the DISTRICT OF COLUMBIA was averaging approximately twelve miles an hour and I have no hesitance in expressing my opinion that such speed is not "moderate" especially in the light of Appellant's own admission that he had expected to find vessels anchored anywhere in dense fog (R. 50) - even in a channel or restricted area.

The second point assigned by Appellant is not within the province of the Coast Guard to determine. Whether properly or improperly laid out, the fact remains that the anchorage ground was marked and Appellant had knowledge of it.

I do not think the Examiner erred as assigned in Appellant's third point. In my opinion the fact that some custom exists which under all circumstances may prove dangerous does not warrant treating it as legal; and this is particularly true where such custom, if followed, is in derogation of and in conflict with a positive statute (Article 16, Inland Rules, 33 United States Code 192).

The fourth error assigned relates to alleged improprieties in the maneuvering of the GEORGIA. I do not consider the point well taken; the question before me concerns the handling of the DISTRICT OF COLUMBIA and in the light of Appellant's testimony referred to above (R. 50) I see no error in the Examiner's finding on the point.

With respect to point 5, it may be observed that the conditions existing before the DISTRICT OF COLUMBIA arrived at Hampton Roads are not material to a determination of Appellant's action at and after the time he departed from Old Point Comfort.

In view of the loss of life and extensive property damage which attended this collision, it is my opinion the order entered

by the Examiner is not excessive.

On the whole case I am of opinion that the action of the Examiner is proper and appropriate and said order is therefore AFFIRMED.

J.F. FARLEY
Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 15th day of April, 1949.

***** END OF DECISION NO. 322 *****

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