

In the Matter of License No. 175758
Issued to: CONRAD CARLSEN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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CONRAD CARLSEN

This appeal comes before me in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

On 24 May, 1949, Appellant appeared before an Examiner of the United States Coast Guard at San Francisco, California, to answer a charge of "inattention to duty" supported by a specification alleging that while Appellant was serving as Master on board the American SS GEORGE BOUTWELL, under authority of License No. 175758, he did, "on or about 14 and 15 August, 1947, cause to be steered continuously a course of 307.5 true, such course having an inadequate allowance for the possibility of error which a reasonably prudent navigator should have foreseen in the then existing circumstances, such steering contributing materially to the stranding of your vessel on 15 August, 1947."

At the hearing, Appellant was informed as to the nature of the proceedings, the rights to which he was entitled and the possible outcome of the hearing. Appellant was represented by counsel of his own choice and a plea of "not guilty" was entered to the charge and specification. The Investigating Officer made his opening statement and then rested his case after having introduced in

evidence depositions, taken shortly after the stranding occurred, and several other exhibits. After closing arguments had been completed by both Appellant's counsel and the Investigating Officer, the Examiner found the charge and specification "proved" and entered an order suspending Appellant's license for a period of four months from 11 July, 1949. The license in question had already been suspended for a period extending until 11 July, 1949, as the result of a prior hearing concerning a subsequent stranding of a ship under Appellant's command.

The appeal states that the order imposed is not justified for the following reasons:

1. The findings of the Examiner are not supported by the evidence.
2. The negligence of the Second Mate, who was on watch at the time of the stranding, was the sole proximate cause of the stranding. His errors were so glaring that they form a complete intervening cause of disaster.
3. The order erroneously takes into consideration, as part of Appellant's prior record, a casualty arising subsequent to the casualty here under investigation.
4. The order is an excessive "sentence" as compared to the "sentence" imposed for the subsequent stranding.

FINDINGS OF FACT

On or about 14 and 15 August, 1947, Appellant was serving as Master on board the American SS GEORGE BOUTWELL, under authority of License No. 175758, while the ship was underway in the East China Sea steaming in a northwesterly direction. The average speed made good by the ship during the twenty-four hour period from noon on 13 August, 1947, to noon on 14 August, 1947, was 11.2 knots. The ship was making 69 RPM during this period.

At 0915 on 14 August, 1947, the BOUTWELL took departure on Kusakaki Shima Light bearing 143 degrees true, distant five and a half miles. Appellant had obtained and plotted the 0915 fix which was the last definite fix before the ship ran aground about seventeen hours and fifty-two minutes later at 0307 on 15 August,

1947. From 0915 on 14 August until she ran aground, the BOUTWELL was steering a course of 307.5° true and proceeding at a speed of 69 RPM. If the ship had made good the course of 307.5° true and the same speed of 11.2 knots which was the speed made during the twenty-four hour period mentioned above, she would have passed Mara To Light abeam to starboard at a distance of approximately five miles. Since the distance from the 0915 fix to Mara To Light is 204 miles, the ship would have passed the light abeam at about 0327 on 15 August, 1947, more than 18 hours after the 0915 fix.

Subsequent to 0915, various visual bearings were taken on Uji Gunto Island and the Second Mate later advanced one of the latter bearing lines in order to cross it with the noon sun line and obtain a running fix for the noon position. This fix was given little credence by Appellant since it does not appear to be very accurate.

At 1636, on 14 August, 1947, Danjo Gunto Island was abeam to starboard but it was too far distant to obtain a bearing on the light on the island. At this point, the ship was estimated to be approximately 124 miles from Mara To Light. Appellant informed the Second Mate of this fact and told him to keep a good lookout since he would pick up Mara To on the last part of his 2400 to 0400 watch. But although Appellant knew from experience that Mara To Light would be extinguished, he failed to inform the Second Mate of this fact at any time.

Based on the 0915 fix and the 1636 abeam bearing of Danjo Gunto, the BOUTWELL had advanced at the rate of 10.8 knots between these two points.

Making allowance for a speed of advance of 11.3 knots, Appellant computed his Estimated Time of Arrival five miles abeam of Mara To Island to be 0336 on 15 August, 1947, since the latter island was 124 miles from the 1636 estimated position. Consequently, Appellant left instructions to be called at 0300.

At a few minutes before midnight, on 14 August, 1947, the Second Mate relieved the watch. Prior to doing so, he checked the chart and estimated, from the distance of 124 from 1636 and the previous day's speed of 11.2 knots, that the ship would arrive off Mara To Island at 0340. The Second Mate also noted Appellant's

call for 0300 and read the standing night orders. The latter included instructions to call Appellant at once "if in any doubt, or in the event of making the land or a shore light unexpectedly." There was nothing in the night orders about Mara To Light being out and the Second Mate expected it to be lighted.

At this time, the sky was overcast and the moon was not visible but the weather was clear and calm. These conditions prevailed up to the time of the grounding at 0307. At various times during the watch, the lights of fishing boats were sighted off the starboard and port bows. No other lights were sighted before the grounding.

At 0250, the lookout on the flying bridge reported shadows four points on the port bow. The Second Mate checked this report visually with his binoculars and then went to the chart room and checked it on the chart. Since the chart showed that no land should be in sight yet, he assumed that only low clouds and shadows had been sighted. Hence, he did not call Appellant nor did he change the course or speed of the ship. When the Second Mate returned to the bridge, he saw dark masses ahead and received reports from the lookouts of shadows on the starboard side and dead ahead. Still he failed to take any precautions since he did not see Mara To Light and he expected to see it when they approached the land. Neither the fathometer nor the direction finder were utilized in an attempt to ascertain the position of the ship.

At 0305, the Second Mate called Appellant and the latter was not yet on the bridge when the ship ran aground at 0307 on a shoal approximately one mile east of Kapa To Island. The weather conditions were the same as at 2400 and no change of course or speed had been made since the last definite fix at 0915 on 14 August.

The scene of the stranding was seven miles off the projected course line of 307.5° true, 126 miles from the estimated position abeam Danjo Gunto at 1636 on 14 August and 206 miles from the last accurate fix at 0915 on 14 August. Consequently, the ship had made good a course of $309 \frac{3}{4}^{\circ}$ true and speed of 11.5 knots since 0915 on 14 August.

OPINION

The basic facts involved in this case are not disputed by either party. It is agreed that the BOUTWELL, under Appellant's command, took its departure at 0915 on 14 August for a point five miles abeam of an island approximately 204 miles distant. There was not an accurate fix obtained from the point of departure until the ship ran aground. It was necessary to make good a course of 307.5 true in order to arrive at the destination some seventeen or eighteen hours after departure and this course was steered continuously up to the time of the stranding.

It is conceded that the mate on watch should have called Appellant upon receiving reports that the lookout reported dark shadows close aboard; that the mate should have operated the fathometer; that he should have stopped or slowed the ship and taken other measures necessary to prevent the ship from stranding. Hence, the only issue is whether the mate's negligence was such an intervening cause as to relieve Appellant of all fault. Obviously, Appellant would have been guilty of the charge of "inattention to duty" if there had been no fault on the part of the mate on watch at the time of stranding. Consequently, if the accident might have happened under similar circumstances except that the intervening errors were absent, then Appellant has been justifiably found guilty of "inattention to duty" because of his failure to adequately protect the ship against mishap.

Generally speaking, the duties and responsibilities of the Master of a ship are very exacting. This is particularly true while the ship is underway at sea beyond the reach of other authority. Discipline demands that his authority be supreme and his commands unquestioned except in extraordinary cases. Hence, his decisions and judgment must be extremely accurate as well as cautious in order to be beyond reproach. The Master is on duty at all times and responsible for the proper management and safety of the vessel. He must be constantly vigilant and his guilt or innocence must be judged by that degree of care which must be exercised, so far as is possible, to avoid any danger to the ship, cargo, passengers and crew.

Certainly, some blame must rest on the shoulders of the Second Mate in this case; but since the position of the Master of a ship at sea is one of such heavy responsibility, he must take more than

ordinary measures to prevent accidents related directly to the errors of others. What a reasonably prudent man in some other station of life would do is seldom sufficient for someone in the position of Master of a valuable ship sailing the seas. Since, practically speaking, "inattention to duty" is the same as "negligence," the analogy between what a "reasonably prudent man" would do and what Appellant did is important in this case.

Appellant contends (Point 2) that the negligence of the Second Mate was the sole proximate cause of the stranding. But even though the accident could have been avoided by prompt action on the part of the Second Mate, the failure of the latter to act does not excuse the prior imprudent judgment exercised by Appellant. Acting as Master of the BOUTWELL, Appellant issued orders for the ship to be steered on a course which he thought would carry the vessel within five miles of a small unlighted island over two hundred miles away from the point of the last accurate fix obtained. The island is in the vicinity of shallow water and shoals, it was a dark night, and the ship was expected to arrive near this island at night approximately eighteen hours after having been at the position of the last fix. Considering these facts, it is apparent that Appellant relied more heavily on the Second Mate's judgment than on his own cautious judgment as he was duty bound to do.

The Master of a ship may not rely on others to take the full blame for damage resulting from their negligence especially when the danger would have been avoided if the Master had taken proper steps to prevent the errors of others from jeopardizing the safety of the ship. The negligence of an inferior officer in the performance of his duties cannot relieve the Master of responsibility unless he has taken all reasonable precautions to nullify the effects of the mistakes of such an officer. This is because of the greater degree of responsibility and the more demanding duties imposed upon the Master. The latter is relieved of responsibility only when no danger could result under normal circumstances without the accompanying negligence of others. Although the negligence of the Second Mate was the predominant cause of the grounding, Appellant should have ordered such a course as would have made it impossible for him to have committed the errors he did.

In view of the surrounding circumstances in this case, it is

evident that Appellant unnecessarily exposed his ship to danger which resulted in damage regardless of the omissions committed by the Second Mate. This is the basis of the offense charged.

Considering the speed of advance of the ship and the requisite caution imposed upon Appellant, it is my opinion that he failed to allow a reasonable margin for error in the dead reckoning course set for such a long period of time. The course being steered was 307.5° true and the course made good was $309 \frac{3}{4}^{\circ}$ true, a difference of only $2 \frac{1}{4}$ degrees over a distance of more than 200 miles. An error of only $1 \frac{1}{2}$ degrees would have caused the ship to head directly for Mara To Light. An allowance for such a small margin of error, considering the speed of advance and the approach to unlighted land on a dark night, certainly was not a display of discreet navigation. Although the noon position on 14 August is conceded to be inaccurate, it should not have been completely ignored by Appellant.

Consideration of this factor would have indicated that the ship was to the right of the intended course and this should have influenced Appellant to allow a greater margin of error in the course set.

The value of Appellant's contention (Point 1) that the Examiner's finding of fault based upon failure to take positions from 0915 to 2200 on 14 August has no material effect on the ultimate conclusions in this proceeding. Regardless of whether subsequent fixes could have been obtained, the 0915 fix should have been used to estimate the time of arrival abeam Mara To because this was the last accurate position known at any given time before the ship ran aground. In conjunction with the distance between this latter position and Mara To (204 miles), Appellant should have used the speed made good for the previous 24 hours (11.2 knots), on which to base to base his E.T.A. abeam Mara To. Appellant should have realized that the speed between 0915 and 1636 was likely to be inaccurate because admittedly the 1636 position was not based on an accurate bearing on Danjo Gunto. Based on 204 miles and 11.2 knots, the E.T.A. Mara To would have been 0327. Computing the E.T.A. on these figures, which allow no margin of error for the speed made good, Appellant would have been awakened (if he had been called 36 minutes before the E.T.A.) at just about the same time the land was sighted at 0250; and, therefore, he could have acted in time to prevent the grounding. If he had allowed a margin for

error of one-half knot based on 11.2 knots, as he did with respect to his estimated speed of 10.8 knots between 0915 and 1636, the E.T.A. would have been 0241 and Appellant would have been called while the ship was more than an hour's steaming distance from the scene of the stranding. Such an allowance for the speed of advance would have been no more than the exercise of moderate care in view of the slight margin of error allowed for in the course selected. Under conditions where the possibility of danger existed, Appellant should have allowed enough time so that he would be certain to be on the bridge when approaching small islands at night.

Another important omission on Appellant's part was his failure to tell the Second Mate that Mara To Light was extinguished. Appellant testified that he was positive the light would be out and the Second Mate stated that he had expected it to be on. Nevertheless, Appellant failed to inform the Second Mate of this fact either at the time the latter was given instructions when the ship was abeam Danjo Gunto or by including it in the night orders.

The advantage of Appellant's presence on the bridge is further brought out by his familiarity with the waters in this area. And, despite Appellant's testimony that the Second Mate was a very reliable man, the latter's actions indicate that he was not competent to handle the situation.

Appellant further urges (Point 3) that the order imposed erroneously took into consideration a stranding arising subsequent to the one involved here.

The Examiner specifically stated that he would not give that accident any consideration "as the case we have here occurred some time before the one tried in Mobile." (R.7)

Finally, Appellant contends (Point 4) that the order is excessive as compared to the order imposed for the subsequent stranding to which offense Appellant pleaded "guilty." The fact that Appellant pleaded "guilty" to that offense and has pleaded "not guilty" to the offense charged herein is no criterion as to the relative severity of the orders imposed. Denial of an offense does not necessarily mean that the actual guilt is not the same or greater than for an admitted offense.

CONCLUSION

Considering the circumstances of the present case on its own merits, I conclude that the order is justified. The intervening acts of the watch officer were the immediate cause of the stranding but that does not free Appellant from blame for his own failure to exercise prudent and cautious judgment in laying out the course. Through carelessness, he neglected to consider the several tangible factors pointed out in this decision. In addition, he failed to take proper precautions to avoid danger resulting from such intangible elements as the negligent conduct of others.

ORDER

The Examiner's order dated 24 May, 1949, should be, and it is AFFIRMED.

MERLIN O'NEILL
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 3rd day of October, 1949.

***** END OF DECISION NO. 360 *****

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