

In the Matter of License No. 45307
Issued to: STIRLING S. SILL

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

448

STIRLING S. SILL

This appeal comes before me by virtue of Title 46 United States Coast Guard 239(g) and 46 Code of Federal Regulations Sec. 137.11-1.

On 2 November, 1949, an Examiner of the United States Coast Guard at Philadelphia, Pennsylvania, suspended License No. 45307 issued to Stirling S. Sill upon finding him guilty of "negligence" based upon two specifications alleging in substance, that while serving as Master on board the American S. S. ATLANTIC VOYAGER, under authority of the document above described, on or about 2 August, 1949, while upbound on the Delaware River, he contributed to the cause of a collision between the S. S. ATLANTIC VOYAGER and the S. S. ALLEN C. BALCH by:

Second Specification: * * * *permitting the pilot to attempt an overtaking passing of the S. S. ALLEN C. BALCH shortly before entering an area where he knew the pilot would reduce speed.

Third Specification: * * * *failing to direct the

conning of his vessel so as to assure that it would stay well clear of the S. S. ALLEN C. BALCH which was being overtaken and passing attempted.

A first specification, which alleged that Appellant had permitted the pilot to attempt an overtaking passing without receiving an assenting whistle signal from the other ship, was dismissed by the Examiner for lack of proof.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. He was represented by counsel of his own selection and he entered a plea of "not guilty" to the charge and each specification.

Thereupon, the Investigating Officer made his opening statement and counsel for Appellant made a motion to dismiss the three specifications. After argument by both parties, the Examiner denied the motion as to all three specifications. Certain stipulations were then entered into by the Investigating Officer and Appellant. In accordance with these stipulations, the testimony and exhibits comprising the record of the Coast Guard investigation into the collision were received in evidence as the Investigating Officer's exhibits. The latter then rested his case. Counsel's objection to the introduction of Appellant's testimony contained in the investigation record was sustained. After introducing in evidence one exhibit, Appellant also rested. Appellant renewed his motion to dismiss the first specification and, after considering the investigation record, the Examiner granted the motion since he found there was no evidence to support the allegations in the specification.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant, the Examiner found the charge "proved" by proof of specifications No. 2 and 3 and entered an order suspending Appellant's License No. 45307 for a period of three months on nine months probation.

From that order, this appeal has been taken, and it is urged: that the conclusion that the second and third specifications were

proved is not supported by reliable, substantial and credible evidence; and that this conclusion is contrary to the undisputed evidence in the case.

With respect to the second specification, Appellant states that both vessels reduced speed off the Sun Shipbuilding docks but both of them resumed full speed at a point about two miles below the scene of the collision. Consequently, the reduction of speed in this area did not cause the accident but it was caused by something intervening after the ships had resumed full speed.

Concerning the third specification, it is contended that even if the quick water of the VOYAGER's propeller forced the BALCH into the downstream side of the channel coming onto the Eddystone Range, this was not a circumstance contributing to the collision because it occurred at least 1.6 miles from the point of the collision; that the BALCH sheered into the VOYAGER as a result of the radical maneuvering required by the former vessel because she was proceeding up the left hand side of the channel and, therefore, she could not maintain her course and speed when a downbound vessel was sighted; and that the sheering of the BALCH was caused by her proximity to the channel bank on her left and not by the suction of the VOYAGER.

In essence, Appellant argues that the collision took place solely because of the failure of the BALCH to hold her course and speed; and she was unable to do so because she was proceeding up the river on the wrong side of the channel.

APPEARANCES: Mr. Otto Wolff, Jr., of Philadelphia, Pennsylvania, for Appellant.

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

FINDINGS OF FACT

On a voyage covering the date of 2 August, 1949, Appellant was serving, under authority of his License No. 45307, as Master of the American S. S. ATLANTIC VOYAGER which was carrying a cargo of petroleum and was upbound on the Delaware River enroute from Port Arthur, Texas, to Philadelphia, Pennsylvania. The ATLANTIC

VOYAGER, which will hereafter be referred to as the VOYAGER, is a T-2 type tanker of 10,172 gross tons, length 504 feet, beam 68.2 feet. Her drafts, at the time, were 29' 10" forward and 31' 02" aft; and the combined value of the ship and cargo was approximately three million dollars.

On this date, at the times herein mentioned, Appellant was on the bridge of the VOYAGER, a pilot was at the conn, and the Second Mate was the officer of the watch. At 1425 Eastern Standard Time, the VOYAGER was in a collision with the S. S. ALLEN C. BALCH, which was also upbound on the Delaware River, while the two ships were on the Tinicum Range. The VOYAGER was being continuously conned by the pilot for several hours prior to, during and after the collision. The weather immediately prior to, and at the time of the collision, was clear, visibility good and these conditions had no causal effect with respect to the collision.

The BALCH departed from the South Chester Tidewater Terminal Company dock, which is on the north (downstream) side of the Delaware River opposite the Marcus Hook Range, at approximately 1345 E.S.T. on 2 August, 1949, and proceeded up the river at full speed (9.5 knots) enroute from Chester, Pennsylvania, to Philadelphia, Pennsylvania. The BALCH is a Liberty type dry cargo vessel of 7,200 gross tons and was lightly loaded at the time. Her drafts were 15' 01" forward and 18' 06" aft. The VOYAGER was about a mile astern of the BALCH when she headed up the river channel.

Practically all of the facts set forth up to this point have been obtained either from the stipulations entered into between the parties or from uncontradicted documentary evidence contained in the record.

In order to clarify the additional facts which follow, I shall describe briefly the channel on the Delaware River in the vicinity which is related to the facts. The channel width and depth vary slightly but it is approximately 800 feet wide and 40 feet deep on all the ranges mentioned. Both ships were on the Marcus Hook Range when the BALCH came on the scene from the terminal which is about one-tenth of a mile below the junction of the Marcus Hook Range and then follows the Tinicum Range on which the collision occurred. The upbound course on the Marcus Hook Range is 057 degrees true; that on the Chester Range is 051 and it is 1.9 miles in length; the

Eddystone Range course is 066 for a distance of one mile; and the Tinicum Range course is 091. The collision occurred on Tinicum Range off Can Buoy T-3 which is 1.5 miles from the junction of the Eddystone and Tinicum Ranges. Hence, the distance from the South Chester Tidewater Terminal dock to the scene of the accident is approximately 4.5 miles. This information has been obtained from the U.S. Coast and Geodetic Survey chart No. 295 which is often referred to in the record but which is not contained therein.

While both vessels were running the Chester Range and the BALCH was off the Ford Plant which is about a mile from the lower end of this range, the VOYAGER, now about 1500 feet astern of the BALCH, sounded a one blast whistle signal intended to obtain the BALCH's assent to overtake on her starboard side. The BALCH answered with one blast and the over taking maneuver was begun. At this point, the BALCH was about one mile below the Sun Shipbuilding Yard which is at the beginning of the Eddystone Range and is an area where reduced speed for deeply laden vessels is required. Both vessels slowed for this area when they were passing the Scott Paper Company which is just below the junction of the Chester and Eddystone Ranges. At this time, the bow of the BALCH was just abaft the beam of the VOYAGER and the latter was continuing up along the starboard hand of the BALCH about 350 feet off the BALCH. The BALCH was close to the left channel bank and the VOYAGER was a little to the right of the middle of the channel.

The normal full speed of the VOYAGER was about 13 knots and that of the BALCH about 9.5 knots. Consequently, the VOYAGER had been overtaking the BALCH up to the time they slowed down. As the ships swung from the Eddystone Range to the Tinicum Range, the stern high pressure area of the VOYAGER and the quick water of her propeller forced the bow of the BALCH towards the north shore of the river. This was countered by a hard right rudder on the BALCH so that she passed the Eddystone - Tinicum Ranges junction buoy about 50 feet on her port hand. The evidence fairly establishes that the BALCH was gaining on the VOYAGER while speed was reduced but that when both vessels resumed full speed after passing the Sun Shipyards, the situation was reversed so that as the two ships came onto the Tinicum Range, their positions relative to each other were just about the same as when they had passed the Scott Paper Company. The BALCH was still on the left hand side of the channel but she was moving toward the right side; and the VOYAGER was slightly to the right of the middle of the channel. At no time had

the stern of the VOYAGER completely cleared the bow of the BALCH.

Shortly after the BALCH came onto the Tinicum Range, two vessels were seen standing down the Tinicum Range more than a mile distant. The closest of these was a Luckenbach steamer and slightly abaft her starboard beam was a Wilson liner. At about 1420 the Balch slowed speed to permit the faster VOYAGER to pass and the VOYAGER also slackened her speed. As the BALCH slowed, she sheered toward the VOYAGER and between one and two minutes after her speed had been reduced the BALCH went full ahead with hard left rudder to break the sheer. The VOYAGER also changed speed to full ahead when it was seen that the BALCH was not going to clear her. This last maneuver on the part of the BALCH would ultimately have put her in the path of the downbound Luckenbach ship which was 1500 feet away and closing rapidly. Consequently, the engines were ordered full astern and the BALCH again sheered toward the VOYAGER. An attempt was made to break this sheer by going full ahead with hard left rudder but it was too late and the starboard bow of the BALCH came into contact with the VOYAGER abaft its midship bridge on the port side. The collision occurred approximately in mid-channel opposite the Can Buoy T-3 just as the Luckenbach steamer passed abeam to port. The VOYAGER had also attempted to avoid the collision by means of several wheel orders. The pilots on both the BALCH and the VOYAGER testified that the BALCH came into the VOYAGER sideways. (R. 50, 59).

There is no record of any prior disciplinary action having been taken against Appellant by the Coast Guard. He is 38 years of age, married and has been a licensed officer for 11 years.

OPINION

By assenting to be overtaken, the BALCH merely indicated that she had no objection to the VOYAGER's attempt to pass and the BALCH did not thereby assume any part of the responsibility for the maneuver unless she had knowledge not open to the observation of the VOYAGER that the maneuver was dangerous. *The Gulftrade* (1928), 278 U.S. 85. In the case of *Atlas Transportation Co., V. Lee Line* (C.C.A. 8, 1916), 235 Fed. 492, the court stated that the overtaking vessel had to be its own judge as to the matter of safety and the reply to the passing signal was no more than an assent to pass at the risk of the vessel proposing it.

The BALCH was required by the Inland Rules (Title 33 United States Code 206) to hold her course and speed as was the VOYAGER bound to keep out of the way of the overtaken vessel. (Title 33 United States Code 209). But despite the former rule, it is not considered to be improper navigation for the overtaken vessel to change to avoid a vessel or other danger (*John L. Hasbrouck* (1876), 93 U.S. 405; *The Hackensack* (D.C.N.Y., 1887) 32 Fed. 800); or to slacken speed to facilitate passing (*The Aureole* (C.C.A. 3, 1902), 113 Fed. 224); or to yield reasonably to the vessel met when a meeting occurs. (*The Queen City* (D.C. Mich., 1910), 189 Fed. 653). When such changes of course and speed are to be expected in the normal course of navigation, the leading vessel does not violate the rule requiring her to hold her course and speed and the overtaking ship must anticipate these changes.

Appellant contends that neither specification which was found "proved" is supported by reliable, substantial and probative evidence. With respect to the second specification, which alleges that the Appellant was negligent in permitting the pilot to attempt an overtaking maneuver shortly before entering a reduced speed area, Appellant claims that this act cannot be considered as a cause of the collision since the accident took place about two miles beyond the point where the vessels resumed full speed and that some intervening cause brought about the collision.

It is my belief that this action taken by the Appellant was not the sole cause of the collision occurring between the two ships but I am also of the opinion that this was a contributing factor and that Appellant was negligent in attempting to overtake the BALCH under the existing circumstances. The ships were both proceeding up a channel about 800 feet wide, with the BALCH close to the left bank of the channel and the VOYAGER approximately in mid-channel. There are two bends in the channel within less than two miles of where the BALCH was when the overtaking signals were exchanged and the change of course required coming onto the Tinicum Range is 25 degrees. Since Appellant was bound to guard against all the normal and foreseeable alterations which might occur during the carrying out of this maneuver and also to stay out of the way of the BALCH while overtaking her, he should have anticipated the possibility that downbound traffic, hidden because of the turns in

the channel, would make it necessary for the BALCH to move over to the right hand side of the channel and that this would create an embarrassing situation since the VOYAGER was close to the middle of the channel. He also should have taken into account the fact that the BALCH was a smaller ship drawing much less water and creating less dangerous swells; and, therefore, she might not slow down enough to permit the VOYAGER to complete the overtaking maneuver within a reasonable length of time. This latter is what apparently actually happened and caused the two ships to overlap for a distance of more than two and a half miles as they progressed up the channel. Thus although there were intervening causes which contributed to the resultant collision, I feel that Appellant did not take the necessary precautions required of him as the Master of the VOYAGER when he allowed the pilot to attempt to negotiate the overtaking maneuver at this point.

It was not necessary for the Examiner to attempt to draw a distinction between an "administrative remedial" point of view, as distinguished from a "civil liability" point of view in order to find the second specification "proved". Whether such a fine line of distinction may be drawn is unnecessary to discuss since it seems very unlikely that any occasion will arise requiring the application of such a theoretical doctrine. This, of course, is said with reference to the alleged acts themselves and has nothing to do with the requirements of proof. So long as there is reliable, probative and substantial evidence to support the specification, it was properly found "proved".

As regards the third specification, which alleges that Appellant failed to direct the conning of the VOYAGER so as to keep well clear of the BALCH, it is urged that the sole cause of the collision was the inability of the BALCH to hold her course and speed when required to maneuver away from the downbound vessels; and that this was due to the fault of the BALCH in proceeding up the river on the left hand side of the channel.

It was found that as the BALCH and the VOYAGER came onto the Tinicum Range and sighted the downbound steamers, the two ships were still about 350 feet apart and that the VOYAGER was still only slightly to the right of the middle of the channel. The BALCH had passed the Eddystone - Tinicum Ranges junction buoy 50 feet abeam to port and had begun moving towards the upbound side of the channel in order to avoid the downbound Luckenbach ship. This means that the distance between the courses of the BALCH and the

VOYAGER was gradually decreasing from the time the two ships came onto the Tinicum Range until the collision occurred one and a half miles up the Tinicum Range. It was also found that the accident took place approximately in mid-channel. This indicates that the VOYAGER stayed close to the middle of the channel rather than attempting to carry out her duty to keep out of the way of the BALCH when the latter was moving out of the path of the Luckenbach ship. The VOYAGER had about 400 feet of clear channel on her starboard side and should have moved over to make room for the BALCH on the upbound side of the channel. This she failed to do.

It is my opinion that when the distance between the BALCH and the VOYAGER had decreased sufficiently the stern high pressure area of the VOYAGER forced the stern of the BALCH to port and thus aided the amid-ships suction of the VOYAGER in swinging the bow of the BALCH toward the VOYAGER. At this point, the BALCH was helpless to attempt to break the force of the suction and, at the same time, to take effective steps to avoid the Luckenbach ship. The latter danger caused her pilot to put the engines on full astern and thus accentuated the swing of the stern to port and the bow to starboard.

The force called "suction", exerted by one vessel on another, due to the creation of currents by a moving vessel, and the effect of which is apparently greatest when a larger and faster vessel is passing another moving in the same direction in shallow water and a narrow channel, has been recognized in many cases by court of admiralty. *The Aureole* (C.C.A. Pa., 1902), 113 Fed. 224. *The Mesaba* (D.C.N.Y., 1901), 111 Fed. 215.

I do not think it is necessary to make any finding as to the distance between the two vessels when this suction came into play but I do feel that it was a cause of the collision and it was brought about partially through the fault of Appellant in not directing the course of the VOYAGER more to the starboard so as to avoid the likelihood of his deeply laden heavier ship from having any such effect on the lighter BALCH. *The Whiteash* (D.C.N.Y., 1894), 64 Fed. 893.

CONCLUSION

Since the overtaking vessel is burdened with the avoidance of the risk of collision as well as actual collision (*The KIRNWOOD*, (D.C. Va., 1912), 201 Fed. 428), the conclusion of the Examiner with respect to the third specification must be upheld. Consequently, I see no need to reconsider Appellant's other arguments except to say that the determination of this case is only that Appellant was at fault and does not answer the question as to whether there was any fault on the part of the BALCH.

ORDER

The Order of the Examiner, dated 2 November, 1949, should be, and it is, AFFIRMED.

Merlin O. Neil
Vice Admiral, U. S. Coast Guard
Commandant

Dated at Washington, D.C., this 13th day of October, 1950.

***** END OF DECISION NO. 448 *****

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