

In the Matter of License No. 74644
Issued to: HAROLD J. HITCHENS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

449

HAROLD J. HITCHENS

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

On 15 December, 1949, an Examiner of the United States Coast Guard at Philadelphia, Pennsylvania, suspended License No. 74644 issued to Harold J. Hitchens upon finding him guilty of "negligence" based upon two specifications alleging in substance, that while serving as Pilot on board the American S. S. ALLEN C. BALCH, under authority of the document above described, on or about 2 August, 1949, while conning said vessel upbound on the Delaware River, he contributed to the cause of a collision between the BALCH and the S. S. ATLANTIC VOYAGER (which was also upbound on a similar course) by:

Second Specification: ****maintaining a course on the downbound side of the channel, while the ATLANTIC VOYAGER was proceeding on his starboard hand, until downbound traffic made it necessary for the BALCH to attempt to fall in astern of

the ATLANTIC VOYAGER.

Third Specification: ****conning the BALCH so close to the ATLANTIC VOYAGER that the suction of the latter vessel affected the steering of the BALCH.

The First Specification, which alleged that Appellant had allowed the speed of the BALCH through the water to increase before the ATLANTIC VOYAGER was past and clear, was found "not proved" by the Examiner.

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.

After certain stipulations had been entered into by the Investigating Officer and counsel, both parties made opening statements. 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. Appellant also rested after he had testified under oath in his own behalf.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and counsel, the Examiner found the charge "proved" by proof of the second and third specifications. He then entered an order suspending Appellant's License No. 74644 for a period of these months on twelve months' probation.

From that order, this appeal has been taken, and it is urged that the second and third specifications are not proved by the evidence; that the two specifications were found "proved" based on the erroneous theory (on which the first specification was based) that the BALCH should have reduced her speed sooner than she did in order to go astern of the VOYAGER; that this latter theory is not applicable to the second and third specifications because the issue involved are not embraced by these two specifications; that the evidence shows the collision was due solely to the gross negligence of the VOYAGER and through no fault of Appellant; and that the

adverse decision is based on a perfectionist concept of conduct and hindsight wisdom which refuses to recognize that a collision does not establish the fault of both ships involved.

APPEARANCES: Messrs. Rawle and Henderson of Philadelphia
Messrs. Kirbin, Campbell, Hickox & Keating, of New
York Eugene F. Gillegan, Esq., of counsel, 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. 74644, as Pilot of the American S.S. ALLEN C. BALCH, which was in a light condition and was upbound on the Delaware River enroute from Chester, Pennsylvania to Philadelphia, Pennsylvania. The BALCH, official No. 245049, is a Liberty type dry cargo vessel of 7,200 gross tons, length 422 feet, beam 57 feet, owned by the U. S. Maritime Commission and operated by the Pacific and Atlantic Steamship Company, Her drafts, at the time, were 15' 01" forward and 18' 06" aft.

On this date, at the times herein mentioned, Appellant was at the conn of the BALCH. At 1425 Eastern Standard Time, the BALCH was in a collision with the S. S. ATLANTIC VOYAGER, which was also upbound on the Delaware River, while the two ships were on the Tinicum Range. 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 Hock Range, at 1345 E.S.T. on 2 August, 1949, and proceeded up the river at full speed of 9.5 knots.

The VOYAGER, official No. 245176, is a T-2 type tanker of

10,172 gross tons, length 504 feet, beam 68.2 feet, owned by the Southern Trading Company and operated by the Atlantic Refining Company. 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. The VOYAGER was carrying a cargo of petroleum enroute from Port Arthur, Texas, to Philadelphia, Pennsylvania, and she was approximately a mile astern of the BALCH as the latter headed up the river channel.

All of the facts set forth above were 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. 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 the Chester Range. Next above the Chester Range is the Eddystone 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.

At 1352, having passed the Sinclair Dock (one mile below the South Chester Tidewater Terminal Company) at half speed, the VOYAGER rang up full speed (13 knots) and shortly afterwards blew a one-blast passing signal to the BALCH which was proceeding up the left side of the channel above the intersection of the Marcus Hook and Chester Ranges. This signal was not answered by the BALCH.

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 overtaking 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. The VOYAGER slowed for this area when she was 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 150 feet off the BALCH. The VOYAGER was a little to the right of the middle of the channel.

Due to the differences in full speed of the two ships, the VOYAGER had been overtaking the BALCH up to the time that the VOYAGER slowed down. Then the BALCH began to pass the VOYAGER while her speed was reduced on the Eddystone Range. When the VOYAGER resumed full speed after passing the Sun Shipyards, she again began to advance on the BALCH. While proceeding on parallel courses on the Eddystone Range, the distance between the two ships was about 100 feet. As the VOYAGER turned into Tinicum Range, her propeller wash caused the BALCH to sheer toward the north side of the channel and resulted in the BALCH passing within 50 feet of the Eddystone Tinicum Ranges junction buoy on her port hand. The BALCH was then given hard right rudder, under orders of Appellant, and while still maintaining full speed she swung back toward the center of the channel until the bow of the BALCH was just abaft the beam of the VOYAGER and with a distance between the vessels of 75 feet. The VOYAGER was still slightly to the right of mid-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 about 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 of both the BALCH and the VOYAGER testified that the BALCH came into the VOYAGER sideways. (R. 50,59). From the time of leaving the dock at Chester until a few minutes before the collision, the BALCH was on her left side of the channel and the VOYAGER was in mid-channel or slightly to the right of mid-channel.

There is no record of any prior disciplinary action having been taken against Appellant by the Coast Guard. He has been a Delaware River pilot for 32 years and is about 52 years of age.

OPINION

It is contended by Appellant that the evidence proves the VOYAGER was going at high speed and crowded in on the BALCH so close as to carry her along; and, therefore, when the BALCH was required to slow to avoid the downbound traffic, the forces of suction set up by the VOYAGER's speed and proximity caused the collision. It is further claimed that in turning on to the Eddystone and Tinicum Ranges, the VOYAGER turned wide forcing the BALCH over and that the BALCH had to use right rudder to stay in the channel coming onto Tinicum Range. This, it is said, is when the "free ride" began; and since Appellant reduced speed when the downbound traffic was about a mile away, his conduct was not negligent in any respect.

The evidence shows that this was an overtaking situation and that due to the VOYAGER's alteration in speed while passing the Sun Shipbuilding docks, the two ships overlapped each other for more than two and a half miles as they proceeded up the channel. The BALCH was required, as the overtaken privileged vessel, to hold her course and speed. (Title 33 United States Code 206). The normal

risks of collision are borne by the overtaking vessel but this does not relieve the privileged vessel from liability for her own negligence.

Appellant admits that he navigated the BALCH up the port side of the channel but claims that this course of action was necessary because the VOYAGER was crowding the BALCH and because of the requirement that the overtaken vessel maintain her course and speed. There are exceptions to the latter rule and one of them is that the overtaken vessel must not hold her course and speed stubbornly if, by a change, she can avoid an apparent danger. *The Menominee* (C.C.A. 3, 1912), 197 Fed. 736; *The Warren* (D.C.N.Y., 1883), 18 Fed. 559. In the latter case, the court said:

"In courts of admiralty both vessels are held bound to exercise all reasonable vigilance and skill to avert disaster and the loss of property. Any vessel, which fails to do this, no matter how much greater may be the fault of the other vessel, is also held in the wrong for neglect of her own duty."

Appellant was aware of the fact that the change of courses from the Eddystone to the Tinicum Range was 25 degrees to starboard and that, if downbound traffic were sighted after rounding onto the Tinicum Range, hasty maneuvering would be required to clear the downbound side of the channel. Because of the slow progress the VOYAGER was making in overtaking, the only alternative to waiting until she had passed was to reduce speed and then move over to the right side of the channel. That is what should have been done and it would not have been a violation of the rule requiring the overtaken vessel to hold her course and speed. *The Aureole* (C.C.A. 3, 1902), 113 Fed. 224. It was held therein that where an overtaking ship is so close as to create danger of a collision, the overtaken vessel is justified in slowing so as to shorten the time of passing and such action cannot be charged as a fault in case of collision. The fact that Appellant knew of the strong suction force exerted by the VOYAGER made it imperative for him to take immediate steps to maneuver the BALCH over to the proper side of the channel. Hence, it is a relevant issue with respect to the second specification as to whether Appellant was negligent by not having reduced the speed of the BALCH sooner. If not before, he could

have taken such action when the VOYAGER forced the bow of the BALCH toward the port side of the channel as they swung from the Eddystone to the Tinicum Range. Certainly, at this time, a reduction in speed could not have brought about a collision due to the suction since the ships were too far apart for the suction to be effective. For these reasons, the conclusion that the second specification was "proved" is sustained.

Much that has been said concerning the second specification is also applicable to the third one. Appellant, by his own admission, felt the suction of the VOYAGER while the two ships were on the Eddystone Range (R. 11, 16); but although he stated that he tried to keep away from the tanker as far as possible (R. 12), Appellant did not take the precaution of reducing speed at the time the BALCH was clear of the suction area at the junction of Eddystone and Tinicum Ranges. Instead, he steered the BALCH right back into a dangerous position alongside of the VOYAGER and stayed there, according to Appellant's own arguments, for about five minutes until the downbound ships were sighted. By that time, it was too late to maneuver the BALCH out of the suction area and clear of the approaching Luckenbach steamer. Appellant took no action prior to then even though he testified that the BALCH, whose full speed was 9.5 knots, was being "carried along" at the same speed as the VOYAGER whose speed was 12 to 14 knots. Since Appellant knew he was being given a "free ride," he was bound to avoid it as soon as possible, especially since downbound traffic might force him to go even closer to the VOYAGER.

While the duty to avoid suction rests primarily on the overtaking vessel, it is held that, if the overtaken vessel sheers, she has the burden of explaining and excusing the sheer. In *The Ohio* (C.C.A. 6, 1898), 91 Fed. 547, the court said:

"But the burden is upon her to show not only that her sheer was caused by the wrongful conduct of the Mather, but that her own management was such, both before and after the sheer, as not to have contributed to the final collision."

Appellant has failed to sustain the burden of satisfactorily explaining why he navigated the BALCH in such close proximity to the VOYAGER that the suction of the VOYAGER put the BALCH out of

control, thus causing the collision. Therefore, the conclusion that the third specification was "proved" will not be altered.

ORDER

The Order of the Examiner dated 15 December, 1949, should be, and it is, AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

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

***** END OF DECISION NO. 449 *****

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