

In the Matter of License No. 3398  
Issued to: ROGER W. SEARS

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

456

ROGER W. SEARS

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

On 9 June, 1950, an Examiner of the United States Coast Guard at Baltimore, Maryland, suspended License No. 33984 issued to Roger W. Sears upon finding him guilty of "negligence" based upon two specifications alleging in substance, that while serving as Pilot on board the American S.S. ROSARIO, under authority of the document above described, on or about 15 May, 1950, he caused said vessel to run aground south of Tolchester Beach, Maryland, by neglecting to check and use the aids to navigation in the vicinity and by permitting a dangerous course to be steered.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. Appellant 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 introduced in evidence the testimony of the Master, and that of the helmsman, lookout, engineer and mate on watch at

the time of the grounding. He then rested his case. In defense, Appellant testified under oath in his own behalf. Both parties introduced in evidence various documentary evidence including a chart of the area where the stranding occurred.

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 both specifications and entered an order suspending Appellant's License No. 33984 and all other valid licenses and endorsements now held by him, for a period of one month.

From that order, this appeal has been taken, and it is urged that the Examiner's findings are not supported by reliable, probative and substantial evidence; and that such findings ignore the uncontradicted evidence that the course Appellant ordered was proper and he had no aids to navigation or other means of knowing that the helmsman was steering the wrong course.

APPEARANCES: Messrs, Ober, Williams, Grimes and Stinson of  
Baltimore Southgate L. Morison, Esq., of Counsel.

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

#### *FINDINGS OF FACT*

On 15 May, 1950, Appellant was acting as pilot, under authority of his License No. 33984, on board the American S. S. ROSARIO when she ran aground in the Chesapeake Bay at 2339 bearing about 211 degrees true at a distance of approximately 2.1 miles from Tolchester Beach, Maryland. Appellant had been at the conn of the ROSARIO since she had departed from Philadelphia at 1530 this same date on a coastwise voyage under enrollment bound for Baltimore via the Chesapeake and Delaware Canal. The ROSARIO was light having a draft of 6' 11" forward and 15' 3" aft upon departure. She is a Liberty type vessel having a normal full speed of 12 knots when light and she was traveling at this speed at all times pertinent to the grounding.

The stranding occurred after the ROSARIO had left the Canal and was proceeding in a southerly direction down the Chesapeake

Bay. At this time, the sky was overcast and dark but the atmosphere was clear. Visibility was greater than six miles although it had been raining at sometime before 2333, at which time an important change of course was ordered. In addition to the pilot, the helmsman and third mate who had the watch, were on the flying bridge. A lookout was posted on the forecastle and the Master had left the bridge at about 2240. The latter did not return to the bridge until after the accident had been reported to him.

While proceeding down the Chesapeake Bay in the vicinity of Tolchester Beach Appellant ordered a change of course to 200 degrees true at Lighted Bell Buoy No. 9 and continued on this course for about two miles until passing Lighted Bell Buoy No. 7 on the starboard hand. When opposite No. 7 Buoy at 2333, Appellant ordered a course change to 225 degrees true in order to stay outside of the three fathom curve and pass Lighted Bell Buoy No. 6 to port at a distance of about 200 yards. When this order was given, Appellant was on the starboard side of the wheelhouse and the watch officer was on the port side. Between them was the magnetic compass and a gyro repeater. The new course of 225 was repeated by the third mate and the helmsman but the helmsman came to 205 degrees true instead of 225. Without waiting to check the course on the gyro repeater but after he had told the third mate to look for a red flashing buoy on the port bow (Buoy No. 6), Appellant left the wheelhouse and went to the port wing of the bridge to watch for Buoy No. 6 which would have come into sight off the port bow if the ship had swung around to 225 degrees true from the previous course of 200. The distance between Buoys No. 7 and 6 is 1.5 miles.

Because of the erroneous course change to 205 instead of 225, the Buoy No. 6 remained on the starboard bow instead of shifting to the port bow. Both the third mate and the helmsman saw it and the mate reported it to Appellant. Appellant did not hear him and since the buoy still could not be observed by Appellant, from the port side, about three minutes after he had ordered the change of course, he asked the helmsman if he was steering 225 and the reply was "Right on 225."

About a minute and a half after this, the third mate again reported to Appellant that he saw a red flashing buoy on the

starboard bow and that the helmsman was steering 205. Appellant immediately ordered full speed astern and hard right rudder but it was too late to avoid the shoal water and the ROSARIO ran aground about six minutes and at a distance of 1.2 miles after the change of course to 225 had been ordered.

The only record of any prior disciplinary action having been taken against Appellant, while acting under his Federal license, was a suspension of his license for one month on six months probation in 1945 in connection with the grounding of the S.S. FITZHUGH LEE. Appellant had piloted 38 vessels to Baltimore since January, 1949, by this route, including the ROSARIO on five occasions.

#### OPINION

Appellant has pointed out many details in support of his contention that the Examiner's findings are not based on substantial evidence; and, even more, that they are opposed to the uncontradicted evidence that Appellant did order the proper course and he had no means of knowing that his order was not carried out by the helmsman. Many of these items require no further comment because of their anticipation by the Examiner and my concurrence in the views expressed in his opinion. I feel that it is only necessary to emphasize a few important points.

Although the proximate cause of the stranding was the fact that the helmsman steered an improper course, Appellant had ample warning that his order had not been carried out and sufficient opportunity to have taken corrective action in time to avoid the accident. Hence, his failure to act in time was a contributory cause of the grounding.

According to the chart submitted in evidence, there were at least three lighted buoys in the vicinity whose absence from view off the port bow of the ship should have made Appellant realize almost immediately that the ship was not on the proper course but was heading into shoal water. If the ROSARIO had come to the ordered course of 225 degrees true, then Lighted Bell Buoys No. 6, 4 and 1 would have been easily discernible from the port wing of the bridge where Appellant had taken his position after leaving the wheelhouse. The distances of these buoys from Buoy No. 7 are 1.5,

3.3 and 4.7 miles, respectively. Failure to sight any of these three lights immediately upon changing course should have aroused Appellant's suspicion sufficiently for him to ascertain exactly what the trouble was. Unless all three of these lights were out, the only logical answer could be that the vessel was on the wrong course. At this point, a glance astern would have disclosed to Appellant that the red sector of the Tolchester Beach Light was visible and, consequently that they were in danger. It would not have been necessary to take bearings on Tolchester Beach Light to fully realize this. Having failed to follow these obvious precautions, it is difficult to understand Appellant's claim that no aids to navigation were available and that he had no way of knowing that the course being steered was not 225 degrees true. As pointed out by the Examiner, it was his job as a pilot to exercise the utmost care in seeing to it that the ship was being safely navigated. That is the duty from which he was not relieved by any faults of others.

Although Appellant states that he could not stay inside the wheelhouse because of the interference of the 8 booms of the ship, the helmsman testified that he saw the lighted buoy off the starboard bow. It seems only reasonable to assume that Appellant could have seen the buoy if he had remained in the wheelhouse since the helmsman could see it from this location. The third mate also testified that he saw the buoy and reported it but Appellant denies that he heard any such report given. Whether he did or not is immaterial to the conclusion that if two other men saw the light, then Appellant also should have seen it. The indications are that he was rather lax in the performance of his duties and, for this reason, did not recognize the warning signs as soon as he should have.

It was not Appellant's fault that the proper change of course was not executed but his heavy responsibility to maintain a safe course cannot be brushed aside simply because it is customary for a pilot to rely on the ship's personnel to see that his orders are followed. There were strong indications to the contrary which required constructive action on his part. He encouraged the continuation of a dangerous course by asking the helmsman if he was steering 225 rather than asking what course he was steering. The natural reaction was for the helmsman to simply repeat back the proper course rather than to bother to stop and think what course he was on as he would have been forced to do if the question had

been worded differently.

*CONCLUSION*

For these reasons, it is my opinion that there is reliable, probative and substantial evidence that Appellant failed to take advantage of adequate aids to navigation to check the ship's position and he unjustifiably allowed the ship to continue on a dangerous course.

*ORDER*

The order of the Examiner dated 9 June 1950, should be, and it is, AFFIRMED.

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

Dated at Washington, D. C., this 10th day of October, 1950.

\*\*\*\*\* END OF DECISION NO. 456 \*\*\*\*\*

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[Top](#)