

In the Matter of License No. 58423
Issued to: SAMUEL NORMAN GROVES

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

531

SAMUEL NORMAN GROVES

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

On 10 November, 1950, an Examiner of the United States Coast Guard at New York City suspended License No. 58423 issued to Samuel Norman Groves upon finding him guilty of inattention to duty based upon two specifications alleging in substance that while serving as Master on board the American SS EXCALIBUR under authority of the document above described, on or about 27 June, 1950, while said vessel was proceeding outbound in New York Harbor and approaching the MV COLOMBIA standing into the harbor, he contributed to the subsequent collision between these two vessels by failing to sound the danger signal and reduce the headway of the EXCALIBUR after:

"First Specification your vessel sounded a two-blast signal to which no answer was heard on the bridge of your ship.

"Second Specification your vessel sounded a two-blast signal and later a one-blast signal to which signals no answers were heard on the bridge of your vessel."

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own selection and he entered a plea of "not guilty" to the charge and each specification proffered against him.

The Investigating Officer and counsel for Appellant stipulated that the investigation record of the Marine Board of Investigation, convened to inquire into this collision, be admitted into evidence with the same force and effect as if the witnesses who testified before the Board had testified in this proceeding.

The Investigating Officer made an opening statement summarizing his service of the charge and specifications upon the person charged. Both parties then rested their case on the stipulated evidence.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specifications and entered the order suspending Appellant's License No. 58423, and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of three months.

This appeal has been taken from that order and it is urged that:

POINT I The Master of a vessel may not displace the pilot unless the pilot is manifestly incompetent or intoxicated. Every difference of opinion or judgment does not require the Master to overrule the pilot. The Master should take over the navigation of the ship from the pilot only in extreme cases (citing cases). This was not such a case since a safe port to port passing situation existed and the collision resulted from the order of hard left rudder on the COLOMBIA a matter of seconds before the collision occurred.

POINT II A pilot is charged with using the ordinary care of an expert in his profession and it is unlawful for any person not licensed as a pilot for these waters to navigate a registered vessel to or from the Port of New York by way of Sandy Hook (citing cases). The pilot of the EXCALIBUR has been a Sandy Hook pilot for thirty years but Appellant does not have such a license.

POINT III There was no obvious danger of collision until immediately before the collision. There was ample room for maneuvering to effect a port to port passing when the one-blast signal was sounded by the EXCALIBUR. This statement is confirmed by the fact that there was an answering one-blast signal by the COLOMBIA. The collision resulted because the COLOMBIA continued her swing to port when the Master ordered the rudder hard left. At this point, action by Appellant would have resulted in conflicting orders and might have endangered lives.

POINT IV Appellant was not proven to have been inattentive to duty. There was no necessity to sound the danger signal or to back since there was no doubt on the EXCALIBUR as to the situation as it developed and blowing the danger signal would not have altered the situation. Failure to sound the danger signal is not a contributing cause to the collision when danger becomes apparent so late that the signal could do no good (citing cases).

POINT V Based on the COLOMBIA pilot's testimony alone, the COLOMBIA must have swung to the right after the EXCALIBUR two-blast signal so as to justify the EXCALIBUR one-blast signal. This is supported by the fact that the COLOMBIA passed 150 feet from the junction buoy,

instead of over 400 feet, after her course was set to pass buoy No. 24 as close as 150 feet.

POINT VI The suspension of Appellant's license for a period of three months is unjust and inconsistent with the facts. Appellant had every right to rely on the skill and experience of the EXCALIBUR's compulsory pilot. By suspending the pilot for two months, the New York Harbor Pilots' Association concluded that the navigation of the ship was in the pilot and not the Appellant. The latter's fault, if any, was in a lesser degree than the pilot's.

APPEARANCES: Messrs. Haight, Deming, Gardner, Poor and Havens,
of New York City
James M. Estabrook, Esquire
W. Parker Sedgwick, Esquire
Walter A. Darby, Jr., Esquire, of Counsel.

FINDINGS OF FACT

On 27 June, 1950, Appellant was serving as Master on board the American SS EXCALIBUR and acting under authority of his License No. 58423 while said vessel was standing out of New York Harbor bound for Marseilles, France.

At approximately 1233 on this date, the EXCALIBUR collided with the inbound Danish motor vessel COLOMBIA about 300 yards northwest of the Main and Bay Ridge Channels Junction Buoy off the Brooklyn Shore. One minor injury resulted and no lives were lost. The EXCALIBUR's damage was estimated at \$950,000 and that of the COLOMBIA at \$85,000.

The EXCALIBUR is a single screw steam turbine-driven ship of 9644 gross tons, 482 feet in length, and beam of 66 feet. She was carrying 114 passengers, 1468 tons of cargo and 282 sacks of mail. Her draft was 21 feet, 9 inches forward and 24 feet, 9 inches aft.

The COLOMBIA is a single screw diesel-driven motorship about

440 feet in length and a beam of 57 feet. She is a cargo vessel with accommodations for 12 passengers and was carrying 7400 tons of cargo which produced a draft of 22 feet forward and 24 feet, 3 inches aft. The COLOMBIA had departed from Philadelphia and she was proceeding up The Narrows with a Sandy Hook pilot at the con when first sighted from the EXCALIBUR. The mate on watch and the helmsman were the only persons on the bridge with the pilot.

The weather conditions were favorable at all pertinent times. It was clear, visibility good, wind negligible and ebb tide. Traffic was light and in no way influenced the maneuvering of either of the two colliding vessels.

Upon departing from Jersey City, a compulsory Sandy Hook pilot took over the con of the EXCALIBUR and directed the navigation of the ship until the time of collision. The Master, watch officer and helmsman were also on the bridge. The EXCALIBUR proceeded down the Upper Bay approaching Main Channel Buoy No. 24 (Owl's Head Buoy) on course 206 degrees true at full harbor speed of approximately 12 knots (60 R.P.M.). She was to the northward of Buoy No. 24 when the COLOMBIA was observed coming up The Narrows and bearing off the port bow of the EXCALIBUR. The latter vessel commenced changing course to 175 degrees true as she rounded the buoy and passed it abeam to port at a distance of about 500 feet. She steadied on course 175 and proceeded down the Main Channel on the left-hand or easterly side of the fairway. This course would cause the EXCALIBUR to pass the junction buoy between the Main Channel and the Bay Ridge Channel abeam to port by about 500 feet also since the latter buoy is south of and slightly to the eastward of buoy No. 24. The distance between the two buoys is slightly more than one mile. Shortly after passing Buoy No. 24 and steadying on course 175 degrees true, the COLOMBIA was bearing a few degrees on the starboard bow of the EXCALIBUR whose pilot then sounded a two-blast whistle signal for a starboard to starboard passing. At this time the two vessels were between one and a quarter and one and a half miles apart; and they were approximately equi-distant from the scene of the collision. The time was 1230.

The COLOMBIA was proceeding up The Narrows on course 345 degrees at a speed of approximately 13 knots. When the line of the junction buoy and Buoy No. 24 had opened, the pilot of the COLOMBIA ordered a change of course to about 355 degrees true and,

subsequently, the COLOMBIA passed within 150 feet of the junction buoy. This course change was undertaken at about the same time that the two-blast whistle signal from the EXCALIBUR was heard. The pilot of the COLOMBIA answered this request for a starboard to starboard passing by sounding two-blasts on the COLOMBIA's air whistle. This reply was not heard on the bridge of the EXCALIBUR and she continued on the same course at the speed of 12 knots.

After the exchange of two-blast signals, the bearing of the COLOMBIA shifted from the starboard to fine on the port bow of the EXCALIBUR. In view of this and not having heard the two-blast signal of the COLOMBIA, Appellant and the pilot of the EXCALIBUR assumed that the COLOMBIA intended to steer a course up Bay Ridge Channel. Consequently, the pilot sounded a one-blast signal for a port to port passing and ordered right rudder but did not undertake to change the speed of the EXCALIBUR. This was done between one and two minutes after the two-blast signal had been sounded and when the two ships were about three-quarters of a mile apart.

The pilot of the COLOMBIA had ordered the rudder hard left in order to comply with the starboard to starboard passing agreement and the ship had begun to swing to port when the one-blast of the EXCALIBUR was heard. Believing that there was adequate maneuvering space to effect a port to port passing, the COLOMBIA's pilot replied with one blast and ordered that the rudder be shifted. Due to the opposite momentum of the ship and the lag between the steering wheel and the rudder caused by the electric steering apparatus of the COLOMBIA, the ship was still swinging to port responding slowly to the hard right helm when the Master appeared on the bridge. The answering signal was not heard on the bridge of the EXCALIBUR but she continued altering course to her starboard at 12 knots and the range between the vessels was closing at the rate of almost 2500 feet a minute as a result of their combined speed of 25 knots and the fact that they had been on reciprocal courses until taking avoiding action. Observing this dangerous predicament, the Master of the COLOMBIA believed that a collision was inevitable and countermanded the pilot's order and shifted the rudder to hard left in order to avoid hitting the EXCALIBUR amidships. About the same time, the pilot of the COLOMBIA reversed the engines sounding the backing and the danger signals. Less than a minute later, the COLOMBIA's bow struck the EXCALIBUR's port side between the numbers 2 and 3 holds at an angle of about 80 degrees between the port sides of the ships and penetrated to a depth of

about 10 feet. The engines of the EXCALIBUR were reversed at about the time of the impact.

OPINION

This was a meeting situation in which normal and proper navigation called for a port to port passing in order to comply with 33 U.S.C. 203, Rule I. A ship initiating a passing signal which is contrary to the rule takes the risk of carrying out the maneuver even though the other vessel assents. The courts have emphasized that the law, and not the exchange of whistles, determines how the vessels shall pass. *The Hermes* (C.C.A. 2, 1927), 21 F. 2d 314; *The Delaware* (C.C.A. 2, 1933), 66 F. 2d 467; *The Bellhaven* (C.C.A. 2, 1934), 72 F. 2d 206. The EXCALIBUR's two-blast whistle signal did not comply with the prescribed passing for approaching vessels which are "head and head . . . or nearly so." Hence, she was immediately required to proceed with extreme caution since she had assumed the risk that the maneuver would succeed. The purpose of these navigation laws is to promote safety and prevent collisions. Therefore, Appellant, as Master of the vessel which elected to deviate from recognized rules, was put on notice that the EXCALIBUR was in danger of collision as soon as this statutory violation was committed and no answer was heard from the rapidly approaching COLOMBIA; and he should have taken preventive action such as sounding the danger signal and stopping the engines of his vessel. The Master's duties are the same, and he does not surrender his authority whether the pilot is a voluntary or a compulsory one. *Robins Drydock Co. v. Navigazione Libera Triestina* (C.C.A. 2, 1929), 32 F. 2d 209.

A shipmaster is always in command and responsible for the safety of his vessel, its passengers and cargo. It will, perhaps, require a major disaster with loss of life to clarify the present legal obscuration of the subject but until my opinion is judicially vacated, I hold the Master's authority to be supreme and his responsibility to be co-extensive with his authority.

The only seemingly conflict in the testimony which is important is that the bearing of the COLOMBIA from the EXCALIBUR shifted from her starboard to port bow, after the two-blast signal

had been sounded, as compared to the statements that the COLOMBIA altered her course to port at this time. The natural result of this maneuver would have been that the bearing of the COLOMBIA opened on the starboard bow of the EXCALIBUR. Possibly, the present result was brought about by the fact that the COLOMBIA was making a course change to the right at approximately the same time the EXCALIBUR sounded the signal and the COLOMBIA might have continued swinging to the right, even beyond her intended new course, after her helm was put to port to carry out the starboard to starboard passing agreement. This seems reasonable in view of the lag of the COLOMBIA in responding to her helm action which occurred just prior to the collision. Since her course of 175 degrees true would have caused the EXCALIBUR to pass the junction buoy about 500 feet abeam and the reciprocal course of the COLOMBIA caused her to approach within a shorter distance of the junction buoy, it is logical that the COLOMBIA should have been off the port bow of the EXCALIBUR. Therefore, it is not plausible that the COLOMBIA was ever bearing more than very finely on the starboard bow of the EXCALIBUR. Under such circumstances, the two vessels could not have been so situated that they would have passed well clear of each other's starboard side if no helm action had been taken on either vessel.

But even if it be disputed that this was a passing situation which called for a port to port passing, the evidence, which is conclusively binding upon Appellant, that no signal was heard in answer to the two-blast whistle by the EXCALIBUR (although it is established that the COLOMBIA did reply with two blasts) and that the COLOMBIA appeared to swing to her own starboard in contravention of the maneuver anticipated by the signal, was more than adequate to inform Appellant that a dangerous situation had developed. After the COLOMBIA was on the port bow of the EXCALIBUR, the two ships could not possibly have accomplished a starboard to starboard passing without the necessity for helm action on the part of either vessel. Therefore, the EXCALIBUR was undoubtedly required to take precautionary measures at this point.

Both Appellant and the pilot of the EXCALIBUR thought that the COLOMBIA intended to proceed up Bay Ridge Channel. Thus, it is clear that they failed to understand the intention of the COLOMBIA and were bound to sound the danger signal in compliance with 33 U.S.C. 203, Rule III. Failing to comply with this law was a statutory fault putting the burden on Appellant to justify his

failure to act. In connection with this same rule, it has been held that a vessel which has received no response to its invitation for a passing must immediately sound the alarm signal after any doubt arises as to the intention of the other vessel (*McWilliams v. Card Line* (C.C.A. 2, 1948), 168 F. 2d 720); and the signalling vessel must stop. *Marshall Field and Co. v. United States* (C.C.A. 2, 1931), 48 F. 2d 763. Since the signal from the COLOMBIA was not heard on the bridge of the EXCALIBUR she was obligated to stop and reverse as though it were a situation of misunderstood or conflicting signals. *The Brandon* (C.C.A. 4, 1921), 273 Fed. 176. It is always the duty of both vessels to take immediate measures if the maneuvers of the two ships are inconsistent or if there are other indications of danger. In the frequently quoted case of *The New York* (1899). 175 U.S. 187, 202, the court stated:

"Nothing is better settled than that, if a steamer be approaching another vessel which has disregarded her signals, or whose position or movements are uncertain, she is bound to stop until her course be ascertained with certainty."

This basic principle of admiralty law is too well founded in both statutory rules and court decisions to dispute. Although the pilot should only be superseded by the Master in a plain case, it is my opinion that there was such clear danger of collision brought about by the abuse of navigation laws combined with the proximity of the ships following the two-blast signal by the EXCALIBUR that Appellant was bound to interfere with the pilot to the extent of sounding the danger signal and reducing the speed of the ship. A pilot is employed because he is presumed to have superior knowledge in certain waters concerning such conditions as currents, depth of water, channel courses, hidden obstructions, navigational aids, anchorages, and other features peculiar to the waters in which he is qualified as an expert navigator. *The Framlington Court* (C.C.A. 5, 1934), 69 F. 2d 300, cert. den. 292 U.S. 651. But it is not within the scope of the pilot's special qualifications that he be required to have general knowledge of the Rules of the Road which surpasses the requirements for a Master in this respect. The Master of a ship is presumed to be fully acquainted with the rules of navigation and the peculiar attributes of his own vessel. Since

the ultimate responsibility for the safety of the ship rests upon the Master, he is required to exercise his paramount authority and relieve the pilot in cases of obvious danger. *The China* (1868), 74 U.S. 53; *Charente SS Co v U. S.* (C.C.A. 5, 1926), 12 F. 2d 412. There is no indication that Appellant would have impeded the pilot in the exercise of his expert knowledge of the channel by sounding the danger signal and slowing the ship.

Much of what has been said concerning the failure of Appellant to take appropriate action after the two-blast signal is also applicable with respect to his omissions after the subsequent one-blast signal from the EXCALIBUR. In addition, the pilot ordered right rudder without hearing the COLOMBIA's answering signal although, in a port to port passing, the signalling vessel must wait until she receives the assent of the other vessel before putting her helm over. *City of New York v. American Export Lines* (C.C.A. 2, 1942), 131 F. 2d 902; *The Sandmaster* (C.C.A. 2, 1939), 105 F. 2d 1009. It is also true that Appellant contributed to the imminent peril of collision by his prior inattention to duty and it has been said that "***No man is excused from the result of an unlawful situation, if he is not also excusable for getting into it." *Carroll v. City of New York* (C.C.A. 2, 1918), 249 Fed. 453. Hence, he would not be excused at this point if his error had only been one of judgment.

Appellant repeatedly contends that there would have been ample room to maneuver for a safe port to port passing and that the danger arose "seconds" before the collision when the COLOMBIA swung hard left. The fallacy in this argument is that it is not conceivable that the vessels would otherwise have passed at a safe distance since the COLOMBIA would not then have been able to cover this distance in a matter of "seconds" and strike the EXCALIBUR before she was clear of the path of the COLOMBIA. Nor is it plausible that the Master of the COLOMBIA would have taken the action of ordering hard left rudder if it was perfectly obvious that a safe port to port passing would have resulted except for his action.

Concerning the fifth point raised by Appellant, there is no evidence that the COLOMBIA's course was set so that she would pass Buoy No. 24 as close as 150 feet. Hence, the balance of this

argument has no significance.

CONCLUSION

The negligence of the pilot did not relieve Appellant responsibility for the safety of his ship when there was real danger, which he either did or should have observed, and since he had ample time in both instances to take the proper precautionary measures of sounding the danger signal and retarding the speed of the EXCALIBUR. But considering the two months' suspension action taken against the pilot and the relative degree of fault on the part of the pilot and Appellant, the Examiner's order dated 10 November, 1950, is modified to read as follows:

ORDER

That License No. 58423 and all other valid licenses, certificates of service and documents now held by Appellant are hereby suspended for a period of one (1) month.

As so MODIFIED, said Order is AFFIRMED.

M. C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 3rd day of January, 1952.

***** END OF DECISION NO. 531 *****

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