

In the Matter of License No. 177065
Issued to: RICHARD O. PATTERSON

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

532

RICHARD O. PATTERSON

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 16 July, 1951, an Examiner of the United States Coast Guard at New York City admonished Richard O. Patterson, License No. 177065, upon finding him guilty of negligence based upon a specification alleging in substance that while serving as Master on board the American SS LOOKOUT under authority of the document above described, on or about 3 December, 1947, while said vessel was in the Yangtze River, China, he allowed the vessel to run aground (off the southeast end of the Woo-Sung Spit Breakwater at the entrance to the Hwangpoo River) by failing to relieve the pilot of the conn.

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 specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and counsel for Appellant made a motion to dismiss the

charge and specification on the ground of laches. After lengthy argument by both parties in which it was brought out that Appellant had been served on 16 February, 1948, with a differently worded specification based on the same incident, the Examiner in effect denied the motion. He stated that the specifications of 16 February, 1948, and 21 March, 1951, were basically the same and that the latter specification would be considered as in the nature of an amendment to the original specification of 16 February, 1948. The Examiner stated that under either specification the Investigating Officer would be required to prove that Appellant should have superseded the pilot in the navigation of the ship prior to the grounding; and, therefore, there was no prejudice to Appellant since he was informed of the nature of the charge by the specification of 16 February, 1948, and he has not been deprived of witnesses or other evidence by the delay.

A motion by counsel to dismiss the specification dated 21 March, 1951, was denied by the Examiner on the ground that the latter specification was merely an elucidation of the specification of 16 February, 1948, and that it also served as notice to the person charged as to the time and place of the hearing. The Examiner ruled that the charge of negligence was based upon the specification of 16 February, 1948, which alleged that Appellant did "fail to relieve a pilot on said vessel and resume the conn of said vessel yourself thereby allowing said vessel to ground." A plea of "not guilty" was entered to this specification and the charge of negligence.

The Investigating Officer then introduced in evidence the testimony of Chief Officer William J. Speidel, the statement of Junior Third Officer Robert A. Simon which was taken in Shanghai, China, on 11 December, 1947, U. S. Hydrographic Office Chart No. 5390 which was aboard the LOOKOUT, and certified copies of extracts from the Deck Log Book, Deck Bell Book and Engine Room Bell Book dated 3 December, 1947. After submitting this evidence, the Investigating Officer rested his case.

Counsel made a motion to dismiss the charge and specification on the ground that the Coast Guard had not borne its burden of proving the charge and specification. After examining the testimony and exhibits, the Examiner denied the motion.

Counsel for Appellant then made his opening statement and Appellant testified under oath in his own behalf.

After 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 adjourned the hearing to await his decision. At a later date, he announced his findings, concluded that the charge had been proved by proof of the specification and entered the order of admonition against Appellant.

From that order, this appeal has been taken, and it is urged that:

"First Point. The Investigating Officer failed to sustain the required burden of proof and establish a *prima facie* case; as a consequence Appellant's motion to dismiss should have been granted.

"Second Point. The Charge and Specification thereunder were not sustained by the competent weight of all of the evidence and the principles of law applicable to the situation.

"Third Point. We submit that irregularities [administrative excesses by the Investigating Officer which were contrary to regulations and settled practice] in the proceedings *per se* are sufficient grounds to dismiss the Charge and the Specification thereunder and strike the Investigating Officer's evidence from the record.

"Last Point. Wherefore, your Appellant respectfully prays that the Commandant will be pleased to make and enter an order dismissing the Charge and Specification."

APPEARANCES: Messrs. Kirlin, Campbell and Keating of New York City by John F. Gerity, Esquire, of Counsel, and John I. Dugan, Esquire, of New York City, of Counsel.

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

FINDINGS OF FACT

On 3 December, 1947, Appellant was serving as Master on board the American SS LOOKOUT and acting under authority of his License No. 177065 while the ship was enroute from Manila, P. I., to Shanghai, China.

The LOCKOUT (presently the AMERICAN MANUFACTURER), Official No. 247643, was a C-2 type steam screw freighter of 6214 gross tons, 6,000 horsepower, 486 feet in length and a beam of 63 feet. She was half-laden and drawing a mean draft of approximately 20 feet while proceeding up the Yangtze River. The weather conditions were favorable, visibility good, and the tide was flooding prior to and at the time the LOOKOUT ran aground in the shoal water off the southeast end of the Woo-Sung Spit Breakwater at the entrance to the Hwangpoo River. The velocity of the flood current varies between 1.7 and 2.6 knots.

As the LOOKOUT was entering the compulsory pilotage waters at the entrance of the Yangtze River on 3 December, 1947, Russian Pilot W. A. Pavloff came aboard at 0948 and conned the ship at all times up to the time she was stranded. When the pilot came on board, Appellant questioned him about a strike by the Shanghai pilots. Pavloff replied that only some of the pilots were on strike and that he had more than twenty years experience navigating ships in these waters. Pavloff's command of the English language was poor and he spoke with a very thick accent which was difficult to understand.

The pilot handled the ship in a competent manner as she proceeded approximately forty miles up the Yangtze River to the Quarantine Anchorage where she anchored at 1240 bearing 049 degrees true and 2700 yards distant from the Woo-Sung Training Wall Beacon. This beacon marks the outer extremity of the training wall or breakwater on the northerly side of the channel which leads into Shanghai and is at the junction of the Hwangpoo and the Yangtze Rivers.

Shanghai is approximately fifteen miles up the Hwangpoo River which is entered to the westward between curved training walls. The distance between the two walls is about 800 yards at the entrance to the Hwangpoo but since the shoal waters of Lismore

Flats extend almost 450 yards north of the southerly wall, the width of the deep water channel between the three fathom curves is reduced to about 350 yards when at the mean low water mark. The depth of the water in Lismore Flats in this vicinity ranges generally from six to fifteen feet. The shoal water area where the LOOKOUT stranded is indicated on the chart in evidence as an area which extends about 100 feet to the south of the training wall and eastward for more than 300 feet.

The Hwangpoo entrance range course is 250 degrees true and it could formerly be followed by keeping the Woo-Sung Light in line with a light shown from another tower nearby. The chart in evidence indicates that the Woo-Sung Light, situated on the west bank of the Hwangpoo near the inner end of the training wall, was destroyed in 1937 and the sailing directions state that this light was reported extinguished in 1947. The sailing directions also mention that the light was shown from a square black tower 58 feet high but there is no indication that either of the towers had been damaged so as to prevent their use as navigational aids during daylight hours. The range line crosses between the extremities of the training walls at a point slightly to the left of the center of the deep water channel. Another readily available aid to navigation in this area is the Lismore Light Buoy which bears 106 degrees true at a distance of 725 yards from the Woo-Sung Training Wall Beacon.

Appellant had been in these waters only once or twice before and he was not familiar with the currents or their effect but he was under the impression that the currents were dangerous, irregular, and unpredictable except for persons with considerable local knowledge. There were no publications on board the LOOKOUT which showed the effect of the currents at the entrance to the Hwangpoo and Appellant did not read the pertinent sailing directions until after the accident occurred.

Pratique was granted at 1305 and the LOOKOUT was underway from the Quarantine Anchorage at 1318 proceeding generally on a course of approximately 225 degrees true and at speeds of slow to full ahead until the ship ran aground. The course of 225 degrees made good over the ground would have carried the vessel to a point approximately on the range line when she passed the ends of the two training walls.

There were several other anchored vessels in the area. One of them was a Chinese vessel which was almost directly between the Woo-Sung Training Wall Beacon and the location where the LOOKOUT had been anchored. The Chinese vessel was approximately 1400 yards distant from the beacon.

Upon getting underway and until the time of the stranding, Pilot Pavloff directed the navigation of the ship. Appellant, Chief Officer Speidel, Junior Third Officer Simon and the helmsman were also on the bridge. The pilot was on the starboard wing of the bridge and Appellant remained constantly by the engine telegraph and close to the helmsman in order to relay the pilot's orders. Due to his years of experience, Appellant had acquired the ability to understand accented language and he wanted to insure prompt and proper obedience to the pilot's orders. The Chief Officer's station was at the starboard telegraph and the Junior Third Officer was on the starboard wing of the bridge.

As the LOOKOUT approached the anchored Chinese ship, it became apparent to Appellant that the flood tide was causing a strong northwesterly current which was setting the LOOKOUT down to her starboard. At about this time, the Chinese vessel began to heave around on her anchor chain. The result of this action by the Chinese vessel combined with the effect of the current on the LOOKOUT was required to order left rudder in order to clear the Chinese vessel by about 100 feet to starboard of the LOOKOUT. This close passage caused Appellant to be concerned and doubtful as to Pavloff's qualifications as a pilot. Appellant considered relieving the pilot at this point but refrained from doing so because of Appellant's own meager knowledge of tidal conditions in this area. Appellant also considered the advisability of following the entrance range but he thought it would be dangerous because of the numerous Chinese junks, sampans and miscellaneous small craft along the southerly side of the Hwangpoo River entrance. Appellant did not attempt to discuss any of these matters with the pilot but permitted him to continue in complete control of the ship's navigation until after the grounding.

The tidal current continued to set the LOOKOUT in a northwesterly direction after she had passed the Chinese vessel. The northerly training wall was visible and the pilot headed the

ship towards the open water close to the south of this breakwater although substantially the entire 350 yard width of the deep water channel could have been utilized since the tide was flooding and the mean draft of the ship was only approximately two feet more than the low water mark of the channel. Appellant thought that the ship would clear the breakwater by approximately 200 feet. But before the bow of the ship reached the Hwangpoo entrance, the force of the current became much more noticeable and the pilot ordered full ahead and hard left rudder in order to counteract the effect of the current. This occurred between one and two minutes before the grounding and it was not until then that Appellant became apprehensive concerning the safety of the ship. Shortly thereafter, the pilot ordered hard right rudder in an attempt to swing the stern clear of the shoal water to the southeast of the tip of the training wall. This maneuver did not serve the purpose for which it was intended and the ship was carried sideways by the flood current onto the sand bottom at 1334 on 3 December, 1947, bearing approximately 105 degrees true, 300 feet from the beacon. The engines were stopped at this time. The LOOKOUT struck on her starboard side in the vicinity of frame number 60 and scraped along her bottom to frame number 98. She remained hard aground and developed a seven degree port list. Numbers 2 and 3 starboard double bottoms were punctured but all holds were dry.

At 1335, Appellant relieved the pilot of the con and ordered him off the bridge. With the assistance of various tugs, the LOOKOUT maneuvered free of the ground at 0325 on 4 December, 1947, and proceeded under Appellant's orders to Shanghai without further incident. The cost of repairing the damage is not disclosed in the record. The pilot could not be located by Appellant subsequent to 3 December, 1947.

Appellant has been going to sea since 1922 and has been a licensed pilot since 1923. He is forty-five years of age. The only record of any prior disciplinary action having been taken against him was for assaulting a seaman and the result was that Appellant's license was suspended for five days.

OPINION

It is contended that the Investigating Officer did not make a proper opening statement and that he did not make out a *prima*

facie case against Appellant (First Point).

It is not necessary that the Investigating Officer should set forth evidentiary facts in his opening statement. The ultimate facts which were intended to be proven by evidence were fully and sufficiently stated in the two specifications. Appellant and his counsel were put on adequate notice as to what the Investigating Officer intended to prove and ample opportunity was afforded counsel to seek an adjournment in order to prepare the defense. The considerable delay since the time of the alleged offense is unfortunate but it has not been shown that this has prejudiced Appellant's case in any material respect.

A *prima facie* case was established by the Investigating Officer's evidence. Chief Officer Speidel stated that the ship was continually being set in a northwesterly direction and that he thought the LOOKOUT would clear the breakwater although it might be a close passage. Junior Third Officer Simon commented on the set from the tidal current, the close approach of the LOOKOUT to the Chinese vessel and his observation that the LOOKOUT was headed directly towards the breakwater. There is proof of the actual grounding and that the LOOKOUT did not follow the range in approaching the entrance to the Hwangpoo. The chart in use on the LOOKOUT at the time of the accident shows that the channel was of ample width for a ship to pass well clear of the breakwater and that, as happened in this case, it is possible to run aground even when as far as 300 feet clear of the breakwater. Such evidence was adequate to make out a *prima facie* case of such obvious danger to the ship that Appellant as Master of the ship, was required to relieve the pilot of the con and navigate his ship in a safe manner.

Counsel also claims that the charge and specification are not sustained by the weight of the evidence and the principles of law applicable to the situation under consideration (Second Point). Numerous passages from Appellant's testimony are quoted and several judicial opinions are cited in support of this argument. Great reliance is placed upon Appellant's statements that the currents in the Yangtze and Hwangpoo Rivers are very dangerous and erratic; that there was no danger until the bow passed the entrance and was caught in the crosscurrent which swept through the breakwater instead of the Hwangpoo as was to be expected; and that Appellant

was required to rely upon the local knowledge of the pilot concerning the set and drift from the unpredictable currents. Authorities are cited for the proposition that pilots are charged with knowledge of the tides and currents; and that the Master may not supersede the authority of the pilot except where it is necessary in extreme cases such as when a ship is in obvious danger which is not apparent to the pilot.

It has been stated in these judicial decisions that a Master may do his whole duty by pointing out the danger and leaving the responsibility to the pilot. But it certainly does not follow that if the pilot does not heed the advice he is given, the Master is automatically free of responsibility no matter how imminent the danger may be. Similarly, if the Master is not able or willing to communicate with the pilot, he is not relieved of following the alternative course of relieving the pilot when it becomes necessary to do so in order to protect the ship from danger. The situation under consideration fits into the latter category.

The present case must be distinguished from those in which there exists the possible element of surprise in connection with the action of local tides and currents. There was no such problem here. Appellant knew that there were dangerous currents in this area with which he was not familiar; but he was equally aware of the fact that at the time in question his ship was being set off her course by a strong northwesterly tidal current. The impression gained from the testimony of both Appellant and his Chief Officer leaves no doubt as to the obvious and continuous effect of this current after the LOOKOUT had passed the Chinese vessel about 1400 yards from the breakwater. This must have been at least six minutes before the LOOKOUT ran aground. And yet during all this time Appellant did absolutely nothing about the dangerous situation which was developing and about which he should have been apprehensive. Appellant had a chart of the area aboard but he did not consult it or attempt to plot the position of his ship. He had become concerned about the competency of the pilot when the LOOKOUT passed close aboard the Chinese vessel but Appellant made no effort to discuss with the pilot the effect of the current or the advisability of using the range.

A glance at the chart discloses the impropriety of heading directly for the Hwangpoo entrance from the anchored position of the LOOKOUT. The chart also shows that the deep water channel is approximately 350 yards in width at the entrance to the Hwangpoo

and that the Chinese junks and sampans sighted from the LOOKOUT might have been to the south of the channel in the Lismore Flats area. If the small craft were congesting the channel to the extent that only 300 feet of its width were available to the LOOKOUT, it was extremely imprudent to approach directly from a point which would necessarily require a course close to the breakwater. This was especially true since it was evident that the ship would be set towards the breakwater by the prevailing current. Although the rapid drift of the current might not otherwise have been very noticeable, the close approach to the Chinese vessel was informative as to this factor and Appellant was put on notice that a similar situation would very probably develop later on unless the shoal waters near the breakwater were given a wide berth. The movement of a ship through the water always seems to be greatly accelerated as she approaches stationary objects. Consequently, the visible effect of the consistently strong current increased greatly as the LOOKOUT drew near to the Chinese vessel and the training wall. Under the circumstances, Appellant should have pointed these things out to the pilot or, in the alternative, have relieved the pilot and come in on the range course navigating by means of the two range towers or by taking cross bearings on the Training Wall Beacon and Lismore Light Buoy. In this manner, the LOOKOUT would have steered a course to clear the shoal water by approximately 600 feet.

The passage of the LOOKOUT past the breakwater at a distance of 200 feet, which was contemplated by Appellant, would not have been safe since this distance is about 100 feet closer to the breakwater than the point where the LOOKOUT ran aground. And since the latter point was not within the entrance, Appellant's contention that the trouble was caused by a cross-current which caught the bow after it had passed the entrance could not be correct.

I think it was incumbent upon Appellant to have attempted to discuss these considerations with the pilot or to have relieved the pilot of the con in the absence of any such discussion.

The LOOKOUT was in a position of imminent danger when she was being set to her starboard while heading for the open channel just to the south of the break-water. Since Appellant either could not or did not choose to bring this danger to the attention of the

pilot in order to obtain an explanation for this drastic deviation from the normal procedure of following the range course. Appellant was bound to have navigated the ship out of danger and at least anchored until he understood the intentions of the pilot and his reasons for having navigated the ship in such an apparently reckless manner. The Master of a ship is not expected to stand idly by until he is almost certain that the pilot's navigation will result in a collision. And the presence of peculiar and tricky currents require that both the Master and pilot exercise even greater than usual care.

A similar situation of continuous danger from an apparent cause appears in *Robins Drydock Co. v. Navigazione Libera Triestina* (C.C.A. 2, 1929), 32 F.2d 209, where the Master was held at fault for failing to do anything for over four minutes when his ship was heading into danger under the direction of another seaman in charge of the operation. Even where danger from some cause is imminent but the particular cause of danger might not be appreciated, the Master must assert his authority over the pilot since the Master is ultimately responsible for the safety of his ship. *Charente Steamship Co. v. United States* (C.C.A. 5, 1926), 12 F.2d 412. This case states that "it was sufficient that the danger of the situation from any one of a number of probable causes was reasonably apparent, to make it the duty of the Master to insist upon the adoption of a method that was safe and ready at hand." The danger to the LOOKOUT was apparent and the "safe method" of following the range was "ready at hand." Appellant was required to act since "it was apparent that the ship was pressing on into danger and the pilot was doing nothing about it." *Union Shipping and Trading Co. v. United States* (C.C.A. 2, 1942), 127 F.2d 771.

It is contended that the Investigating Officer had in his possession at the hearing a transcript of the testimony taken on the first day of the hearing; and that the failure of the Investigating Officer to make this transcript available to the Examiner and counsel was so irregular as to require the dismissal of the charge and specification (Point Three). Since Appellant has failed to present any convincing reason as to what, if any, material prejudice this caused him, the argument does not contain any persuasive merit.

CONCLUSION

For the reasons above stated, I conclude that it was Appellant's duty, under the circumstances, to resume the navigation of his ship in order to protect the crew and ship from danger which was, or should have been, apparent to him. It was negligence for Appellant not to follow this course of action. Therefore, the order of the Examiner will be sustained.

ORDER

The order of the Examiner dated 16 July, 1951, should be, and it is, AFFIRMED.

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

Dated at Washington, D. C., this 7th day of April, 1952.

***** END OF DECISION NO. 532 *****

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