

In the Matter of License No. 164078 and all other Licenses,  
Certificates and Documents

Issued to: CHARLES WOODROW JUDKINS

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

868

CHARLES WOODROW JUDKINS

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.

By order dated 13 September 1955, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended License No. 164078 issued to Charles Woodrow Judkins upon finding him guilty of negligence based upon a specification alleging in substance that while serving as Second Mate on board the American SS GULFTRADE under authority of the license above described, on or about 11 May 1955, while in charge of the navigation of said vessel underway on the Gulf of Mexico and while having another vessel, the SEVEN SONS, so bearing on his port bow as to indicate risk collision, he failed to sound a warning signal when collision was imminent.

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 counsel of his own choice and he entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer and Appellant's counsel made their opening statements. The parties stipulated in evidence the testimony (except that of Appellant) and the exhibits constituting the record of the investigation of the collision between the GULFTRADE and SEVEN SONS on 11 May 1955.

After argument by both parties, the Examiner denied counsel's motion to dismiss for failure to make out a prima facie case.

Appellant then testified under oath. Appellant stated that, at 0105, the SEVEN SONS was bearing between 2 1/2 and 3 points on the port bow at a distance of 6 or 7 miles; at 0133 when Appellant ordered hard right rudder (1 to 1 1/2 minutes before the collision), the SEVEN SONS was bearing approximately 1 point on the port bow at a distance of between 1/4 and 1/2 mile; the GULFTRADE swung 35 to 40 degrees before the collision occurred at 0135. Appellant also testified that he thought the lights were those of a fishing vessel; he never lost sight of her lights; she did not appear to change course or speed prior to the collision; Appellant began to worry shortly after 0130 when the fishing vessel was getting very close; fishing vessels often come close before changing course at the last minute; and Appellant is familiar with the new danger signal under the International Rules of the Road, Rule 28(b). Appellant stated he had no record in 23 years at sea.

At the conclusion of the hearing, having given both parties an opportunity to submit further argument and proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and specification had been proved. He then entered the order suspending Appellant's License No. 164078, and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of three months subject to a probation period of twelve months.

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

#### *FINDINGS OF FACT*

On 11 May 1955, Appellant was serving as Second Mate on board the American SS GULFTRADE and acting under authority of his License

No. 164078 while the ship was navigating on the Gulf of Mexico, in international waters, enroute from Port Arthur, Texas to Jacksonville, Florida.

At 0135 on this date, the GULFTRADE, a tanker of more than 500 feet in length, was in a collision with the American F/V SEVEN SONS, a 61-foot shrimp trawler. The collision occurred at a point approximately 25 miles southeast of Trinity Shoal Lighted Whistle Buoy 4.

The collision took place on a clear, moonlight night. The sea was calm, there was a moderate southerly wind and visibility was excellent. There were no obstructions to navigation or other vessels in the area except the shrimp trawler FLORIDA QUEEN which was following the SEVEN SONS at a distance of about 2 miles. The three vessels were showing their proper navigational lights. No failure of machinery or equipment was involved in the collision.

Appellant had the 0000 to 0400 bridge watch on the GULFTRADE. At all times leading up to the collision, the helmsman was the only other seaman on the bridge. There was a lookout posted on the forecastle. The Master had retired.

At 0105, the GULFTRADE was proceeding on course 124° true, speed 14 knots, when Appellant sighted the masthead lights of two vessels which were later ascertained to be the SEVEN SONS and the FLORIDA QUEEN. The leading vessel, the SEVEN SONS, was bearing about 2 1/2 points on the port bow of the GULFTRADE at an estimated distance of 7 MILES. (The evidence shows that this was an accurate estimate.) At first, Appellant could not see the green sidelight of the SEVEN SONS except by using binoculars.

As the two vessels approached each other, Appellant could see the green sidelight of the SEVEN SONS with his naked eye; the lookout reported her presence on the port bow with a two-bell signal. Since the GULFTRADE was the holding-on vessel in a crossing situation, she maintained her course and speed. Appellant kept the SEVEN SONS under constant observation as her bearing drew steadily ahead on the port bow. Appellant thought the lights were those of a fishing vessel and that she would eventually change course very quickly in order to pass astern of the GULFTRADE. He was familiar with the danger signal under the International Rules

of the Road (Rule 28(b), 33 U.S.C. 147nb) but did not use it. No whistle signals were sounded by either vessel prior to the collision.

At 0130, there was no indication that the SEVEN SONS had changed her course or speed; or that she intended to do so. Appellant became worried as the two vessels drew closer together. At 0133 1/2, Appellant ordered hard right rudder when the fishing vessel was bearing 1 point on the port bow at a distance of between 1/4 and 1/2 mile. The GULFTRADE commenced swinging to the right. Appellant saw the red sidelight of the SEVEN SONS after about a minute. He then ordered the helmsman to shift the rudder in order to check the swing of the ship's stern towards the fishing vessel. The stern of the GULFTRADE was still swinging to port when the bow of the SEVEN SONS struck the port quarter of the larger vessel at 0135. Since the heading of the GULFTRADE had changed about 35 degrees to the right of her original course by the time the collision occurred, the angle of collision between the port sides of the two vessels was about 115 degrees. The engines of the GULFTRADE were stopped at 0136 and she maneuvered to render whatever assistance might be necessary.

The SEVEN SONS had been making about 8 miles per hour on a southwesterly course. She was steering by automatic pilot. The Master and a two-man crew were on board. None of them held documents issued by the Coast Guard or its predecessor authority. The deckhand on watch saw the lights of the GULFTRADE at a distance of several miles; but he went out on deck and fell asleep while sitting on a hatch cover. He awoke and was returning to the wheelhouse when he saw the GULFTRADE close aboard in front of the SEVEN SONS. The deckhand reached the wheel just at the time of impact. The bow of then fishing vessel was completely crushed. The shock awakened the Master. He called the FLORIDA QUEEN by radio-telephone. The latter vessel came alongside the SEVEN SONS and removed the three occupants. Nobody was injured. The fishing vessel sank within an hour. She was valued at \$56,000. There was an estimated \$500 damage to the GULFTRADE. The two remaining vessels proceeded to their respective destinations after the SEVEN SONS sank.

There is no record of prior disciplinary action having been taken against Appellant.

*BASIS OF APPEAL*

This appeal has been taken from the order imposed by the Examiner. It is contended that the collision was due to the criminal negligence of the deckhand on watch on the SEVEN SONS in that he was asleep. If Appellant had sounded the danger signal when he ordered hard right rudder, it would not have aroused the deckhand. In addition, the latter would not have known what action to take if he had heard a signal of 5 short blasts. Therefore, Appellant was not guilty of negligence since his failure to sound the danger signal did not contribute to the collision.

Appellant had a right to assume that the SEVEN SONS would see the lights of the GULFTRADE and obey the law by staying clear of her. Appellant took action *in extremis*, 1 1/2 minutes before the collision, when it was obvious that the SEVEN SONS would take no action.

An analogous situation was presented in *Nashbulk-Rutgers Victory* (C.A. 2, 1950) 183 F.2d 405, 1950 A.M.C. 1293, cert. den. 340 U.S. 865, where the court concluded that the failure of the holding-on vessel to indicate her change of course with a one-blast signal could not be held to have been a contributing cause of the collision because the change of course signal is required only to indicate a change of course; it was not required for the purpose of warning a vessel of the presence of another vessel even though the vessel alerted could have successfully taken action to prevent collision if such a signal had been sounded.

The use of the danger signal under the International Rules is permissive or optional, rather than mandatory as in our Inland Rules.

Since there is no substantial evidence of negligence, it is respectfully submitted that the findings of the Examiner should be reversed and the order of probationary suspension set aside.

APPEARANCES: Messrs. Terriberry, Young, Rault and Carroll of New Orleans, Louisiana,

by Alfred M. Farrell, Jr., Esquire, of Counsel.

OPINION

The determination of the issues in this case depends largely upon the interpretation to be given to Rule 28(b) of the International Rules of the Road (33 U.S.C. 147(b) which became effective on 1 January 1954. Diligent search has revealed no judicial authority concerning this comparatively new rule. It reads as follows:

"Whenever a power-driven vessel which, under these rules, is to keep her course and speed, is in sight of another vessel and is in doubt whether sufficient action is being taken by the other vessel to avert collision, she may indicate such doubt by giving at least five short and rapid blasts on the whistle. The giving of such a signal shall not relieve a vessel of her obligations under Rules 27 and 29 or any other Rule, or of her duty to indicate any action taken under these Rules by giving the appropriate sound signals laid down in this Rule."

Keeping in mind the fact that the over-all purpose of the International Rules is to prevent collisions upon the high seas, the most logical construction is that Rule 28(b) should be interpreted in the light of other rules stating general standards of conduct which are consistent with the purpose of the rules. Rule 29 (33 U.S.C. 147a) requires conformance with the "ordinary practice of seamen"; and it has been stated that all the rules which "are pertinent in a given situation should be considered and construed as a whole." U.S. v. Erie Railroad Co. (C.C.A. 6, 1909) 172 Fed. 50. Also 33 U.S.C. 146 requires that action be taken "with due regard to the observance of good seamanship."

In order to comply with these standards, it seems that the danger signal should be used at a safe distance when there is no indication that the giving-way vessel intends to take action to stay clear of the holding-on vessel. Despite the permissive wording of Rule 28(b), it is my opinion that this is the only construction which is compatible with the exercise of good seamanship.

In this particular case, Appellant is not charged with the violation of a mandatory rule of navigation which would be a statutory fault. He is charged with negligent navigation within the meaning of R.S. 4450, as amended (46 U.S.C. 239), under which a seaman is guilty of negligence if he does not take all reasonable precautions, including those required by the rules, to avoid danger in navigation. There is occasionally a distinction between negligence under R.S. 4450 and negligence which is a contributory fault or cause of a collision. Proof of the former normally depends upon whether the person charged acted imprudently under the circumstances rather than whether his vessel is wholly or partially liable for damages as the result of contributory fault on his part. These administrative proceedings do not attempt to forecast the outcome of civil litigation which will determine the issue of damages. The specification under consideration does not allege any casual connection between Appellant's negligence and the collision.

The primary purpose of Rule 28(b) is to give the vessel required to hold course and speed (until collision cannot be avoided by the action of the giving-way vessel alone) the opportunity of calling the attention of another vessel to her obligations under the rules in time to keep clear. Appropriate action by the alerted vessel would permit the holding-on vessel to maintain her course and speed. But the wording of Rule 28(b) does not preclude its application at a time when action is required on the part of both vessels if collision is to be avoided. This is the time to which the specification herein is limited.

Although the factual situation is strikingly similar to that in the *Nashbulk-Rutgers Victory* case, *supra*, the difference is that the failure to sound a one-blast signal was under consideration in the latter case. Rule 28(b) specifically provides for a danger signal and not some other kind of signal which would incidentally have served the function of a danger signal.

There is no doubt that, as contended, the SEVEN SONS are guilty of gross negligence. But in *The Yoshida Maru* (C.C.A. 9, 1927) 20 F2d 25, 1927 A.M.C. 1201, the court said:

"It is well settled that, in case of a collision, the initial fault of one vessel does not exempt the other

from the duty of complying with the rules of navigation or of using such precautions as good judgement and good seamanship require to meet the emergency."

I also agree with the contention that Appellant had a right to assume that the fishing vessel would keep out of the way of the GULFTRADE. Nevertheless, Appellant did not act *in extremis* with respect to his omission to sound the danger signal when he gave the right rudder order 1 1/2 minutes before the collision. In the *Nashbulk-Rutgers Victory*, supra, it was held that "only when an emergency suddenly arises does the *in extremis* doctrine apply. \* \* \* the NASHBULK's master had ample opportunity for the exercise of considered judgement in taking timely steps to cope with it [the situation]."

The admitted facts are that Appellant had the SEVEN SONS under observation for approximately 28 minutes before the time of the alleged offense; Appellant saw the bearing close about 1 1/2 points on the port bow; he noticed no change in the course or speed of the fishing vessel; and he was worried as the fishing vessel drew closer. Yet, Appellant did not even sound the danger signal when, it is contended, "it was obvious that the SEVEN SONS would take no action, the GULFTRADE gave hard right rudder." This was at a time when the danger of collision had increased to the point of making it almost unavoidable unless both vessels acted. Since the deckhand on watch on the fishing vessel actually reached the wheel by the time of impact without the benefit of an alerting signal, there is no assurance that the danger signal would not have spurred the deckhand into taking action which would have prevented the collision. As stated above, the very purpose of Rule 28(b) is to attract the attention of the giving-way vessel.

It is my opinion that the omission to sound the danger signal at this time or sooner was not in compliance with the requirement to exercise good seamanship. I consider that it was improper for Appellant to assume that the fishing vessel would pass astern of the GULFTRADE by changing course at "the last minute." Since Appellant had prior experiences where fishing vessels came very close before changing course, this was precisely the type of situation where Appellant should have used every available means to prevent it from developing into a dangerous one.

It is my conclusion that there is substantial evidence of negligence, as alleged, on the part of the Appellant regardless of the fact that the wording of Rule 28(b) is permissive rather than mandatory. A contrary holding in this case would permit the holding-on vessel to ignore a valuable, available means of attempting to avoid danger in navigation.

*ORDER*

the order of the Examiner dated at New Orleans, Louisiana, on  
13 September 1955 is AFFIRMED.

A. C. Richmond  
Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington, D.C., this 26th day of March, 1956.

\*\*\*\*\* END OF DECISION NO. 868 \*\*\*\*\*

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