

In the Matter of License No. 75723  
Issued to: LESTER MARTIN

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

599

LESTER MARTIN

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 28 May, 1952, an Examiner of the United States Coast Guard at Long Beach, California, suspended License No. 75723 issued to Lester Martin upon finding him guilty of negligence based upon a specification alleging in substance that while serving as Master on board the American SS DAVID E. DAY under authority of the document above described, on or about 17 May, 1952, while said vessel was at sea, he navigated at an immoderate speed in a fog.

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 introduced in evidence the testimony of five members of the crew of the DAY. By stipulation, a copy of the course recorder record of the DAY and a copy of her deck log entries were

placed in evidence.

In defense, Appellant offered in evidence his own testimony and that of the Master of the MARINE FLIER.

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 specification. He then entered the order suspending Appellant's License No. 75723 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 six months - three months' outright suspension and three months on one year's probation from 28 May, 1952.

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

- I. There is not sufficient evidence to support a finding that Appellant was negligent since the charge was not proved beyond a reasonable doubt. Although the DAY was proceeding at approximately 16 knots and the visibility was restricted, she could have stopped in minimum time and distance because she was in her most maneuverable condition. But the DAY was not put to the crucial test as to whether she could have stopped in one-half the distance of visibility since the best maneuver was to continue at full speed after the MARINE FLIER was sighted on the starboard beam of the DAY and headed directly for her.
- II. The finding that Appellant was negligent is not warranted by the facts on the record. Under the circumstances, Appellant acted as a reasonably prudent Master. The ship was exceptionally maneuverable and in perfect operating condition, the personnel on watch were unusually competent, Appellant knew these waters well and he was continuously on the bridge from approximately 1800 until the collision at 2322, Appellant has had far greater

radar experience than the average Merchant Marine officer, and he kept the radar scope under observation. The presence of radar is a factor in determining whether a vessel is proceeding at an immoderate speed; but the effect of radar on Article 16 of the Rules of the Road is in a state of evolution and no reported opinion of a United States court has specifically condemned a radar equipped ship for going too fast in restricted visibility.

III. Appellant properly evaluated the approach of the MARINE FLIER and the collision would not have occurred but for the last minute radical maneuver of the MARINE FLIER when her rudder was put hard right. Appellant picked up the other ship on his radar when she was approximately five degrees on the DAY's starboard bow at nine miles. The prudent course was to refrain from crossing the bow of the approaching vessel and negotiate a starboard to starboard passing. The bearing of the MARINE FLIER opened to 45 to 50 degrees on the starboard bow of the DAY at a distance of one mile after Appellant changed course to the left. On the other hand, the bearing of the DAY from the MARINE FLIER did not open to the left as it should have for a port to port passing. The two ships would have passed well clear to starboard of each other if they had maintained their respective courses.

IV. The order is unduly severe in view of Appellant's otherwise perfect record during 36 years at sea including about four years in the U.S. Navy.

APPEARANCES: Messrs. Lillick, Geary and McHose of Los Angeles, California by Lawrence D. Bradley, Jr., Esquire, of Counsel.

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

#### *FINDINGS OF FACT*

On 17 May, 1952, Appellant was serving as Master on board the American SS DAVID E. DAY and acting under authority of his License

No. 75723 while his ship was en route from Port Richmond to Long Beach, California. At 2322 on this date, the DAY was in a collision with the MARINE FLIER at a point about ten miles southwesterly from Point Dume, California, and in the main shipping lane between San Francisco and Los Angeles ports.

The DAY is a T-2 type tanker of approximately 525 feet in length. She is powered by a turbo-electric plant which makes it possible for her engines to be reversed from full ahead to full astern in about ten seconds; and she has the same power going astern as when going ahead. The DAY's maneuverability was increased by the fact that ballast had been discharged and her draft was one foot forward, seventeen feet aft, at the time of the collision. There is no data in the record as to the time or distance in which the DAY could be stopped dead in the water from full speed ahead in this light condition.

Fog was encountered in the morning and afternoon of 17 May, 1952, as the DAY proceeded down the coast. At 1827 when Point Conception was passed abeam to port, the DAY changed course to 111 degrees gyro, 110 1/2 true, and thereafter she was in thick fog but continued at normal full speed ahead (90 RPM) although the engine telegraph was placed on "standby." Appellant was on the bridge at 1827 and remained there until after the collision. The radar was in operation, fog signals were sounded every minute and a half, and a bow lookout was posted at all times until the collision.

The fog remained dense throughout the 2000 to 2400 watch; and visibility was limited to between approximately 1000 and 3000 feet. The DAY changed course to 114 degrees gyro at 2135. Visibility was restricted to about two ship lengths when the DAY passed Anacapa Island Light at a distance of 2.3 miles abeam to starboard at 2211. The average speed of the ship between Point Conception and this Light had been 16.33 knots over the ground.

Appellant and the Third Mate who was on watch alternated watching the radar scope until the MARINE FLIER actually came into sight. The radar was located at the after end of the wheelhouse on the port side. It was about six feet from the steering wheel. The helmsman was the only other person on the bridge at the time of the collision.

At 2247, the DAY changed course to 116 degrees gyro and, while

moving at full speed ahead, she passed between two ships which were headed in the opposite direction. Appellant then set the radar scope on the eight mile range scale. Some minutes later, he saw a contact come into view on the outer edge of the scope. The radar indicated to Appellant that this object, which turned out to be the MARINE FLIER, was bearing five degrees on the starboard bow of the DAY. Appellant decided to pass the other ship starboard to starboard. At 2301, he ordered a change of course to 110 degrees gyro and he watched the radar scope almost continuously from then until the collision occurred. By using ranges and bearings obtained from the radar and a table in Bowditch, Appellant and the Third Mate arrived at the conclusion that the closest point of approach of the MARINE FLIER to the DAY would be about seven-tenths of a mile to starboard. (The exact table upon which this calculation was based is not mentioned.) Appellant did not plot the relative positions of the pips representing the MARINE FLIER as the range between the two vessels was closing; and he did not estimate the other ship's course at any time before the collision.

Although the bearing of the MARINE FLIER was slowly but steadily broadening on the starboard bow of the DAY as Appellant continued to constantly check the ranges and bearings on the radar scope, he ordered a course change to 100 degrees gyro at 2313 and to 090 gyro at 2316. At about the latter time, the bow lookout heard the fog signal of the MARINE FLIER on the starboard bow and he rang one bell. The radar showed that the MARINE FLIER was bearing 035 degrees relative when the DAY was on course 100 gyro, and broad on the starboard bow of the DAY when the two ships were about a mile apart.

The relative bearing was practically the same when the Third Mate on the DAY saw the loom of the masthead and range lights of the MARINE FLIER at a distance of approximately two ship lengths. This was about a minute before the collision. Since the lights were open to port and Appellant was watching the radar scope, the Third Mate ordered hard left rudder without taking time to consult Appellant who then saw the MARINE FLIER and immediately countermanded the Mate's order with hard right rudder. Appellant also gave the order to put the rudder amidships just prior to the collision. The course of the DAY had not altered substantially from 090 gyro and she was still making full speed ahead at 2322 when the bow of the MARINE FLIER struck and holed the DAY on her starboard side under the wing of the bridge. The angle of

collision was approximately ninety degrees.

The MARINE FLIER had been on course 293 degrees gyro, 293 1/2 true, until after the radar scope of the MARINE FLIER disclosed the DAY up ahead. In order to attempt a port to port passing the course of the MARINE FLIER was changed to 303 gyro at 2312. This caused the DAY to bear slightly on the port bow of the MARINE FLIER. When the bearing of the DAY began to close, the course of the MARINE FLIER was changed first to 313 gyro at 2318, and then to 323 gyro at 2320. Her speed was changed to one-half ahead and her rudder put hard right at 2321. Consequently, the MARINE FLIER was swinging to her right when the impact occurred.

Appellant gave orders to stop the engines after the collision and a fire broke out immediately on the DAY. The MARINE FLIER stood by to render assistance. Fortunately, the fire was extinguished without injuries to anyone aboard the DAY and she proceeded into Long Beach, California, under her own power.

#### OPINION

The degree of proof required in these administrative proceedings is that the decision must be supported by "reliable, probative, and substantial evidence." Administrative Procedure Act, section 7(c), Title 5 United States Code, section 1006(c); Suspension and Revocation Proceedings, Title 46 Code of Federal Regulations, section 137.21-5.

The distance of visibility at the time the MARINE FLIER became visible from the DAY presents the only material difference between my findings of fact and Appellant's contentions as to the prevailing circumstances. I have found that the visible distance was approximately two ship lengths (or about 1000 feet) while Appellant claims that although the visibility was restricted, there is no means of determining the precise limit of visibility. All of the witnesses including Appellant, but with the exception of the engineering officer who was not in a position to judge, testified that after 2000 the fog was thick, dense, or heavy. But the Third Mate was the only witness who gave a definite estimate as to the distance of visibility at the time in question. He stated unhesitatingly and repeatedly that his estimate was "two ship lengths" (R. 10, 12). Therefore, I consider this to be substantial

evidence for the fact as found. Other findings of the Examiner have been altered or modified to agree with the record.

Appellant's claims as to the highly maneuverable condition of his ship, her ability to stop quickly, and the above average competency of her operating personnel, have been given consideration in determining whether the DAY was moving at an immoderate speed. But as mentioned in the companion case to this one ([Appeal No. 598](#)), in which the suspension of the license of the Master of the MARINE FLIER was upheld, there were other circumstances present which are pertinent to the issue of moderate speed. Some of these conditions were that Appellant permitted the DAY to advance at a speed greater than sixteen knots throughout the critical period of more than twenty minutes after he knew of the presence of an approaching vessel in a dense fog at night; Appellant knew that the two ships were very nearly head-on to each other if the other vessel was following the usual shipping track between Los Angeles and San Francisco; and Appellant was on the bridge observing the radar scope as the dangerous situation developed.

Appellant does not question the applicability of Article 16 of the Rules of the Road to a vessel equipped with radar but he contends that radar is a factor in determining whether a vessel was proceeding at an immoderate speed. It is urged that aided by the information obtained from the radar that the MARINE FLIER was five degrees on the starboard bow of the DAY, Appellant took the proper action by altering course to port for a starboard to starboard passing; and that the speed of the DAY was not excessive but that the last minute radical change of course by the MARINE FLIER to her starboard was the sole cause of the accident.

Undoubtedly, a heavier burden is placed upon a ship to comply with all the general principles applicable to navigation in a fog after her radar has disclosed the fact that there is an approaching ship in the vicinity. A ship is bound to have her radar in operation if it is in good condition and she is required to make adequate use of the information obtained from the radar. The *Medford* (D.C.N.Y., 1946), 65 F. Supp. 622; *The Australia Star* (C.C.A. 2, 1949), 172 F.2d. 472. In the absence of any change in the Rules of the Road which specifically provide for radar, it is the judicial function to interpret Article 16 in the light of this

comparatively new scientific development which was not provided for or anticipated when the Rules were adopted. But no judicial interpretations have been brought to my attention which qualify the recognized principles that moderate speed in fog is something less than full speed; a ship in fog is required to proceed at such a speed that she can stop before colliding with another vessel; and a ship must stop and then navigate with caution after hearing the fog signal of an invisible vessel coming from forward of the beam.

The rules of navigation become applicable when the necessity for precaution begins. Under the circumstances of this case, I think that this time occurred not later than when Appellant first observed the contact on his radar scope; and that if not bound to then stop the engines of the DAY, he was burdened with the duty to reduce the speed of his vessel from full ahead and to proceed with extreme caution. Regardless of the unusual power of the DAY in stopping and rut on advance notice, by the radar data, of impending danger. It was particularly urgent in this case that Appellant should at least have ordered the engines stopped after he was informed by the Second Mate that the bearing of the other ship had remained almost constant even after the first ten degree course change.

Appellant's contention, as applied to the circumstances of this case, seems to be that a higher speed in fog should be permitted when a ship is equipped with radar to locate other ships; and that the radar equipped ship is not bound by the usual standards, which are employed to prevent collisions, even after a target has been sighted on the radar, so long as the other vessel is kept under observation on the radar scope and some avoiding action is attempted. But this is inconsistent with the Rules of the Road as interpreted by the courts as well as with the basic rule that a greater, rather than a lesser, responsibility rests upon the radar equipped vessel to take whatever action is necessary to avoid another vessel whose presence has been disclosed by the radar.

Regardless of the fact that Appellant has never before been subjected to disciplinary action, he must suffer the consequences of his failure to take proper action promptly in this case. His eight years' experience with radar makes it even more difficult to understand why this collision occurred.

### CONCLUSION

The requirements to substantially reduce speed and to proceed so as to be able to stop before colliding with another vessel apply even more strongly than usual in this case because Appellant's responsibility to avoid collision was increased by the radar equipment aboard the MARINE FLIER. A contrary determination would be tantamount to holding Masters in similar situations to a lesser degree of care, than is usually required by the Rules of the Road, when they are navigating with the assistance of radar. Since Appellant did not stop or even reduce the speed of his ship, he was negligent.

### ORDER

The Order of the Examiner dated at Long Beach, California, on 27 May, 1952, is AFFIRMED.

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

Dated at Washington, D. C., this 29th day of October, 1952.

rounding circumstances. The outstanding circumstance here is that Appellant was aware of the exact relative positions of the WIDEAWAKE as a result of the radar information received from the Second Mate. Nevertheless, Appellant continued towards the heavier fog, which was hiding the WIDEAWAKE from sight, at the rate of 12 knots over the ground instead of following the requirement to proceed with caution and to slow down so that the vessel would be moving at a moderate speed when she entered the fog bank ahead of her. *The City of Alexandria (D.C.S.D.N.Y., 1887)*, 31 Fed. 427. The third specification is supported by substantial evidence.

Concerning the fifth specification, it is contended that Appellant recognized this as a crossing situation and he took action to stay out of the way of the privileged vessel by ordering hard right rudder to pass under the stern of the WIDEAWAKE; but the latter failed to carry out her obligation to answer the CONCORD's one-blast signal and to maintain course and speed.

Contrary to Appellant's contention, I have found that there was no appreciable alteration in course on the part of the WIDEAWAKE and that she did reply to the first one-blast whistle signal sounded by the CONCORD at 1539. The fact that Appellant did not hear the answering one-blast whistle does not excuse him from fault. And the CONCORD was justified in not holding her speed when immediate danger of collision was seen to exist at the moment she sighted the CONCORD bearing down on her. The rule requiring the burdened vessel to direct her course to starboard so as to cross the stern of the other vessel, also requires that if necessary to do so, she must slacken her speed or stop or reverse. Appellant took the latter precautions too late.

When a situation exists such that the vessels do not sight each other at a distance sufficient to allow them time to maneuver in accordance with the crossing rules and both vessels are placed in *extremis* through their concurring fault, neither vessel can use the existence of the emergency as an excuse for her own erroneous action. Regardless of the actions of the WIDEAWAKE prior to 1539 when she sighted the CONCORD, Appellant was at least partially responsible for the predicament existing at 1539 because of his negligent action before then. In addition to the negligence proven with respect to the other specifications, a greater burden was placed upon Appellant to avoid danger of a collision because of the knowledge he had obtained from the radar. The fact that Appellant knew of the presence of the WIDEAWAKE sixteen minutes before the collision occurred and that the WIDEAWAKE was approaching the CONCORD in the position of a privileged vessel in a crossing situation, was ample warning to Appellant to take whatever action might be necessary in order to be certain that the CONCORD kept out of the way of the WIDEAWAKE. Appellant having failed in this duty, the fifth specification has been proved.

*ORDER*

The Order of the Examiner dated 4 April, 1952, is AFFIRMED.

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

Dated at Washington, D. C., this 17th day of October, 1952. c known to traverse the waters in the vicinity of the Golden Gate Bridge, the 800 yards wide marked channel and the open water between the bridge and the channel, makes utterly superfluous any extended discussion of the problems any navigator may expect to encounter there. The variety of vessel types which he might meet is demonstrated by the presence of the BENEVOLENCE on the occasion in question. The fog was an additional warning to Appellant to navigate his vessel at a low speed. Nevertheless, the LUCKENBACH headed for the marked channel while she was heavily loaded with 10,000 tons of cargo, drawing 27 feet 4 inches forward and 29 feet 7 inches aft, and the uninterrupted forward motion of the ship was accelerated by a favorable current.

There are mechanical tests which are also applied by the courts to determine whether a given rate of speed of a ship is moderate or excessive in view of the particular circumstances of the case. It has been held that a vessel shall not proceed at a speed at which she cannot be stopped dead in the water in one-half the distance of visibility ahead of her (*The Chicago - Silver Palm* (CCA9, 1937), 94 F.2d 754, cert. den. 304 U.S. 576); and also that a vessel must be able to stop before colliding with another vessel which has been sighted, provided such approaching vessel is going at a moderate speed. (*The Umbria* (1897), 166 U.S. 404; *The Nacoochee* (1890), 137 U.S. 330). The significance of the test set forth in the latter two cases is substantially the same as that enumerated in the former case, when applied to two vessels which are approximately head and head when they sight each other. According to either test, each vessel would then be required to be able to stop within one-half of the visible distance; and under the circumstances of this case, that is the test which is applicable.

I have found that the BENEVOLENCE was sighted at a range of approximately 1500 to 2000 feet and Appellant raises no objection to limiting this finding to 2000 feet. Since there was no substantial change in the density of the fog prior to sighting the other ship, the distance in which the LUCKENBACH was required to have been able to stop (when she heard the fog signal of the BENEVOLENCE a minute before sighting her) was a maximum of 1000 feet. The latter figure will be considered to have been one-half the distance of visibility even though it would be more appropriate

to use the lesser distance of 750 feet in view of the surrounding circumstances such as the expectancy of meeting other vessels in this vicinity.

I have also found that the LUCKENBACH passed the Golden Gate Bridge at 1642 ship's time (see Exhibits 6 and 7) and that the clocks on the LUCKENBACH's bridge were approximately five minutes ahead of the BENEVOLENCE clocks. The latter finding is supported by the mutually corroborating testimony of the witnesses from both ships which can lead only to the conclusion that the collision occurred at 1655 BENEVOLENCE time and 1700 LUCKENBACH time.

There is no disagreement with the BENEVOLENCE time of 1655 and this is supported by the entry made in the Quartermaster's Log Book of the BENEVOLENCE (Exhibit 24) at the time of the first impact (R. 653) as well as the statement of the Captain of the BENEVOLENCE in his report of the accident (Exhibit 19) and the testimony of the Navigator (R. 536). There is also testimony by the Captain of the BENEVOLENCE that the conning pilot heard the fog whistle of the LUCKENBACH at 1652 (R. 381); and by the Captain and Navigator of the BENEVOLENCE that the order to stop all engines was given at 1652 (R. 381, 555). The testimony of the Chief Engineer corroborates the time of stopping at 1652. Although he testified that the stop bell was received in the engineroom at 1650 (R. 743), it is evident that the source of his time was two minutes behind the bridge time because he also testified that the stop bell after the collision was received at 1653 1/2 (R. 744). The testimony of the Captain and Navigator discloses that at 1654 they heard the LUCKENBACH's fog signal and that the order "right full rudder" was given as the bow wave of the LUCKENBACH came into sight (R. 386, R. 536-7). The prospective MSTs Second Officer testified that the two-thirds ahead order was given seconds before the collision occurred at 1655 (R. 821, 831). This agrees with the testimony of the Chief Engineer that the two-thirds ahead bell was received two minutes after the stop bell (R. 744) and that the ahead bell was still being answered when the collision occurred (R. 745, 762). The Captain stated that the collision alarm was sounded on the siren after sighting the LUCKENBACH and prior to the impact (Exhibit 19). This must have been at 1654 BENEVOLENCE time. The evidence indicates that the BENEVOLENCE sighted the LUCKENBACH slightly earlier than the BENEVOLENCE was seen from the LUCKENBACH.

Turn failure to stop her engines upon first hearing the fog signal of the MARINE FLIER. In view of the circumstances, I do not think the suspension order is unduly severe despite Appellant's otherwise perfect record.

*ORDER*

The order of the Examiner dated at Long Beach, California, on 28 May, 1952, is AFFIRMED.

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

Dated at Washington, D. C., this 4th day of November, 1952.

\*\*\*\*\* END OF DECISION NO. 599 \*\*\*\*\*

---

[Top](#)