

In the Matter of License NO. 111903
Issued to: CHARLES FABRI

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

840

CHARLES FABRI

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 26 October 1954, an Examiner of the United States Coast Guard at San Francisco, California, suspended License No. 111903 issued to Charles Fabri upon finding him guilty of negligence based upon three specifications alleging in substance that while serving as Junior Third Mate on board the American SS COLORADO under authority of the document above described, on or about 1 January 1954 while said vessel was at sea off the coast of California, he contributed to a collision between the COLORADO and the PERMANENTE SILVERBOW by directing the course of his vessel to starboard without sounding the required signal when meeting the SILVERBOW end on (Second Specification); by failing to alter the course of his vessel sufficiently and timely enough to assure a safe port to port passing with the SILVERBOW (Third Specification); and by continuing on hard right rudder when the green sidelight of the SILVERBOW was observed on the port bow of the COLORADO (Fourth Specification). The First Specification was found not proved by the Examiner.

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.

It was stipulated by the parties that the entire record of the preliminary investigation conducted by the Coast Guard should be introduced in evidence before the Examiner. No additional evidence was offered on behalf of Appellant.

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 three specifications. He then entered the order suspending Appellant's License No. 111903, and all other licenses issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of eight months.

From that order, this appeal has been taken, and it is urged that the COLORADO did not cross the bow of the SILVERBOW from her port to starboard but the Mate of the SILVERBOW assumed that the COLORADO would attempt to pass on the wrong side and he changed the course of the SILVERBOW to 160° true as the COLORADO was changing course to 350° true; since the vessels approached one another in a head and head meeting situation, the right turn of the COLORADO was the proper maneuver and the left turn of the SILVERBOW, which was a violation of her obligation to turn to the right, was the primary cause of the collision; the ships were so close when Appellant saw the SILVERBOW's green sidelight that the maneuver best calculated to avoid collision was to continue the COLORADO's right swing, while ordering the engines full astern, in order to give the SILVERBOW an opportunity to correct her erroneous left turn or to pass clear across the bow of the COLORADO; the 85 degree alteration of the heading of the COLORADO before the collision was a sufficient change of course; the latter maneuver would have been timely if it had not been met with a left turn by the SILVERBOW; and the SILVERBOW's story suggests maneuvers on the part of the COLORADO which were physically impossible since she was never on a course to the left of 340° true.

Appellant admits guilt with regard to the failure to sound a one-blast whistle signal when altering course to starboard (Second Specification) but it is contended that he is not guilty of failing to alter course sufficiently and timely enough (Third Specification) or of improperly continuing to turn right after sighting the SILVERBOW's green sidelight.

In conclusion, Appellant submits that since the negligence of the SILVERBOW Mate was equal to or greater than that of Appellant, the latter's eight months suspension should be modified to not more than the four months suspension imposed upon the Mate of the SILVERBOW.

APPEARANCES: Messrs. Lillick, Geary, Olson, Adams and Charles of
San Francisco, California
By Gilbert C. Wheat, Esquire, of Counsel.

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

FINDINGS OF FACT

On 1 January 1954, Appellant was serving as Junior Third Mate on board the American SS COLORADO and acting under authority of his License No. 111903 when the ship collided with the American SS PERMANENTE SILVERBOW approximately twelve miles off the coast of California in the vicinity of Fort Bragg. The collision occurred at 2106, COLORADO bridge time, as the bow of the COLORADO penetrated the starboard quarter of the SILVERBOW at an angle of about ninety degrees and caused estimated damages of \$450,000 to the vessels. No one was injured on either vessel.

The COLORADO, a Victory ship of the 8500-horsepower class, was bound from San Francisco to Vancouver with 3200 tons of cargo on course 340° true at full speed of 16 knots. Her draft was 19 feet, 2 inches forward and 22 feet, 10 inches aft.

The SILVERBOW is also a Victory-type cargo vessel of the 8500-horsepower class. She was proceeding from Seattle to San

Francisco in ballast on the reciprocal course of 160° true at full speed of 18 knots. Her draft was 10 feet, 1 inch forward and 18 feet, 3 inches aft.

The tanker MacGAREGILL was almost directly ahead of the SILVERBOW at a distance of about 7 miles. The MacGARGILL was on course 159° true making 15 knots.

The collision occurred on a dark, clear night. The sea was calm, there was a light northwesterly wind, the current was negligible and visibility was excellent.

Appellant had the 2000 to 2400 on the COLORADO. At all times leading up to the collision, the only other seaman on the bridge was the helmsman. There was a lookout posted on the bow of the ship. The Master had retired. All navigational equipment and lights were in good working condition. The radar was in operation.

The entries in the engine room and deck logbooks and bellbooks of the two ships indicate that the collision took place at 2106 COLORADO bridge time and 2104 SILVERBOW bridge time.

Appellant observed pips on the radarscope representing both the MacGAREGILL and the SILVERBOW before he saw the lights of either ship. When Appellant saw the masthead and range lights of the MacGAREGILL almost dead ahead, he changed course from 340 to 350° true. The lookout on the COLORADO reported the other ship dead ahead by sounding three bells. Appellant then sighted both the red and green sidelights of the MacGAREGILL. The latter changed her course to 183° true and the two ships passed port to port at a distance of about one mile. At this point, Appellant ordered the helmsman to return to course 340° true.

As soon as the COLORADO had steadied on 340° true, Appellant sighted a white on the SILVERBOW at a distance of approximately 5 1/2 miles. The SILVERBOW was practically dead ahead of the COLORADO and was so reported by the sounding of three bells by the bow lookout. The COLORADO continued on course 340° true for about 6 minutes until Appellant saw the red sidelight of the SILVERBOW at a distance of approximately 2 miles. He immediately ordered a change of course to 350° true at 2102 or 2103.

Appellant next saw the masthead and range lights of the SILVERBOW close and open in the opposite direction so that he could see the green sidelight of the SILVERBOW almost dead ahead. Appellant then ordered a change of course to 360° true. Finally, he ordered the rudder hard right and the engines full astern at 2105. The collision occurred about a minute later with the rudder of the COLORADO still hard right. No whistle signals had been sounded by either vessel.

The white lights of the COLORADO were sighted dead ahead of the SILVERBOW at approximately the same time Appellant observed a white light on the SILVERBOW. At a distance of 3 1/2 miles, the red and green sidelights of the COLORADO were seen dead ahead of the SILVERBOW. At about 2100 SILVERBOW bridge time (2102 COLORADO bridge time), the SILVERBOW changed course from 160° true to 175° true when only the red sidelight was visible. Then the COLORADO, according to SILVERBOW witnesses, appeared to be crossing the bow of the SILVERBOW from port to starboard, and the latter's course was changed to 160° true at about 2104 COLORADO time. A minute later, the rudder was placed hard left shortly before the time of collision. The engines of the SILVERBOW remained at full speed ahead until after the collision.

OPINION

Undoubtedly, the COLORADO and the SILVERBOW were approaching each other end on, or head and head, on parallel courses so as to require a port to port passing in accordance with Rule 18 since each vessel was in position to see both the sidelights of the other 33 U.S.C. 146b(a). Witnesses from both ships repeatedly testified that the other vessel was "dead ahead" while the ships were on their respective base courses of 340 and 160 degrees true. Consequently, they were both required to alter course to starboard so as to pass on the port side of the other (33 U.S.C. 146b(a)) and to indicate such a change of course by sounding one short blast on the whistle. Rule 28. 33 U.S.C. 147(a).

Appellant admits that his failure to comply with the latter statutory requirement contributed to the collision. Appellant's negligence in this respect is supported by the holding of the supreme Court that if a ship at the time of a collision is in violation of a statutory rule intended to prevent collisions, it is

a reasonable presumption that this fault was a contributory cause of the disaster and the burden rests upon the ship of showing affirmatively that her fault could have been one of the causes of the collision. *The Pennsylvania* (1873) 19 Wall. 125. In other words, in a case of this nature, a vessel at fault for not sounding a signal when changing helm must prove, in order to escape liability, that the collision would have occurred even though the proper signal had been given. *Oriental Trading and Transport Co. V. Gulf Oil Corp.* (C.A. 2, 1949), 173 F2d 108. In *The Cushing* (C.C.A. 2, 1923, 292 Fed. 560, both ships which collided in waters where the International Rules applied were found at fault for failing to sound whistle signal indicate their changes of course when approaching each other in a meeting situation.

The testimony of Appellant and the Mate on the SILVERBOW is substantially corroborated by their respective lookouts and helmsmen. These two versions of the incident disagree as to what occurred when the ships were about one mile apart. This was approximately 2 minutes before the collision since the clocking rate of speed was approximately 34 knots, or about 1150 yards per minute, while the ships were head on opposite courses. As to this time, Appellant testified that the red sidelight of the SILVERBOW disappeared and was replaced by her green sidelight coming into view slightly on the port bow of the COLORADO after the latter had commenced changing course to starboard. The Mate on the SILVERBOW claimed that he observed the COLORADO slowly crossing the bow of the SILVERBOW and he saw the green sidelight of the COLORADO at a distance of one mile dead ahead before he changed course to 160° true.

Although it would be within my authority to make a determination de novo (of this apparent conflict in testimony) in favor of one side or the other because the evidence was entirely by stipulation and exhibits (*United States V. Cia. Luz Stearica* (C.A. 9, 1951), it is not necessary to do so since the dangerous situation was created by the earlier negligence of those in control of the navigation of the two ships - Appellant and the Mate on the SILVERBOW. Another element which makes a clear determination of this issue impractical is the fact that estimates by witnesses in collision cases are "so wholly unreliable as to have become proverbial for uncertainty." *The Georgic* (D.C.S.D.N.Y., 1910), 180 Fed. 863. In connection with this, it is significant with

respect to both ships that the initial fault of one vessel does not exempt the other from the duty of complying with rules of navigation. *The Yoshida Maru* (C.C.A. 9, 1927), 20 F2d 25.

In addition to negligence failing to sound a one-blast whistle signal, it is my opinion that the 10 degree change of course ordered by Appellant was not a large enough change of course and that the order was not given in time. The SILVERBOW had been in sight some 6 minutes before Appellant ordered this change when the vessels were only about 2 miles apart. An earlier change of course to starboard in accordance with Rule 18 should have prevented misunderstanding. If ships meeting end on, so as to involve risk of collision, fail to comply with this requirement until it is so late that the objective is not accomplished, it is no defense to state that the proper action was taken before the collision occurred. *The America* (1876), 92 U.S. 432. Appellant's first order was to change course to 350° true and it is apparent from the resulting confusion and collision that this was not a sufficient change to insure a safe passing in view of the dangerous situation which was developing as the distance between the two ships rapidly decreased. Helm action must be both timely and adequate under such circumstances. *The Sidney M. HAUPTMAN* (C.C.A. 2, 1929), 34 F2d 622. I conclude that the Third Specification is supported by substantial evidence.

The Fourth Specification alleges that it was negligent for Appellant to continue under hard right rudder after the green sidelight of the SILVERBOW was visible from the COLORADO. With the benefit of hindsight, it seems that the collision might have been avoided if Appellant had shifted the rudder immediately after it was right full and the SILVERBOW's green sidelight was still in view. But Appellant had no means of knowing whether the SILVERBOW would continue in this direction or change course to her starboard and attempt to pass port to port. At this point, Appellant's helm and engine orders were as good a guess as any to how to avoid collision or reduce the impact. This is especially true since the SILVERBOW did not sound a two-blast whistle signal to indicate her turn to port. The findings as to the Fourth Specification are reversed and the specification is dismissed.

The over-all picture presented by a review of the record in this case indicates that both vessels were guilty of violating the

often repeated rule laid down in *The New York* (1899), 175 U.S. 187, that if one vessel is approaching another whose position or movements are uncertain, she is bound to stop until the course of the other vessel is ascertained with certainty.

In view of the dismissal of the Fourth Specification and the four month's suspension against the license of the Mate of the SILVERBOW for charges similar to those remaining against, the order of the Examiner should be modified accordingly.

ORDER

The order of the Examiner dated at San Francisco, California, on 26 October 1954 is modified to provide for a suspension of four (4) months.

As so MODIFIED, said order is AFFIRMED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D.C., this 21st day of November, 1955.

***** END OF DECISION NO. 840 *****

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