

In the Matter of License No. 162109 and all other Licenses,
Certificates and Documents

Issued to: JOHN B. KELLY

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

842

JOHN B. KELLY

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 19 July 1955, an Examiner of the United States Coast Guard at New York, New York, suspended License No. 162109 issued to John B. Kelly upon finding him guilty of negligence based upon two specifications alleging in substance that while serving as Master on board the American SS YORKVILLE under authority of the license above described, on or about 18 June 1955, while proceeding up the East River, New York, he damaged said vessel and endangered the lives of persons on board by failing to signal for the raising of the Welfare Island Bridge lift span although he did not know the height of his vessel above the water, and by imprudently navigating under the bridge while the lift span was down, thereby causing the vessel to strike the bridge.

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 nonprofessional counsel of his own choice and he entered a plea of

"not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of the Chief Engineer and a deckhand on the YORKVILLE. The Investigating Officer also placed in evidence a Local Notice to Mariners which stated that the Welfare Island Bridge would have "a minimum clearance of 40 feet above mean high water."

In defense, Appellant offered in evidence his sworn testimony. Appellant stated that he did not blow any signals for the bridge to open because a sign on the bridge abutment read "Clearance 45 feet" and he estimated the height of the top of the smokestacks above the water line to be between 40 and 43 feet.

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 decision and concluded that the charge and two specifications had been proved. He then entered the order suspending Appellant's License No. 162109, and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of four months - one month outright suspension and three months suspension on nine months probation from the termination of the outright suspension.

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

FINDINGS OF FACT

On 18 June 1955, Appellant was serving as Master on board the American SS YORKVILLE, a ferryboat was proceeding up the east branch of the East River at full speed after taking on fuel oil at Staten Island. The YORKVILLE was bound for her dock at 134th Street and the East River. The usual run of the YORKVILLE was between 134th Street and Riker's Island. Appellant had never gone under the Welfare Island Bridge which extends across the east channel of the East River from Long Island City to Welfare Island. This is a vertical lift bridge.

The ferryboat YORKVILLE was owned and operated by the City of New York. She had two athwartship smokestacks aft of the pilot house and a flagpole on each side about a foot forward of the smokestacks. The flagpoles and stacks were approximately the same height.

The YORKVILLE was operating with her normal crew of five seamen in addition to the Appellant but there were no passengers on board. As the ferryboat approached the Welfare Island Bridge at twilight, Appellant was in the pilot house steering the vessel and a deckhand was on watch in the pilot house. The weather was clear and it was the last hour of flood tide. Appellant saw the bridge at a distance of about 500 yards. The lift span was down but Appellant did not sound any whistle signal requesting that the bridge be opened. A sign on the bridge abutment stated that the clearance was 45 feet (at mean high water). Appellant estimated that, at this stage of the tide, there would be a clearance of approximately two feet since he thought the height of the stacks and flagpoles was not more than 43 feet above the water line. This estimate was based completely on Appellant's mental calculations without benefit of actual measurements of the ferryboat. About two minutes before the collision, Appellant ordered a change of speed to one-half ahead which with the current gave a speed of approximately four knots over the ground. Appellant did not have the Local Notice to Mariners which stated that the bridge would have a minimum clearance of 40 feet.

Between 2035 and 2040, the upper two feet of the smokestacks and flagpoles on the YORKVILLE struck the bridge as the ferryboat passed under the bridge. The two flagpoles were broken off. The rivets holding the stacks to the deck were ripped out and the stacks were knocked backward to an angle of from 40 to 45 degrees. The whistle steam lines were parted but the ferryboat was able to proceed to her dock at 134th Street. No one was injured and there was no damage done to the bridge.

Appellant has no record of prior action having been taken against his license by the Coast Guard.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the

Examiner. Appellant contends that subsequent changes in the amount of clearance shown on the sign on the bridge and the Local Notice to Mariners (in evidence) indicate that the clearance was 40 feet at mean high water; and if this is so, the Appellant's seaman's eye correctly estimated that the vessel should have cleared the bridge since later measurements show that it was 43 feet, 8 inches from the water line to the tip of the stacks - a clearance of 1 foot, 4 inches.

OPINION

According to Appellant's own version of the incident, he neglected to signal for the bridge to be opened solely because he judged, by his seaman's eye, that the ferryboat would clear the bridge with about 2 feet to spare. Although Appellant testified that he had never before gone under the Welfare Island Bridge, he had not attempted to measure the height of the ferryboat or to compute accurately the stage of the tide before passing under the closed bridge. Appellant admitted that he would not have proceeded under the bridge if he had seen the Local Notice to Mariners which indicated an assured clearance of only 40 feet at mean high water.

From the evidence presented, it is my opinion that Appellant did not use the care of seamanship required of a prudent navigator under the circumstances. It is felt that Appellant did not exercise that degree of judgment, which would have been compatible with the safety of life and property, when he failed to signal for the lift span to be raised. The accident would have been prevented by the exercise of ordinary care, caution and maritime skill in signaling and waiting for the bridge to open. It was dangerous to take a chance that the ferryboat would clear the bridge when the assumed clearance of 2 feet was based on Appellant's rough estimate of the height of the stacks. Appellant had ample time to anticipate and take precautions against the dangerous situation which resulted. Fortunately, there were no injuries to personnel.

It is my conclusion that the Examiner properly found the two specifications and the charge of negligence proved. The evidence in the record does not show the exact clearance under the bridge at the time in question; and there is nothing to support Appellant's bare contention on appeal that it was 43 feet, 8 inches from the water line to the top of the smokestacks of the YORKVILLE.

Nevertheless, it is evident that Appellant was negligent for not making every reasonable attempt to determine these measurements before passing under the Welfare Island Bridge for the first time.

ORDER

The order of the Examiner dated at New York, New York, on 19 July 1955 is AFFIRMED.

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

Dated at Washington, D. C., this 9th day of December, 1955.

***** END OF DECISION NO. 842 *****

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