

In the Matter of License No. 160310 and all other Licenses
Issued to: JOHN W. MAPP

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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JOHN W. MAPP

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 1 June 1955, an Examiner of the United States Coast Guard at Norfolk, Virginia, suspended License No. 160310 issued to John W. Mapp upon finding him guilty of inattention to duty based upon two specifications alleging in substance that while serving as Master on board the American SS NOTHAMPTON under authority of the license above described, on or about 19 November 1954, while said vessel was underway in dense fog, he failed to stop her engines and then navigate with caution on hearing the fog signal of another vessel forward of the NORTHAMPTON beam, the position of which other vessel was not ascertained (First Specification); and while serving as above, he neglected and fail to navigate his vessel at a moderate speed (Second Specification).

At the hearing, counsel for 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. Counsel entered a plea of "not guilty" to the charge and each specification proffered

against Appellant.

Thereupon, the Investigating Officer made his opening statement. By stipulation, the transcript of the testimony of the investigation conducted under 46 CFR 136.07 and the included exhibits were submitted in evidence.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and having considered the proposed findings and conclusions of both parties, 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. 160310, and all other licenses issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of six months - two months outright suspension and four months suspension on probation until six months after the termination of the outright suspension.

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

FINDINGS OF FACT

On 19 November 1954, Appellant was serving as Master on board the American SS NORTHAMPTON and acting under authority of his License No. 160310 when his vessel collided with the American SS ACCOMAC near the entrance to the Chesapeake Bay at a point bearing approximately 330 degrees true and almost 9 miles distant from Cape Henry Light. The collision occurred between 1730 and 1732, in dense fog; the bow of the ACCOMAC penetrated the starboard quarter of the NORTHAMPTON at an angle of about 75 degrees. One passenger on the NORTHAMPTON was seriously injured and one on the ACCOMAC was slightly injured.

Both vessels were ferryboats operating between Kiptopeke Beach, Virginia, and Little Creek, Virginia. At the time of the collision, the NORTHAMPTON, 307 feet in length, was southbound from Kiptopeke and the ACCOMAC, 291 feet in length, was northbound from Little Creek. Both vessels were equipped with radar and this fact was known to Appellant.

The collision occurred in visibility limited to between 50 and

100 years. The sea was calm and there was a light breeze. The proper navigational lights were being shown on both vessels, and all equipment was in good working condition. Fog signals were being sounded, and a lookout was posted on the bow of each ferryboat. The radar of the NORTHAMPTON was in operation on the 5-mile range scale and that of the ACCOMAC on the 4-mile scale.

Appellant was at the conn of the NORTHAMPTON as she proceeded on course 210° true at full speed of 11 knots. When the dense fog was encountered, regulation fog signals were commenced, a lookout was stationed on the bow and the Chief Mate operated the radar in the wheelhouse. Shortly thereafter, a pip on the radarscope was observed which represented the ACCOMAC at a position 4 miles' distant and 2 points on the starboard bow. Appellant did not order any change of speed.

The ACCOMAC proceeded on course 038° true at full speed of 12 knots after crossing Thimble Shoal Channel at a point five miles from the scene of the collision. The NORTHAMPTON was picked up on the radar at a range of 3 miles. The Chief Mate of the ACCOMAC reported to the Master assumed that the vessels would pass port to port.

The radar observations of the Chief Mate on the NORTHAMPTON indicated to him that the two vessels were on parallel courses and would pass starboard to starboard at a distance of about a half mile. At a distance of about 2 miles, the fog signals of the ACCOMAC were heard on the NORTHAMPTON. The radar showed that the bearing of the ACCOMAC had opened to 4 points on the starboard bow of the NORTHAMPTON when the distance between the vessels was one mile. Appellant occasionally checked the radar observations of the Chief Mate and agreed with him. The radarscope showed the pip of the ACCOMAC 2 points forward of the NORTHAMPTON's starboard beam just before the target was lost in the sea return at a range of a half mile. Fog signals from the other vessel could still be heard but the NORTHAMPTON continued on at 11 knots.

Appellant next saw the glow of the ACCOMAC's lights 2 points forward of the starboard beam and, 2 or 3 seconds later, he saw her red side light. In an attempt to avoid collision by passing ahead of the ACCOMAC, Appellant maintained speed and ordered hard right rudder in order to swing the stern away from the ACCOMAC. The

effort was unsuccessful as the ACCOMAC struck the NORTHAMPTON's starboard quarter and sheared her side plates. These plates crushed the automobile in which a passenger was seriously injured. Appellant ordered the engines of the NORTHAMPTON stopped a second or two before the collision occurred.

The maneuvering of the ACCOMAC before the collision was as follows. At a distance of 1 mile from the NORTHAMPTON, the ACCOMAC changed course one-half point to the right. She changed course another half point in the same direction at a distance of a half mile. Radar contact was lost at a quarter mile. The Master saw the loom of the white lights of the NORTHAMPTON and ordered hard right rudder, stop engines. When the Master realized the lights were on the stern of the NORTHAMPTON and ordered hard right rudder, stop engines. When the Master realized the lights were on the stern of the NORTHAMPTON, he ordered the rudder amidships and full astern on the port engine to swing the bow to port. The port engine was stopped after the collision. Both vessels blew danger signals prior to the collision. They were able to proceed to their respective destinations.

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. The grounds for this appeal are as follows:

1. It was error to impose equal orders against the two Masters. The ACCOMAC caused the collision when she made an unforeseeable, radical change of course which caused her to turn into the NORTHAMPTON.
2. The position of the vessel from which fog signals were heard ahead was ascertained by Appellant. Hence, he was under no duty to stop the NORTHAMPTON's engines. By the use of radar, Appellant knew the location, course and speed of the ACCOMAC until shortly before she began her radical turn after which Appellant could not have avoided the collision.

3. With radar information available, Appellant was not required to reduce speed below 11 knots. As a public service, ferryboats are an exception to the general rule concerning navigation in fog although they must navigate with due care. The proximate cause of the collision was the fault of the ACCOMAC; the speed of the NORTHAMPTON was merely a condition rather than a cause.

It is respectfully submitted that no outright suspension of Appellant's license was justified.

APPEARANCES: Messrs. Baird, White and Lanning of Norfolk, Virginia, by Edward R. Baird, Esquire, of Counsel.

OPINION

In accordance with the undisputed evidence in the record, the Examiner's findings of fact have been changed in my above findings to show that the speed of the ACCOMAC was 12 knots and that her rudder was placed hard right after she had lost radar contact with the NORTHAMPTON at a quarter of a mile.

Despite the facts that Appellant was using radar to determine the position of the ACCOMAC and he had reason to believe the Master of the ACCOMAC was acting similarly with respect to the NORTHAMPTON, it is my opinion that Appellant permitted his vessel to proceed at an immoderate rate of speed in a dense fog and that he should have stopped the engines of the NORTHAMPTON when he heard fog signals forward of the beam. These offenses were violations of Article 16 of the Inland Rules of the Road. 33 U.S.C. 192.

With respect to the Second Specification alleging immoderate speed, Appellant contends that 11 knots was not excessive under the circumstances due to the use of radar and the status of ferryboats which render a public service.

A ship navigating in a fog and equipped with radar is required to avail itself of information afforded by such instrument, and there is consequently an added responsibility on such vessel to employ this information to avoid collision. The data from the NORTHAMPTON's radar would have been more intelligently and usefully

employed if several ranges and bearing of the ACCOMAC had been plotted in order to obtain an estimate of her course and speed. This was not done. Consequently, knowing that the radar indicated the probability of the presence of a vessel which could not be seen in the dense fog which limited visibility to less than 100 yards, Appellant was unquestionably on notice of a danger requiring that greater than usual caution be exercised to avoid collision. This is consistent with the statement that "where the danger is great, the greater should be the precaution." *The Clarita* (1874), 90 U.S.

The International Conference for the Safety of Life at Sea, London, 1948, recommended that Masters be informed that the possession of radar would not, in any way, relieve them from their obligations to observe strictly the International Rules for preventing collisions at sea. Recommendation No. 19. This may also be said to apply to the Inland Rules of the Road.

As to the fact that the NORTHAMPTON was a ferryboat, it is noted that Appellant was not charged with operating the NORTHAMPTON when she should not have been underway in a dense fog. Although public necessity may justify operation of a ferryboat in dense fog, she must navigate prudently and comply with the rules applicable under such conditions. See *The City of Lowell* (C.C.A. 2, 1907), 152 Fed. 593.

Concerning the First Specification which alleges that Appellant failed to stop the engines of the NORTHAMPTON and navigate with caution on hearing the fog signal of another vessel forward of the NORTHAMPTON's beam in an unascertained position, Article 16 further requires that such cautious navigation shall continue until danger of collision is over. This means that Appellant was required to stop the engines when he heard the fog signals at a distance of about 2 miles unless the position of the ACCOMAC was "ascertained" within the meaning of Article 16. It has been held that another vessel's position has not been ascertained unless her course as well as her momentary location is known. *The El Monte* (D.C.N.Y., 1902), 114 Fed. 796. Appellant did not know the course of the ACCOMAC since, without a plot of the latter vessel's positions, Appellant was led to believe that the two vessels were on parallel courses. In fact, they were on courses

which were converging at an angle of about 8 degrees. Hence, Appellant was required to stop the engines at this time.

This provision of Article 16 has been very strictly enforced by the courts. It has been stated that "the command is imperative that he [the navigator] shall stop his engines when the conditions described confront him." *Lie v. San Francisco and Portland S.S. Co.* (1917), 243 U.S. 291. See also *Rules of the Road* (1944) by Farwell, pages 207-8, and *Griffin on Collision* (1949), page 317. Appellant's duty to comply with this requirement was certainly apparent when contact with the ACCOMAC was lost at a range of a half mile.

Since Appellant was guilty of two statutory violations of rules intended to prevent collisions, there is a presumption that his fault contributed to the collision; and he must bear the heavy burden of proving that his statutory violations not only did not, but could not, have contributed to the collision. *The Pennsylvania* (1873E, 86 U.S. 125, states:

"* * * it is not possible in the administration of practical justice to avoid the conclusion that the effect of the wilful disobedience of this imperative and important statutory rule of law, which should have governed his conduct, continued as an effective force, operating on the movement of his vessel to the instant of collision, driving her forward steadily, even though in the last moments slowly, to the fateful point of intersection of the courses of the two ships."

It is my opinion that Appellant has not succeeded in proving that his faults were conditions of the collision rather than causes. Despite any fault on the part of the ACCOMAC, Appellant must rely upon conjecture to support the proposition that his failure to slow or stop his vessel could not have been a cause of the collision. If given additional time, the Master of the ACCOMAC might have realized his error as to the relative positions of the two vessels and maneuvered accordingly. *The latter* is also speculation but it is consistent with the rule set forth in *The Pennsylvania*, supra. It is significant that the fault of the ACCOMAC did not excuse Appellant from his duty to comply with the

rules of navigation. *The Yoshida Maru* (C.C.A.9, 1927), 20 F2d 25.

CONCLUSION

Since Appellant did not stop his vessel or even slow down when he knew another vessel was approaching in extremely poor visibility, it is my conclusion that he was guilty of inattention to duty. The realistic approach to the subject of navigating in dense fog with the help of radar is that a heavier burden to avoid collision is placed upon the user of this aid to navigation; such a person must comply fully with the rules of navigation in fog; and he must not assume that he still knows the location of a radar "target" after it has been lost at close range. Appellant did not give his attention to these responsibilities. Therefore, it is my opinion that the order imposed was justified despite fault on the part of the ACCOMAC.

ORDER

The order of the Examiner dated at Norfolk, Virginia, on 1 June 1955 is AFFIRMED.

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

Dated at Washington, D. C., this 13th day of March, 1956.

10985 TREASURY, USCGHQ, WASH., D.C.

***** END OF DECISION NO. 866 *****

