

In the Matter of License No. 145654 Merchant Mariner's Document No.
Z-274734 and all other Licenses, Certificates and Documents
Issued to: FONCE KELLAMS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

870

FONCE KELLAMS

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 October 1955, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended License No. 145654 and Merchant Mariner's Document No. Z-274734 issued to Fonce Kellams upon finding him guilty of negligence based upon a specification alleging in substance that while serving as Master on board the American SS META D under authority of the license above described, on or about 22 February 1955, while said vessel was navigating in conditions of fog and low visibility on the high seas off the Isle of Wight, England, he wrongfully failed to navigate said vessel with caution, notwithstanding the fact that the proximity of uncertain shore lines and shoals was shown on the chart used in the navigation of the vessel, thereby causing the grounding of his vessel in the vicinity of Boulder Bank off Selsey Bill, England.

By prior agreement, the hearing was conducted in absentia. At the time of service and specification Appellant was given an

explanation of the Nature of the proceedings and the rights to which he was entitled including the right to be represented by counsel of his own choice. Appellant stated that he did not desire to be represented by counsel. Also at the time of service, the parties stipulated in evidence the testimony of the Appellant and four members of the crew whose testimony was taken at the Coast Guard investigation into the grounding of the META D on 22 February 1955. The exhibits contained in this record of investigation were also stipulated in evidence.

At the hearing, the Examiner entered a plea of "not guilty" on behalf of the Appellant. The Investigating Officer then made his opening statement and submitted the record of the investigation for consideration by the Examiner. The hearing was continued until a later date.

At the conclusion of the hearing, having heard the argument of the Investigating Officer, 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. 145654, Merchant Mariner's Document No. Z-274734, 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.

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

FINDINGS OF FACT

On a voyage including the dates of 20 to 25 February 1955, Appellant was serving as Master on board the American SS META D and acting under authority of his License No. 145654 when the ship ran aground, at 0950 on 22 February, in the English Channel approximately 4 miles south of Selsey Bill, England while enroute from Cobh, Ireland to Rotterdam, Netherlands.

The META D was a Liberty-type cargo vessel, more than 400 feet in length, with a cargo of 9970 tons of coal on board. On 20 February, the vessel took on bunker fuel at Cobh, Ireland and departed at 1805 on this date. Her draft was 25 feet forward and 27 feet, 10 inches aft.

At 1421 on 21 February, the last fix prior to the grounding was obtained when Lizard Head Light was abeam to port at a distance of 5.3 miles. At this time, it was overcast, visibility was poor, there was a northeasterly wind and the sea was rough. These conditions remained fairly constant until the grounding. Appellant changed course to 070° true and gyro intending to make good a course of 078° true to the Royal Sovereign Light Vessel after passing the Isle of Wight 8 miles abeam to port. For a majority of the time, the vessel continued to steer 070° and 071° true while proceeding at full speed of approximately 9 knots over the ground at all times prior to the grounding.

At 0600 on 22 February, Appellant returned to the bridge and conned the ship until the time of the grounding. Subsequent to this time, fog patches, snow and misty rain reduced the visibility to about a mile. The fathometer and radio direction finder were in operation. Some R.D.F. stations in the English Channel were inoperative and the bearings obtained on other stations were considered doubtful due to atmospheric conditions. It was not possible to navigate with reliance on a sounding curve, until about 6 miles from the point of grounding, because the soundings did not vary sufficiently. The ship was not equipped with radar.

At 0740, Appellant saw an indistinct mass of land on the port beam. Based on the estimated position of the ship, Appellant assumed that this land was the Isle of Wight at a distance of about 8 miles although the weather conditions prevented an estimate as to either what part of the Isle of Wight it was or the distance. It was later determined that Appellant saw the loom of land when the ship was about 2 miles off the Isle of Wight and about 18 miles from the point of grounding.

At approximately 0944, Appellant saw buoy on the port bow. He assumed that this was the red station marker buoy for the Owers Light Vessel which was actually about 4 miles south of the extended course line of the ship. Appellant changed course to 086° true in an attempt to clear all shoals while approaching the Royal Sovereign Light Vessel. As the ship drew closer to the Buoy, Appellant recognized it as black shoal buoy and he then saw a checkered shoal buoy on the port bow. Appellant ordered hard right rudder just before the ship ran aground in the shoals at about 0950. This was at 50° 40' N. 0/D 45' W., a position 6 miles north

of the intended course line. The engines were ordered full astern to no avail. Salvage tugs could not free the ship.

The Third Mate had obtained a fathometer reading of 40 feet just prior to the grounding but this information was obtained only after Appellant recognized the shoal buoy as such and told the Third Mate to obtain a fathometer reading.

At 0130 on 25 February, the META D floated free without assistance on an exceptionally high tide. She anchored and later was towed to Southampton, England where the cargo was removed undamaged. There were no injuries to personnel as a result of the grounding. The vessel was declared a constructive total loss.

There is no record of prior disciplinary action having been taken against Appellant during 35 years at sea.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that he was not guilty of "negligence" but of an "error of judgment" while navigating under hazardous conditions caused by the elements which were beyond Appellant's control. Appellant also states that he has already been punished for this error; this was his first casualty; hardships result from the three month's suspension which is excessive; and he requests leniency in the nature of an admonition.

In the view of the Master's responsibility for the safety of his ship at all times, the record indicates that Appellant did not take the precautions which were reasonably required under the prevailing circumstances.

Appellant navigated without a fix and close to shore for 19 1/2 hours over a distance of more than 175 miles in fog and reduced visibility. Although he did not know the position of his ship, Appellant depended upon the current to set his vessel far enough to the south to clear the land to the north by 8 miles or more; when, in fact, the courses steered, if made good, would have caused the vessel to run aground at an earlier time than she did; and the width of open water available in which to navigate up to the place of the grounding was not much less than 50 miles at any point.

It is my opinion that Appellant was negligent for failing to anchor his ship in the vicinity of the Isle of Wight until visibility increased sufficiently to determine the ship's position. Such action was not taken until after the ship floated free 3 days after the date of the grounding. Alternatively, Appellant should have proceeded with extreme caution, at less than full speed, since he admittedly could not estimate the distance to the Isle of Wight based upon his visual observation through the mist and fog.

Appellant was further negligent in that he failed to make full use of the information available from the fathometer. The fathometer should have been under almost constant observation after passing the Isle of Wight at an indefinite distance abeam to port. The Third Mate obtained a reading of 40 feet after Appellant identified the first shoal buoy. As the facts show, it was too late. A constant watch would have made available information to indicate that the ship was within the 10 fathom curve for a distance of about six miles from where the grounding occurred. The soundings along the course line 6 miles to the south, where Appellant thought the ship was, would have been 14 to 16 fathoms. Hence, Appellant could and should have had the valuable information concerning the shallow depth for more than 30 minutes. He would then have ample time to realize that the ship was in a position much closer to the land and shoals than he had assumed or intended.

Another point which is worthy of comment is that the record does not show the basis for Appellant's erroneous expectation that a course of 078° true would be made good by steering 070° and 071° true. The tide tables do not lend support to this expectation. The disastrous result of this assumption by Appellant is ample proof that he should have utilized more of the available sea room in order to allow for possible error. As it was, the ship ran aground in shoals to the left of her intended course even though she was set to the right of the courses steered, though obviously not to the extent anticipated by Appellant.

CONCLUSION

There is substantial evidence that Appellant's omissions amounted to negligence and were not merely errors of judgment caused by factors beyond his control.

But in view of Appellant's very long, unblemished record, the order will be modified.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 19 October 1955, is modified to provide for the immediate return of Appellant's/ Merchant Mariner's Document No. Z-274734; and to provide for the issuance of a Second Mate's License to remain effective during the three (3) month's outright suspension of Appellant's License No. 145654 as Master. The Second Mate's License issued to Appellant shall be the same type as License No. 145654. The order of three (3) month's suspension against License No. 145654 shall remain effective.

As so modified, said order is

AFFIRMED.

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

Dated at Washington, D.C., this 30th day of March, 1956.

***** END OF DECISION NO. 870 *****

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