



16731
January 5, 2002

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

RE: MV00002141
Captain [REDACTED]
M/V [REDACTED]
\$1000.00

Dear [REDACTED]:

The Commanding Officer, Coast Guard Hearing Office, Arlington, Virginia, has forwarded the file in Civil Penalty Case MV00002141, which includes your appeal on behalf of Captain [REDACTED], pilot of the M/V [REDACTED]. The appeal is from the action of the Hearing Officer in assessing a \$1,000.00 penalty for the following violation:

<u>LAW/REGULATION</u>	<u>NATURE OF VIOLATION</u>	<u>ASSESSED PENALTY</u>
33 USC 1602 (Rule 34)	Failure of a vessel, when in sight of another vessel, to make appropriate maneuvering or warning signal.	\$1,000.00

The violation was observed on January 29, 1999 when the 789-foot Liberian registered container vessel [REDACTED], piloted by Captain [REDACTED], collided with the 688-foot U.S. registered tank ship [REDACTED] in the vicinity of the Miami Entrance Channel, near Miami, Florida.

On appeal, you do not deny that the M/V [REDACTED] did not sound the appropriate "danger signal." You contend, however, that failure to do so, "while 'technical' in nature, was in no way the cause of this incident." In support of Captain [REDACTED]'s position you argue: 1) "Failure to sound the danger signal did not cause the incident;" 2) "Both pilots were in constant radio communication with each other and were aware or should have been aware of the others' intentions as well as actions;" 3) Captain [REDACTED] "considered his first priority because of the impending collision, to clear the forecastle of all personnel so as to avoid injury to the crew;" and 4) a "\$1,000 fine is quite severe for this alleged violation of the COLREGS." Your appeal is denied for the reasons described below.

33 USC 1602 (Rule 34(d)) makes clear that "[w]hen vessels in sight of one another are approaching each other and from any cause either vessel fails to understand the intentions or

January 5, 2002

actions of the other, or is in doubt whether sufficient action is being taken by the other to avoid collision, the vessel in doubt shall immediately indicate such doubt by giving at least five short and rapid blasts on the whistle.” Thus, according to the plain meaning of the regulation, a violation occurs when a vessel under the circumstances noted above, fails to sound its whistle appropriately.

There is ample evidence in the record to suggest that Captain [REDACTED] should have sounded the M/V [REDACTED]’s whistle in accordance with the dictates of Rule 34. The record indicates that, following initial conversations between Captain [REDACTED] and Captain [REDACTED], the pilots agreed to meet starboard to starboard once the vessels were clear of the channel. Captain [REDACTED]’s statement indicates that there was confusion from the beginning of the passage. During the interview, Captain [REDACTED] stated:

And I agreed to the starboard, starboard passage, and we continued on out the channel. The wind was fresh. I was making about 11 knots, I guess, on the [REDACTED].

As we were making our turn through the widener, I noticed—well, actually, a little before that I noticed that the tanker [REDACTED] was to the north of the sea buoy, but proceeding slowly to the south, and I made the turn. And when I was fair in the outer bar cut, I noticed that the [REDACTED] had already passed the sea buoy, going south and was starting to swing toward the channel.

I then called the [REDACTED] on UHF, again, and advised them that I was deep draft and I couldn’t turn out of the channel early. And, first, I asked if he was starting in, if he was already starting in.

According to Captain [REDACTED]’s statement, he next called the pilot of the M/V [REDACTED] and informed him that, due to the deep draft of the M/V [REDACTED] and the location of the M/V [REDACTED], “starboard doesn’t look like it’s going to work.” He then stated that he wanted to “meet port to port.” He contended that he never received a response from the M/V [REDACTED] regarding the changed passage and proceeded under the assumption that the other vessel would undertake the new route. Shortly thereafter, Captain [REDACTED] “stopped the engine, and...told the tanker [REDACTED] that...[he]...was swinging to starboard.” At this point, there was considerable confusion as to the course that the vessels were going to take. Captain [REDACTED] was aware that the M/V [REDACTED] had proceeded on an inappropriate course throughout the entire incident and failed to accurately ascertain exactly what route the vessel was going to take. Thus, under the dictates of Rule 34, the M/V [REDACTED] should have sounded its whistle five times in quick succession.

The record indicates that, although Captain [REDACTED] was ready to attempt a port to port passing, Captain [REDACTED] was not. In his transcribed statement, Captain [REDACTED] stated that, when informed of the port to port passing, he “immediately...felt a rush of adrenaline, that ‘Oh, my God, no’” and realized that “the one thing” he was not “set up for is port to port.” He stated that “[t]he entire time out, every time...[he]...repeated ‘starboard to starboard.’” Captain [REDACTED] informed Captain [REDACTED] that he could not do that and he contends that “there was no immediate response” from Captain [REDACTED]. It is evident that the vessels were not communicating properly and that neither vessel had adequately

January 5, 2002

ascertained the course of the other. As this was occurring, according to Rule 34, Captain [REDACTED] was obligated to sound the ship's whistle. Whether the collision occurred because of his failure to do so is patently irrelevant. Captain [REDACTED]'s confusion as to the course of the M/V [REDACTED] and his subsequent failure to issue the danger signal is enough to constitute a violation of the statute.

You contend "Captain [REDACTED] quite properly took as his first priority the prevention of injury to the crew of his vessel, and accordingly, in the short period of time available, put forth his efforts to clearing the forecastle of all personnel so as to avoid injury to them in the collision." This assertion likewise, does not constitute a defense. Although I commend Captain [REDACTED] for considering the safety of his crew above all else, such action does not excuse his violation of the regulation. Furthermore, as discussed above, the record indicates that Captain [REDACTED] doubted the actions of the other vessel well before the collision occurred. It is apparent that he did, indeed, have time to sound the whistle before the collision and failed to do so.

Your contention that, although the whistle was not blown, "[b]oth pilots were in constant radio communication with each other and were aware or should have been aware of the others' intentions" is, likewise, without merit. The courts have long held that vessels may neither substitute nor rely on equivalent signals in following navigational rules. *See, e.g., The Pennsylvania*, 86 U.S. 125, 22 L. Ed 148, (1874) *overruled on other grounds by United States v. Reliable Transfer Co.* 421 US 397, 44 L. Ed. 2d 251, 95 S. Ct. 1708 (1974); *The New York*, 175 U.S. 187, 44 L. Ed. 126, 20 S. Ct. 67 (1899). In the instant case, the regulation called for the M/V [REDACTED] to sound "at least five short and rapid blasts on the whistle." The fact that the vessels were communicating via UHF is irrelevant. To satisfy the regulation, the whistle had to be blown.

Finally, you contend that "if...[Captain [REDACTED]]...is indeed guilty of a violation of the COLREGS...the penalty should be commensurate with the alleged violation and should not be \$1,000.00." You conclude that "a fine of \$100.00 would be more appropriate for this 'technical' violation." I do not agree with this assertion. In the instant case, the collision between the two vessels could have lead to catastrophic environmental damage and personal injury. The COLREGS apply to all vessels operating on the high seas and in all waters connected therewith that are navigable by seagoing vessels. The regulations are meant specifically to promote safety. Compliance is, therefore, mandatory in achieving national directives. Therefore, I do not see Captain [REDACTED]'s violation as merely 'technical' in nature and I will not mitigate the penalty any further.

Accordingly, I find that there is substantial evidence in the record to support the Hearing Officer's determination that the violations occurred and that Captain [REDACTED] is the responsible party. The Hearing Officer's decision was neither arbitrary nor capricious and is hereby affirmed. I find the penalty of \$1,000.00 rather than the \$5,500.00 maximum permitted by statute appropriate in light of the seriousness of the violations.

RE: CIVIL PENALTY

16731

January 5, 2002

In accordance with the regulations governing civil penalty proceedings, 33 CFR 1.07, this decision constitutes final agency action. Payment of **\$1,000.00** by check or money order payable to the U.S. Coast Guard is due and should be remitted promptly, accompanied by a copy of this letter. Send your payment to:

U.S. Coast Guard - Civil Penalties
P.O. Box 100160
Atlanta, GA 30384

Payments received within 30 days will not accrue interest. However, interest at the annual rate of 5 % accrues from the date of this letter if payment is not received within 30 days. Payments received after 30 days will be assessed an administrative charge of \$12.00 per month for the cost of collecting the debt. If the debt remains unpaid for over 90 days, a 6% per annum late payment penalty will be assessed on the balance of the debt, the accrued interest, and administrative costs.

Sincerely,

//S//

DAVID J. KANTOR
Deputy Chief,
Office of Maritime and International Law
By direction of the Commandant

Copy: Commanding Officer, U.S. Coast Guard Hearing Office
Commander, Finance Center