In the Matter of License No. 75723
Issued to: LESTER MARTIN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

599

LESTER MARTIN

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.

On 28 May, 1952, an Examiner of the United States Coast Guard at Long Beach, California, suspended License No. 75723 issued to Lester Martin upon finding him guilty of negligence based upon a specification alleging in substance that while serving as Master on board the American SS DAVID E. DAY under authority of the document above described, on or about 17 May, 1952, while said vessel was at sea, he navigated at an immoderate speed in a fog.

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 specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of five members of the crew of the DAY. By stipulation, a copy of the course recorder record of the DAY and a copy of her deck log entries were placed in evidence.

In defense, Appellant offered in evidence his own testimony and that of the Master of the MARINE FLIER.

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 specification. He then entered the order suspending Appellant's License No. 75723 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of six months - three months' outright suspension and three months on one year's probation from 28 May, 1952.

From that order, this appeal has been taken, and it is urged that:

I. There is not sufficient evidence to support a finding that Appellant was negligent

since the charge was not proved beyond a reasonable doubt. Although the DAY was proceeding at approximately 16 knots and the visibility was restricted, she could have stopped in minimum time and distance because she was in her most maneuverable condition. But the DAY was not put to the crucial test as to whether she could have stopped in one-half the distance of visibility since the best maneuver was to continue at full speed after the MARINE FLIER was sighted on the starboard beam of the DAY and headed directly for her.

II. The finding that Appellant was negligent is not warranted by the facts on the record. Under the circumstances, Appellant acted as a reasonably prudent Master. The ship was exceptionally maneuverable and in perfect operating condition, the personnel on watch were unusually competent, Appellant knew these waters well and he was continuously on the bridge from approximately 1800 until the collision at 2322, Appellant has had far greater radar experience than the average Merchant Marine officer, and he kept the radar scope under observation. The presence of radar is a factor in determining whether a vessel is proceeding at an immoderate speed; but the effect of radar on Article 16 of the Rules of the Road is in a state of evolution and no reported opinion of a United States court has specifically condemned a radar equipped ship for going too fast in restricted visibility.

III. Appellant properly evaluated the approach of the MARINE FLIER and the collision would not have occurred but for the last minute radical maneuver of the MARINE FLIER when her rudder was put hard right. Appellant picked up the other ship on his radar when she was approximately five degrees on the DAY's starboard bow at nine miles. The prudent course was to refrain from crossing the bow of the approaching vessel and negotiate a starboard to starboard passing. The bearing of the MARINE FLIER opened to 45 to 50 degrees on the starboard bow of the DAY at a distance of one mile after Appellant changed course to the left. On the other hand, the bearing of the DAY from the MARINE FLIER did not open to the left as it should have for a port to port passing. The two ships would have passed well clear to starboard of each other if they had maintained their respective courses.

IV. The order is unduly severe in view of Appellant's otherwise perfect record during 36 years at sea including about four years in the U.S. Navy.

APPEARANCES: Messrs. Lillick, Geary and McHose of Los Angeles, California by Lawrence D. Bradley, Jr., Esquire, of Counsel.

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

FINDINGS OF FACT

On 17 May, 1952, Appellant was serving as Master on board the American SS DAVID E. DAY and acting under authority of his License No. 75723 while his ship was en route from Port

Richmond to Long Beach, California. At 2322 on this date, the DAY was in a collision with the MARINE FLIER at a point about ten miles southwesterly from Point Dume, California, and in the main shipping lane between San Francisco and Los Angeles ports.

The DAY is a T-2 type tanker of approximately 525 feet in length. She is powered by a turbo-electric plant which makes it possible for her engines to be reversed from full ahead to full astern in about ten seconds; and she has the same power going astern as when going ahead. The DAY's maneuverability was increased by the fact that ballast had been discharged and her draft was one foot forward, seventeen feet aft, at the time of the collision. There is no data in the record as to the time or distance in which the DAY could be stopped dead in the water from full speed ahead in this light condition.

Fog was encountered in the morning and afternoon of 17 May, 1952, as the DAY proceeded down the coast. At 1827 when Point Conception was passed abeam to port, the DAY changed course to 111 degrees gyro, 110 1/2 true, and thereafter she was in thick fog but continued at normal full speed ahead (90 RPM) although the engine telegraph was placed on "standby." Appellant was on the bridge at 1827 and remained there until after the collision. The radar was in operation, fog signals were sounded every minute and a half, and a bow lookout was posted at all times until the collision.

The fog remained dense throughout the 2000 to 2400 watch; and visibility was limited to between approximately 1000 and 3000 feet. The DAY changed course to 114 degrees gyro at 2135. Visibility was restricted to about two ship lengths when the DAY passed Anacapa Island Light at a distance of 2.3 miles abeam to starboard at 2211. The average speed of the ship between Point Conception and this Light had been 16.33 knots over the ground.

Appellant and the Third Mate who was on watch alternated watching the radar scope until the MARINE FLIER actually came into sight. The radar was located at the after end of the wheelhouse on the port side. It was about six feet from the steering wheel. The helmsman was the only other person on the bridge at the time of the collision.

At 2247, the DAY changed course to 116 degrees gyro and, while moving at full speed ahead, she passed between two ships which were headed in the opposite direction. Appellant then set the radar scope on the eight mile range scale. Some minutes later, he saw a contact come into view on the outer edge of the scope. The radar indicated to Appellant that this object, which turned out to be the MARINE FLIER, was bearing five degrees on the starboard bow of the DAY. Appellant decided to pass the other ship starboard to starboard. At 2301, he ordered a change of course to 110 degrees gyro and he watched the radar scope almost continuously from then until the collision occurred. By using ranges and bearings obtained from the radar and a table in Bowditch, Appellant and the Third Mate arrived at the conclusion that the closest point of approach of the MARINE FLIER to the DAY would be about seven-tenths of a mile to starboard. (The exact table upon which this calculation was based is not mentioned.) Appellant did not plot the relative positions of the pips representing the MARINE FLIER as the range between the two vessels was closing; and he did not estimate the other ship's course at any time before the collision.

Although the bearing of the MARINE FLIER was slowly but steadily broadening on the starboard bow of the DAY as Appellant continued to constantly check the ranges and bearings on the radar scope, he ordered a course change to 100 degrees gyro at 2313 and to 090 gyro at 2316. At about the latter time, the bow lookout heard the fog signal of the MARINE FLIER on the starboard bow and he rang one bell. The radar showed that the MARINE FLIER was bearing 035 degrees relative when the DAY was on course 100 gyro, and broad on the starboard bow of the DAY when the two ships were about a mile apart.

The relative bearing was practically the same when the Third Mate on the DAY saw the loom of the masthead and range lights of the MARINE FLIER at a distance of approximately two ship lengths. This was about a minute before the collision. Since the lights were open to port and Appellant was watching the radar scope, the Third Mate ordered hard left rudder without taking time to consult Appellant who then saw the MARINE FLIER and immediately countermanded the Mate's order with hard right rudder. Appellant also gave the order to put the rudder amidships just prior to the collision. The course of the DAY had not altered substantially from 090 gyro and she was still making full speed ahead at 2322 when the bow of the MARINE FLIER struck and holed the DAY on her starboard side under the wing of the bridge. The angle of collision was approximately ninety degrees.

The MARINE FLIER had been on course 293 degrees gyro, 293 1/2 true, until after the radar scope of the MARINE FLIER disclosed the DAY up ahead. In order to attempt a port to port passing the course of the MARINE FLIER was changed to 303 gyro at 2312. This caused the DAY to bear slightly on the port bow of the MARINE FLIER. When the bearing of the DAY began to close, the course of the MARINE FLIER was changed first to 313 gyro at 2318, and then to 323 gyro at 2320. Her speed was changed to one-half ahead and her rudder put hard right at 2321. Consequently, the MARINE FLIER was swinging to her right when the impact occurred.

Appellant gave orders to stop the engines after the collision and a fire broke out immediately on the DAY. The MARINE FLIER stood by to render assistance. Fortunately, the fire was extinguished without injuries to anyone aboard the DAY and she proceeded into Long Beach, California, under her own power.

OPINION

The degree of proof required in these administrative proceedings is that the decision must be supported by "reliable, probative, and substantial evidence." Administrative Procedure Act, section 7(c), Title 5 United States Code, section 1006(c); Suspension and Revocation Proceedings, Title 46 Code of Federal Regulations, section 137.21-5.

The distance of visibility at the time the MARINE FLIER became visible from the DAY presents the only material difference between my findings of fact and Appellant's contentions as to the prevailing circumstances. I have found that the visible distance was approximately two ship lengths (or about 1000 feet) while Appellant claims that although the visibility was restricted, there is no means of determining the precise limit of visibility. All of the witnesses including Appellant,

but with the exception of the engineering officer who was not in a position to judge, testified that after 2000 the fog was thick, dense, or heavy. But the Third Mate was the only witness who gave a definite estimate as to the distance of visibility at the time in question. He stated unhesitatingly and repeatedly that his estimate was "two ship lengths" (R. 10, 12). Therefore, I consider this to be substantial evidence for the fact as found. Other findings of the Examiner have been altered or modified to agree with the record.

Appellant's claims as to the highly maneuverable condition of his ship, her ability to stop quickly, and the above average competency of her operating personnel, have been given consideration in determining whether the DAY was moving at an immoderate speed. But as mentioned in the companion case to this one (Appeal No. 598), in which the suspension of the license of the Master of the MARINE FLIER was upheld, there were other circumstances present which are pertinent to the issue of moderate speed. Some of these conditions were that Appellant permitted the DAY to advance at a speed greater than sixteen knots throughout the critical period of more than twenty minutes after he knew of the presence of an approaching vessel in a dense fog at night; Appellant knew that the two ships were very nearly head-on to each other if the other vessel was following the usual shipping track between Los Angeles and San Francisco; and Appellant was on the bridge observing the radar scope as the dangerous situation developed.

Appellant does not question the applicability of Article 16 of the Rules of the Road to a vessel equipped with radar but he contends that radar is a factor in determining whether a vessel was proceeding at an immoderate speed. It is urged that aided by the information obtained from the radar that the MARINE FLIER was five degrees on the starboard bow of the DAY, Appellant took the proper action by altering course to port for a starboard to starboard passing; and that the speed of the DAY was not excessive but that the last minute radical change of course by the MARINE FLIER to her starboard was the sole cause of the accident.

Undoubtedly, a heavier burden is placed upon a ship to comply with all the general principles applicable to navigation in a fog after her radar has disclosed the fact that there is an approaching ship in the vicinity. A ship is bound to have her radar in operation if it is in good condition and she is required to make adequate use of the information obtained from the radar. The Medford (D.C.N.Y., 1946), 65 F. Supp. 622; The Australia Star (C.C.A. 2, 1949), 172 F.2d. 472. In the absence of any change in the Rules of the Road which specifically provide for radar, it is the judicial function to interpret Article 16 in the light of this comparatively new scientific development which was not provided for or anticipated when the Rules were adopted. But no judicial interpretations have been brought to my attention which qualify the recognized principles that moderate speed in fog is something less than full speed; a ship in fog is required to proceed at such a speed that she can stop before colliding with another vessel; and a ship must stop and then navigate with caution after hearing the fog signal of an invisible vessel coming from forward of the beam.

The rules of navigation become applicable when the necessity for precaution begins. Under the circumstances of this case, I think that this time occurred not later than when Appellant first observed the contact on his radar scope; and that if not bound to then stop the engines of the DAY, he was burdened with the duty to reduce the speed of his vessel from full ahead and to proceed with

extreme caution. Regardless of the unusual power of the DAY in stopping and reversing her engines, her full speed of more than sixteen knots would have been greatly excessive in such limited visibility if she had no radar equipment aboard. In the absence of any showing that Appellant utilized the radar data to such an extent that he navigated the DAY so as to put her in a position more certain to prevent a collision than if he had followed the standard set for vessels without radar, it was negligence to continue on towards the MARINE FLIER at the same speed.

It was also improper for Appellant to have altered the course of the DAY before ascertaining the course of the other vessel by constant attention to the radar scope and accurate interpretation of the pips representing the relative movement of the MARINE FLIER subsequent to the time her approach was observed. A plot of these positions would have conclusively disclosed to Appellant that the MARINE FLIER was on a parallel course as well as informing him of the fact that she commenced changing course to her starboard at 2312. Therefore, the picture presented by an intelligent interpretation of the radar information was that the normal procedure of passing port to port should have been followed. The propriety of this is emphasized by the fact that radar bearings are not as accurate as visual ones and the bearing of the MARINE FLIER might well have been dead ahead of the DAY rather than five degrees on her starboard bow as it appeared to Appellant when the MARINE FLIER was picked up on the radar scope. Appellant's long experience with radar should have caused him to allow for this factor. He had ample time to fully appreciate the situation and that the natural reaction of the MARINE FLIER would be to alter course to starboard. It was a faulty maneuver by Appellant to initiate a starboard to starboard passing; and, in any event, a much more definite initial change of course than six degrees was required in order to have relieved Appellant in the slightest degree from the requirement to reduce speed at this time. A substantial change in course would have informed the radar equipped MARINE FLIER of the intention of the DAY. If the other vessel had not possessed radar, she would have had no reason to alter her own course and a large change by the DAY would have provided a wide margin of safety. Without a plot of the other ship's position, Appellant could not determine her course with any degree of accuracy and, therefore, he was required to exercise great care. The record does not indicate whether Appellant knew that the MARINE FLIER was equipped with radar and he had no reason to believe that she intended to attempt a starboard passing even if he did know that both ships had radar.

There is no doubt that the DAY could still have been stopped dead in the water in one-half the distance of radar "visibility" for some time after she first made radar contact with the MARINE FLIER. But Appellant permitted his ship to proceed at full speed into a dangerous situation until it was too late to stop. Another vessel's position is not ascertained within the meaning of Article 16 unless her course as well as her momentary location is known. El Monte (D.C.N.Y., 1902), 114 Fed. 796. In the latter case, it was also held that stopping a minute after slowing was not sufficiently prompt action. If the rules had been observed to the extent that Appellant had ordered the engines reversed when the fog signal of the MARINE FLIER was heard about six minutes before the collision, the accident would probably have been averted. At this time which was 2316, the lookout heard and reported the fog signal on the starboard bow and the radar indicated that the ship was bearing 035 degrees relative. Then the DAY changed course from 100 gyro to 090 gyro at 2316 and the bearing of the MARINE FLIER changed to 045 degrees relative. Thus, the true bearing of the

other vessel remained unchanged; and this knowledge gained from the radar made it even more imperative that the DAY be stopped.

The evidence shows that the two vessels were practically on collision courses for several minutes before the collision and that changes of course by one were offset by alterations of course by the other. The MARINE FLIER remained approximately broad on the starboard bow of the DAY while the DAY was almost dead ahead of the MARINE FLIER. Therefore, it was also negligent for the DAY not to have stopped at this later time, especially in view of the fact that Appellant would have realized that the MARINE FLIER was turning farther to her starboard if he had fully utilized the radar by accurately interpreting the movements of the other ship.

If the DAY had stopped and reversed her engines at 2316, the MARINE FLIER would have passed ahead and the collision would have been avoided in this manner as well as it would have been if the MARINE FLIER had not come hard right, which is the reason Appellant contends that the collision occurred. Regardless of this, Appellant was not excused by the other ship's actions from his duty to comply with the rules of navigation. Yoshida Maru (CCA 9, 1927), 20 F.2d. 25. Appellant would not have been faced, later on, with a choice between two equally unfavorable alternatives if he had complied with Article 16, which is strictly enforced by the courts, and stopped the headway of his ship as soon as possible after the lookout had reported hearing the fog signal of the MARINE FLIER.

A very similar situation is presented in the Chinook - Dagmar Salen, 1950 A.M.C. 729, which was decided by the Exchequer Court of Canada, British Columbia Admiralty District. Both ships were equipped with radar and they were underway on closely parallel courses and proceeding at a combined speed of thirty knots in Puget Sound when the ships picked up each other on their radars about eight or nine minutes before the collision and at a distance of approximately five miles almost dead ahead. The CHINOOK changed course seventeen degrees to her starboard about six minutes before the ships collided in dense fog. The DAGMAR SALEN altered course five degrees to port nine minutes prior to the accident and ten more degrees in the same direction at about the same time that the CHINOOK changed course. The CHINOOK stopped her engines, upon hearing the fog signal of the DAGMAR, and went full astern a minute before the impact. The DAGMAR's engines were stopped at the same time that she made her second change of course and her engines were put full astern three minutes before her stem rammed the port side of the CHINOOK at the wing of the bridge. Visibility was about 600 feet when the vessels actually came into view of each other. It was stated that although the converging courses of the ships could not be plotted with pin-point precision, the known facts were accurate enough for determining what principles of good seamanship were infringed. In holding both vessels at fault for failing to reduce speed sufficiently when their respective radars gave indications of the other's approach, the Court used the following language:

> "American and British Courts alike have stated, again and again, that in dense fog the most extreme degree of caution is exacted; that, with traffic about, it is very easy to go too fast, very difficult to go too slow. No doubt they were each lulled into a sense of security by their radar bearings. But radar is an aid to navigation only.

> It does not over-ride the general principles applicable to navigation in fog, the first of which is moderate speed and the second great care. Moreover, I am satisfied that if proper use had been made of the radar on the CHINOOK, her master would have seen the DAGMAR SALEN instead of broadening, was narrowing on his port bow. On the DAGMAR SALEN the bearings were observed more continuously and accurately. But they, too, changed too narrowly to permit of a safe distance for passing in fog. The fact is that during the critical period, and until their respective alterations of course, the two ships were very nearly head-on to each other."

On appeal, the Supreme Court of Canada affirmed the trial court's finding that both vessels were guilty of excessive speed. Chinook - Dagmar Salen, 1950 A.M.C. 1253. But the proportion of responsibility was reversed to one-third blame on the part of the DAGMAR SALEN and two-thirds for the CHINOOK because the Supreme Court did not agree with the finding that the DAGMAR SALEN was more to blame because she disregarded a customary rule to pass port to port in these waters. The Supreme Court concluded that the CHINOOK was primarily responsible because she made a seventeen degree change in course without having ascertained the course of the DAGMAR SALEN by paying proper attention to the radar and, at the same time, continuing to proceed at a speed (sixteen knots over the ground) which was felt to have been made safe by radar. The opinion reads, in part, as follows:

> "On the other hand, CHINOOK, relying on radar and the stopping power of its engines, was travelling at a speed that, in the absence of radar, would have been greatly excessive, and it called for unremitting attention to the screen and the sharpest appreciation of what it revealed. If radar is to furnish a new sight through fog, then the report which it brings must be interpreted by active and constant intelligence on the part of the operator."

There was only a half-mile of open water on the DAGMAR's starboard hand and the Court did not reject a starboard passing, but it was held that the attempted starboard passing had not been properly initiated because, "assuming radar equipment in the other vessel, a departure of five degrees from a course would not at once be apparent. There was nothing to prevent a swing of 15 or even 20 degrees at the first sighting to take DAGMAR without delay out of the easterly lane preparatory to a starboard passing."

The above cases have been reviewed at length because, in some respects, the faulty navigation of each vessel presents a close analogy to the behavior of the DAY.

CONCLUSION

Appellant did not obey the generally applicable rules for navigating in fog and he failed to sustain the burden of justifying his deviation from these rules. The DAY was navigating at an excessive speed in dense fog for at least twenty minutes before the collision; and this offense was aggravated by her alterations of course and the failure to stop her engines upon first hearing the fog signal of the MARINE FLIER. In view of the circumstances, I do not think the suspension order

is unduly severe despite Appellant's otherwise perfect record.

ORDER

The order of the Examiner dated at Long Beach, California, on 28 May, 1952, is AFFIRMED.

M.C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 4th day of November, 1952.