

In the Matter of License No. 80136
Issued to: GEORGE B. SAUNDERS

Decision and Final Order of the Commandant
United States Coast Guard

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GEORGE B. SAUNDERS

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 24 April, 1953, an Examiner of the United States Coast Guard at Norfolk, Virginia, suspended License No. 80136 issued to George B. Saunders upon finding him guilty of negligence based upon a specification alleging in substance that while serving as Master on board the American SS SEACONNET under authority of the document above described, on or about 7 February, 1953, during a time of reduced visibility, he neglected and failed to navigate said vessel with due caution while maneuvering off the entrance to Beaufort Inlet, North Carolina, thereby contributing to the grounding of said vessel.

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 and Appellant made their opening statements and the Investigating Officer introduced in evidence the testimony of the Third Mate, U.S. Coast and Geodetic Survey Chart No. 420, a copy of entries in the Deck Logbook and a copy of entries in the Deck Bell Book.

After argument on counsel's motion to dismiss on the ground of lack of evidence to substantiate the charge, the Examiner reserved ruling on the motion.

In defense, Appellant testified under oath in his own behalf. Appellant stated that he had never been in these waters before but since he knew his position when passing the sea buoy and he intended to anchor in the open water about halfway between the sea buoy and shoal water which was about a mile and a half from the sea buoy on a projected course of 340 degrees true, he did not consider it necessary to use the radar or fathometer after passing the sea buoy.

After the completion of Appellant's testimony, counsel's renewed motion to dismiss was denied by the Examiner. At the

conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and having ruled on the proposed findings and conclusions, submitted by counsel for Appellant, 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. 80136, 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 on twelve months probation.

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

POINT I. The fact that no sounding were taken after 2254 did not constitute negligence as the conditions existing at the time did not call for the taking of sounding. Appellant knew the exact position of his vessel at 2335 when passing the sea buoy, he set a course which was clear of shoal water for one and a half miles, and he stopped the engines after proceeding on this course for approximately seven-tenths of a mile.

POINT II. The grounding was caused by a strong northeasterly current which Appellant did not know about because he was not familiar with these waters and this current was not mentioned in any of the hydrographic publications carried aboard the ship. Appellant intended to anchor in the only suitable place in the vicinity and await the arrival of a pilot in the morning. Appellant's conduct was prudent rather than negligent.

POINT III. The Examiner erred in failing to grant counsel's motion to dismiss. The Investigating Officer's only witness approved of Appellant's navigation of the vessel and this witness demonstrated by means of the chart in evidence that the dead reckoning position of the ship at the time of grounding was perfectly safe.

Appellant concludes that he was found guilty of negligence purely because his vessel grounded although the proximate cause of the grounding was the fact that the ship was set off her course by an unknown current; and that Appellant acted as any other prudent Master would have done under the same circumstances.

APPEARANCES: Messrs. Vandeventer, Black and Meredith by Hugh S. Meredith, Esquire, of Counsel.

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

FINDINGS OF FACT

On a voyage including the date of 7 February, 1953, Appellant was serving as Master on board the American SS SEACONNET (6801 gross tons and 423 feet in length) and acting under authority of his License No. 80136 while the ship was enroute from Newport News, Virginia, to Genoa, Italy, with a cargo of coal. Her draft on leaving port on 6 February, 1953, was 29 feet forward and 27 feet aft. The ship was routed via Morehead City, North Carolina, in order to obtain bunker fuel at that port.

The SEACONNET approached the North Carolina coast in the vicinity of Beauford Inlet on the evening of 7 February, 1953, in fog, rain, and a very rough sea. Due to the inclement weather, Appellant intended to anchor to the northwestward of the sea buoy which was about a mile south of the channel entrance. The channel in to Morehead City extends in a northerly direction.

Appellant was on the bridge and conning the ship from about 2310 until after the grounding at 2342 1/2. The Third Mate had the 2000 to 2400 watch and he remained on the bridge until leaving at 2339 to man to anchor. The Third Mate had informed the Master that flood tide of two to three knots could be expected upon arrival at Beauford Inlet. No sounding were taken on the fathometer between 2254 and the time of the grounding. The radar was on standby but it was not used after passing the sea buoy.

At 2335, The SEACONNET passed the sea buoy abeam to port at a distance of about fifty yards and changed course from 330 to 340 degrees true. At this point, the fog became so thick that visibility was limited to not more than one ship length; and at 2336, Appellant ordered a speed change from full ahead of 10 knots to one-half ahead of 7 knots. Appellant intended to anchor about midway between the sea buoy and the five fathom curve which was one and a half miles from the sea buoy on a course line of 340 degrees true. The fog and intermittent rain prevented the observation of the lighted channel buoys or any other aids to navigation prior to the time of the stranding.

At 2339, Appellant ordered the engines on slow ahead (4 knots) and continued on course 340 degrees true. The Third Mate left the bridge to stand by the anchor. At 2340, the engines were stopped and Appellant ordered slow astern at 2342. At 2342 1/2, this was increased to half astern and then full astern as the starboard anchor was let go and the ship grounded in about 28 feet of water. Appellant estimated that the ship was a mile inside the sea buoy. A fix obtained at 0045 showed the position of the ship to be about 200 yards west of the channel and almost directly north of the sea buoy. This point was about one-half mile in a northeasterly direction reckoning position of the ship at the time of grounding and about 500 yards farther from the sea buoy than the dead reckoning position. The SEACONNET remained aground until the morning of 12 February, 1953, due to the fact that no tug with sufficient power to pull her off was available before this date.

Appellant has held a Master's license for about 14 years. During this period of time, his prior disciplinary record consists of a suspension for ten days in 1947 in connection with the grounding of another ship on which he was serving as Master.

OPINION

Appellant contends that there is no proof of negligence on his part since he navigated the ship as any prudent Master would have navigated under the circumstances; and the grounding was caused by a strong, northeasterly current about which Appellant neither had any knowledge nor any means of obtaining knowledge from the hydrographic publications on the ship.

I do not think that Appellant acted with all the prudence required under the circumstances. Considering the fact that his ship was heading directly towards shoal water in a dense fog and in rough, unfamiliar waters after passing the sea buoy, the speed of the SEACONNET was far too high for a heavily loaded vessel of this size. Moreover, Appellant did not use the fathometer or the radar; and there is no indication that he made any allowance for the 2 to 3 knot current which was caused by the flood tide condition existing at the time.

Every precaution available is required of a Master under such extreme circumstances. It has often been said that the care to be exercised must be in proportion to the danger to be avoided; and there was considerable danger in the present situation. Hence, it was Appellant's duty to insure the safety of the ship and all persons on board by making the maximum use of all information, and means of acquiring it, at his disposal. Appellant should have kept a more accurate check on the position of his ship by proceeding with extreme caution in these strange waters, estimating the effect of the current, taking frequent sounding, and attempting to fix his location by use of the radar. Since he did not do any of these things, he was negligent.

Nor do I agree with the proposition that the evidence establishes the fact that some strong, unknown current caused the grounding. A prima facie cause was made out against Appellant because ships under careful navigators do not run aground, in the ordinary course of events, without cause. And Appellant has offered no positive evidence of the presence of a current about which he had no knowledge. On the contrary, there was a known 2 to 3 knot current which was setting the ship to the right of her course of 340 degrees true. This current alone was sufficient to account for the difference between the position of the ship as estimated by dead reckoning and the actual position of the vessel as determined by means of a fix which was obtained a short time after the grounding occurred.

It appears that the finding proposed by Appellant, that "the SEACONNET apparently grounded by reason of having been set in a northeasterly direction by an unknown current" was improvidently accepted by the Examiner. This finding is not consistent with the conclusion of the Examiner that Appellant was negligent; nor is such a finding supported by substantial evidence in the record. This proposed finding is an inference drawn from the basic findings of fact which the Examiner arrived at directly from his estimates of the credibility of the witnesses whom he heard and observed as they testified. An appellate authority should disregard an inference which is not properly supported by the facts testified to by the witnesses. See American Tobacco Co. v. The Katingo Hadjipatera (C.C.A. 2, 1951), 194 F2d 449, 451.

CONCLUSION

For these reasons, Appellant was guilty of negligent navigation which was a contributing factor in the grounding of the SEACONNET.

ORDER

The order of the Examiner dated at Norfolk, Virginia, on 24 April, 1953 is AFFIRMED.

A.C. RICHMOND
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D.C., this 7th day of October, 1953.