

In the Matter of License No. 115643
Issued to: DONALD A. BLANCHARD

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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DONALD A. BLANCHARD

In the Matter of License No. 115643
Issued to: DONALD A. BLANCHARD

and

License No. 105443
Issued to: MARION M. ROSS

These appeals have been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

By separate orders dated 19 January 1955, an Examiner of the United States Coast Guard at Port Arthur, Texas suspended License No. 115643 issued to Donald A. Blanchard and License No. 105443 issued to Marion M. Ross upon finding them guilty of inattention to duty upon specifications alleging in substance that while serving as Pilot and Master, respectively, on board the American SS GULFTIDE under authority of the licenses above described, on or about 27 November 1954, while said vessel was outbound from Port Arthur, Texas, they improperly permitted an excessive degree of left rudder to be used and to be continued until impact of collision.

At a hearing held in joinder, the Appellants were given a full explanation of the nature of the proceedings, the rights to which they were entitled and the possible results of the hearing. Each Appellant was represented by an attorney of his own selection and 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 the GULFTIDE's helmsman at the time of collision, the Chief Mate, the First Assistant Engineer and the lookout. After the Investigating Officer rested his case, motions to dismiss the specifications as to each Appellant were denied by the Examiner.

In defense, Appellants offered in evidence their sworn testimony and several exhibits including a chart of the area where the collision occurred.

After the Investigating Officer waived his closing argument, the hearing was adjourned to permit the submission of briefs by the respective counsel for Appellants. When the hearing was reconvened, the Examiner announced his findings and concluded that the charge against each Appellant had been proved by proof of the specification. He then entered the orders suspending Appellant's License Nos. 115643 and 105443, each for a period of three months.

From these orders Appeals have been taken, and it is urged on behalf of Pilot Blanchard that the Master relieved the Pilot of all responsibility by giving the countermanding order of "full astern" two or three minutes before the collision at a time when the ship was not in extremis and the Pilot could have avoid the collision except for such interference by the Master; and, therefore, there is no substantial evidence to support the specification, as amended to read that the Pilot "failed to ascertain the position of the

rudder and permitted left helm to remain upon the vessel until impact of collision," because the Pilot could do nothing about the position of the helm after he was relieved of the conn by the Master. It is further contended that the Pilot was found guilty of an offense with which he was not charged since he was not charged with placing the vessel in extremis but with a continuity offense until the time of collision; the specification does not charge the Pilot with "negligence"; and more than one offense is alleged in the specification. In conclusion, it is respectfully submitted that since the charge against the Pilot was not proved beyond a reasonable doubt, the findings of the Examiner should be reversed and the charge and specification dismissed.

Appearances: Messrs. Fulbright, Crooker, Freeman, Bates and Jaworski of Houston, Texas, by E.V. Greenwood, Esquire, of Counsel for Donald A. Blanchard.

On behalf of Master Ross, it is urged that the facts and the law concerning the master-pilot relationship fail to support the statement of the Examiner that the Master "negligently permitted - - too much left rudder" when the Pilot ordered "two turns left" and there was no appreciable change in the heading of the vessel until one minute after the latter order was given; the orders "one turn left" and "two turns left" are normally required to follow the bend in the channel; the physical facts show that the ship was handling well at a point 1100 feet below Buoy No. 46 when she took the rapid left swing; the Pilot's order of "hard left" caused the sudden, rapid swing to port and placed the ship in extremis; the Master acted instantly when danger became apparent after the latter order which he did not hear; and the Master did not check the Pilot's orders to the helmsman since it was the responsibility of this experienced and competent Pilot to handle the ship properly. Counsel contends that it was customary and would have been proper for the Master temporarily to leave the bridge while the Pilot was navigating the ship in inland water; and that the decision of the courts limit the Master to displacing a Pilot in cases of manifest incompetence, intoxication, great necessity, or danger not foreseen by the Pilot and not too sudden to prevent the Master from taking avoiding action. (Citing cases). In conclusion, it is stated that the Master has an unblemished record and has held a Master's license since 1940; the Master was not guilty of the charge of "inattention to duty" since a Master should not be burdened with the duty of minute supervision over every order of an experienced Pilot given to competent watch personnel on the bridge; and, therefore, it is respectfully submitted that the findings and order of the Examiner should be reversed.

Appearances: Messrs. Terriberry, Young, Rault and Carroll of New Orleans, Louisiana, by Alfred M. Farrell,

Jr., Esquire, of Counsel for Marion M. Ross.

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

FINDINGS OF FACT

On 27 November 1954, the Appellants were serving as Pilot and Master on board the American SS GULFTIDE and acting under authority of their License Nos. 115643 and 105446, respectively, while the ship was outbound from Port Arthur, Texas and collided with the inbound American SS SHABONEE at 0611 in the Sabine Pass Channel about a mile and a half below Mesquite Point.

The GULFTIDE was a steam screw tank vessel of 7,140 gross tons, 426 feet in length and 64 feet in breadth. She was loaded with petroleum to a draft of 27 feet, 2 inches forward and 29 feet 1 inch aft. Her navigation equipment was in good working condition except for the rudder angle indicator on the forward bulkhead in the wheelhouse.

The SHABONEE was steam screw tank vessel of 10,255 gross tons, 488 feet in length and with a beam of 68 feet. She was bound for Port Arthur in ballast.

The GULFTIDE departed Port Arthur on the morning of 27 November 1954 with Pilot Blanchard at the conn. Day was breaking when able seaman Beck relieved the helmsman watch on the GULFTIDE at 0600. Also on the bridge were the Master and the Chief Mate who was the watch officer. The visibility was good and there was a slight breeze. At this time the tide was ebbing with a velocity of about 6 knots flowing from Sabine Lake in a southerly direction into Sabine Pass Channel. Since the ebb tide meets the Sabine Pass Channel on the downbound port side of the channel, the force of this current was exerted against the port side of the GULFTIDE as she turned from an easterly course in Port Arthur Canal to a southerly course as she entered the Sabine Pass Channel.

In this vicinity, the channel is about 500 feet in width. It extends in a generally southerly direction below the junction of Sabine Lake and the Port Arthur Canal at Mesquite Point for a distance of about a mile and then gradually changes to an easterly course which extends for approximately another mile. Pilot Blanchard conned the GULFTIDE to the left side of the channel in order to allow for the effect of the current while making the turn.

The GULFTIDE was opposite Buoy No. 48 at about 0606. At 0607, speed was reduced from full ahead to one-half ahead, or approximately 5 or 6 knots. Shortly afterwards, the lights of the ascending SHABONEE were sighted at a distance of about one and a half miles. She was below the bend in the channel. The two vessels exchanged one blast whistle signals for a port to port passing. By this time the GULFTIDE was maneuvering towards her starboard side of the channel.

As the GULFTIDE approached Buoy No. 46 which is a little more than a half mile below Buoy No. 48 and is at the sharpest part of the bend in the channel, Pilot Blanchard ordered the helmsman to place the wheel "one turn left" in order to swing around Buoy No. 46. The Pilot was inside the doorway between the wheelhouse and the port wing of the bridge. He heard the helmsman repeat the order. The Master was on the port wing of the bridge and the Chief Mate was at the engine order telegraph to the right of the wheel.

A few seconds after the GULFTIDE commenced to swing slightly to the left and just before the ship was abeam of Buoy No. 46, the Pilot gave the order "two turns left" and heard the helmsman answer the order. The rudder indicator at the wheel showed that the rudder was about half way between amidships and hard left after the latter order had been executed. The Pilot went out to the port wing of the bridge. He then ordered the rudder either "hard right" or "hard left" with the intention of ordering "hard right" to straighten the ship in the channel around the bend. The helmsman understood the order as "hard left" and so executed it. Neither the Master nor the Chief Mate heard the order; and the Pilot did not hear any acknowledgment of the order by the helmsman.

At 6010 which was about a minute after the "two turns left" order, the GULFTIDE sheered rapidly to port while at a distance of about two to three ship lengths from the SHABONEE. The Master said, "She can't make it," and immediately thereafter the following action was taken nearly simultaneously in this order: The Pilot ordered the engines "full ahead;" this was countermanded by the Master's order of "full astern" which the Chief Mate executed with an emergency jingle of the engine order telegraph; the Chief Mates turned on the general alarm; the Pilot ordered the lookout to drop the anchor; the Master ordered the lookout to get the forecastle head; and the Pilot sounded the danger signal.

At 6011, the port bow the GULFTIDE struck the forward port side of the SHABONEE at an angle of approximately 60 degrees. The collision occurred on the GULFTIDE's extreme left side of the channel about 600 yards below Buoy No. 46. It was determined that the GULFTIDE's rudder was hard left after the collision. There was no loss of life or injury to anyone on either vessel. After the collision, the Pilot coned the GULFTIDE back to Port Arthur.

The Pilot was admonished in 1950 for failing to report promptly a marine casualty. The Master has no prior record.

OPINION

This case involves the meeting of two ships near a bend in a narrow channel after passing signals had been exchanged for a

conventional port to port passing. The outbound GULFTIDE was moving along with a strong ebb current and was required to negotiate a bend in the channel to the left just prior to meeting the upbound SHABONNE. Under these circumstances, it was imperative that both the Master and the Pilot of the GULFTIDE be extremely vigilant and attentive in order to be certain that the orders to the helmsman were correctly and expeditiously carried out. The proper steering of the two ships was vital in effecting a safe passing; and, therefore, the highest degree of care was required in checking the orders to the helmsman and observing the swing of the ship resulting from these orders.

The Master and Pilot of the GULFTIDE were both responsible for the navigation of the ship despite the fact that the Pilot was in immediate charge of the conning of the vessel shortly before the collision with the SHABONNE, and they were both required to exercise great care due to the strong current. The Master is ultimately responsible for the safety of his ship and he does not surrender his authority whether the Pilot is a voluntary or a compulsory one. Robins Drydock Co. v. Navigazione Libera Triestina (C.C.A. 2, 1929), 32 F. 2d 209; Charente S.s. Co. v. United States (C.C.A. 5, 1926), 12 F. 2d 412. There is no evidence that there was any fault on the part of the SHABONNE in connection with this collision.

Although the specifications are somewhat narrowly worded, the evidence produced at the hearing clearly indicates that proof of the charge of "inattention to duty" is dependent upon whether there is substantial evidence that either or both Appellants proceeded into danger as the result of failure to exercise reasonable care under the prevailing circumstances. It has been stated that in these administrative proceedings the proof need not adhere strictly to the wording of the specification so long as there has been actual notice and litigation of the issue and there is no surprise. Kuhn v. Civil Aeronautics Board (C.A., D.C., 1950), 183 F. 2d 839. The same rule applies in admiralty. Lampros Seaplane Base, Inc. v. The Batory et al (D.C., S.D.N.Y., 1953), 117 F. Supp. 16. There was no element of surprise in this case since the issue of negligence as to the Master and Pilot was extensively argued by both parties.

The degree of proof required in these remedial, administrative proceedings is that the findings be supported by substantial evidence - not by proof beyond a reasonable doubt. Since the amendments to R. S. 450 (46 U.S.C. 239) in 1936, it has been the constant interpretation of the Coast Guard that the latter statute is remedial in nature as well as in effect. This position is fortified by the statute itself which provides for the referral of any evidence of criminal liability to the Department of Justice for

action by that Department, thus recognizing and providing for the separability of the penal from the remedial or administrative functions. In addition the Administrative Procedure Act, section 7(c), and 46 CFR 137.215-5 state that the degree of proof required is substantial evidence.

The above findings of fact have modified those of the Examiner to some extent particularly with respect to the irreconcilable testimony of the Pilot and the helmsman as to helm orders given after the "two turns left" order at about 0309. The Pilot testified that he subsequently ordered the rudder "midships," "one turn right," "two turns right" and finally "hard right"; and that he assumed these orders were carried out although he did not hear the helmsman repeat them since the Pilot was then outside the wheelhouse. On the other hand, the helmsman stated positively that the only order he received after the "two turns left" was the order "hard left" and that he repeated it. The Master and the Chief Mate testified that they did not hear any orders given to the helmsman after the "two turns left" or the acknowledgment by the helmsman of any order received by him. In order to resolve this conflict to the fullest possible extent and not to totally reject the Pilot's testimony that he ordered "hard right" rudder, the findings of fact state that either the Pilot gave the reverse order of what he intended or the helmsman misunderstood the order. It is not disputed that the rudder was hard left immediately after the collision.

On the bases of the testimony of the Master, the First Assistant Engineer and the lookout, I have found that the collision took place at 0611 which was about a minute after the GULFTIDE commenced swinging rapidly to port. The Master testified that the SHABONEE was two or three ship lengths away when he noticed the sudden sheer of the GULFTIDE. This was a distance of between about 900 and 1100 feet; and taking into consideration the 6 knot current, this agrees with the speed of the GULFTIDE over the ground of about 1100 feet a minute. The First Assistant Engineer testified that he checked the entries with a clock as they were made in the engine room bell book. These entries indicate that the "full astern" order was received at 0610 and the collision was at 0611. The lookout testified that after receiving the Master's order to get off the forecastle, he ran as fast as he could but had not reached the amidships superstructure by the time of the collision.

Considering the above comments and my findings of fact, it is my opinion that the contentions raised on appeal by the Pilot are without merit to the extent that the charge and specification against him should be dismissed. The specification was sufficiently informative to enable Appellant Blanchard to prepare

his defense. The substantial weight of the evidence shows that the collision occurred about one minute and not two or three minutes after the Master relieved the Pilot of further responsibility by countermanding the Pilot's order of "full ahead" and ordering "full astern."

Although I conclude that the Master superseded the authority of the Pilot at this point, it is also my conclusion from the facts that the GUILFTIDE was then in extremis and it was impossible to avoid the collision. It is evident that the "full ahead" order alone could not have prevented the accident since the rudder was hard left and not hard right as the Pilot apparently thought it was. Even shifting the rudder at the time of the "full ahead" order would only have caused the GULFTIDE to strike the SHABONEE father aft on her port side.

The inattention to duty and the inexcusable lack of vigilance on the part of the Pilot originated when he failed to obtain an acknowledgment from the helmsman for any order or orders given by the Pilot after his "two turns left" order; or, alternatively, no order was given for the purpose of stopping the swing to the left after the ship had rounded the bend in the channel. This negligent act of allowing left rudder to remain on the vessel continued until the Master displaced the Pilot after the ship was in the jaws of collision. In addition to the fault of not checking on the helmsman, the Pilot should have been able to detect the mishandling of the ship at an earlier time based on the failure of the ship to respond to the order of "hard right" rudder which he thought he had given. A Pilot is presumed to have superior knowledge concerning the effect of tides and currents, channel courses and other features peculiar to the waters in which he is qualified as an expert navigator; and the degree of knowledge exacted, in this regard, is of a very high order. Atlee v. Packet Co. (1974), 88 U.S. 389; The Framlington Court (C.C.A. 5, 1934), 69 F. 2d 300, cert. den. 292 U.S. 651; Homer Ramsdell Transp. Co. v. Campagnie Generale Transatlantique (C.C., S.D.N.Y., 1894), 63 Fed. 845.

For these reasons, it is my conclusion that Appellant Blanchard was properly found guilty of the charge of "inattention to duty" by the required substantial evidence.

Considering the appeal of Appellant Ross, it is my opinion that his contentions are totally unconvincing. Neither the presence of the Pilot nor his negligence relieved the Master from responsibility for the safety of his when there was danger which he observed, or should have observed, in sufficient time to take action to avoid the collision. Charente S.S. Co. v. United States (C.C.A. 5, 1926), supra. The Master was bound to keep a vigilant eye on the navigation of his ship and insist that the Pilot use

every precaution (The Oregon (1895), 158 U.S. 186); the Master must maintain a sufficient and attentive watch on deck (The Oregon, supras; City of Los Angeles v. Standard Transportation Co. et al. (C.C.A. 9, 1929), 32 F. 2d 988); the Master must advise the Pilot of all dangers and make suggestions to him (Eldena-Griffdu (D.C., S.D. Tex. 1928), 25 F. 2d 312; Charente S.S. Co. v. United States, supra; Jure v. United Fruit Co. (C.C.A. 5, 1925), 6 F. 2d 6; Homer Ramsdell Transp. Co., supra); the Master is always in command of his ship and has the duty to displace the Pilot in cases where danger is apparent and the Pilot does nothing about it. The China (1868), 74 U.S. 53; Robins Drydock Co., supra; Charente S.S. Co., supra; Jure v. United Fruit Co., supra; The Framlington Court, supra; Homer Ramsdell Transp. Co., supra; Union Shipping and Trading Co. v. United States, 127 F. 2d 771.

Appellant Ross did not act in conformance with these standards. According to his own contentions, the Master took no action to advise or displace the Pilot at a time when the ship should have been straightening out around the bend but the Master had heard no order given or acknowledged since the order "two turns left." The Master claims that it was the responsibility of the Pilot to give the correct orders and the Master assumed the Pilot was doing this. But this does not agree with the authority contained in the cases cited above. The Master should have checked with the Pilot and, if necessary, relieved or advised him when the Master did not hear any order to star bringing the ship's head to starboard; and he should then have checked the rudder indicator at the wheel. Either the Pilot or the helmsman had been inattentive with respect to the giving of an order intended to place right rudder on the ship. If the Master had not waited until the ship was in extremis after the rudder was hard left, this error would have been detected in time to shift the rudder and to avoid the collision.

Contrary to the Master's contention, it was his duty to be on the bridge and to minutely supervise the orders of the Pilot as well as the actions of the helmsman in carrying out the orders of the Pilot. The Master did not act with the degree of vigilance which the results show was obviously a potentially dangerous situation in a channel not much wider than the length of either of the two vessels. If the ship was 1100 feet below Buoy No. 46 when she took the rapid left swing, as contended by the Master, it is clear that a right rudder order should have been given at an earlier time and the Master should have heard it or made inquiry of the Pilot. "But notwithstanding the knowledge the Master had and the knowledge imputed to him he did nothing whatever to forestall the disaster, and was clearly negligent in that regard." City of Los Angeles v. Standard Transp. Co. et al, supra.

Consequently, I conclude that Appellant Ross was guilty of "inattention to duty" as charged.

CONCLUSION

There is substantial evidence to prove that both Appellants were guilty of failing to take precautions which were reasonably required under the circumstances. These omissions amounted to inattention to duty in the nature of negligence and were not merely errors of judgment which appear to be negligence with the advantageous perspective of hindsight.

ORDER

The Orders of the Examiner dated at Port Arthur, on 19 January 1955 are AFFIRMED.

J. A. Hirshfield
Rear Admiral, U. S. Coast Guard
Acting Commandant

Dated at Washington, D. C., this 23rd day of September 1955.