

In the Matter of License No. 23019 and all other Licenses
Issued to: JACK GORDON

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

961

JACK GORDON

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 29 August 1956, an Examiner of the United States Coast Guard at Baltimore, Maryland, suspended License No. 23019 issued to Jack Gordon upon finding him guilty of inattention to duty. The specification alleges in substance that while serving as Master on board the American SS I. R. LASHINS under authority of the License above described, on or about 20 January 1956, while said vessel was approaching Cape San Antonio, Cuba, Appellant failed to exercise such care as a reasonably prudent Master would have exercised under the same circumstances and at the same time, in that he failed to verify the vessel's true heading from about 2045 to about 2325, thereby contributing to the grounding of his ship.

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 counsel of his own choice. He entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer and Appellant's counsel made their opening statements. The Investigating Officer introduced in evidence the testimony of the Chief Mate and the two helmsmen during the period of time referred to in the specification. After the Investigating Officer rested his case, counsel for Appellant made a motion to dismiss on the ground of lack of proof. The Examiner heard argument on the motion and then denied it.

In defense, counsel for Appellant offered a stipulation concerning what the testimony of the Second Mate would be if he were called as a witness. Counsel then rested the defense.

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 Appellant, the Examiner announced his decision. He concluded that the charge and specification had been proved. The Examiner then entered the order suspending Appellant's License No. 23019, and all other licenses issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of one month.

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

FINDINGS OF FACT

On 20 January 1956, Appellant was serving as Master on board the American SS I. R. LASHINS and acting under authority of his License No. 23019 when the ship ran aground at approximately 2325 on the northwest coast of Cuba while enroute from Houston, Texas to Santos, Brazil.

When the Third Mate relieved the Chief Mate for the 2000 to 2400 watch on this date, the ship was on course 131 degrees per gyro compass and proceeding at a speed of approximately 10 knots. A course line of 131 degrees projected from the noon position indicated that Cape San Antonio Light, on the western tip of Cuba, should be 5 miles abeam to port at approximately 2300 as the ship commenced the passage through Yucatan Channel. The intended course was laid out on a chart in the chartroom aft of the wheelhouse. There was a gyro repeater in the chartroom and also one on the starboard wing of the bridge. The helmsman was steering by a gyro repeater which was slightly forward of the wheel.

Appellant was on the port wing of the bridge at 2000 and remained there most of the time until the grounding at approximately 2325. At 2040, Appellant was on the port wing of the bridge looking for Cape San Antonio Light when he told the Third Mate to bring the vessel "2 degrees to the wind." the wind was then on the starboard bow. The Second and Third Mates were with Appellant at the time of this order. The Third Mate went into the wheelhouse and ordered the helmsman to change course to 103 degrees - instead of 133 degrees as intended by Appellant. After giving this order, Appellant went below with the Second Mate. The helmsman executed the ordered course change and properly reported the new course to the Third Mate when the ship was on 103 degrees per gyro compass.

Appellant returned to the bridge prior to 2200. At some time after 2200, Appellant ordered the helmsman to change course 5 degrees to the right. This order was for the purpose of avoiding a vessel crossing ahead from the right. The helmsman changed

course to 108 degrees gyro but did not report the new course. He was not given any subsequent orders until just prior to the grounding.

Shortly before 2300, Appellant called the Chief Mate to the bridge and asked him to see if he could obtain a sight since Cape San Antonio Light had not been observed. Appellant erroneously told the Chief Mate that the ship's course was 133 degrees. The Chief Mate took a sight of Jupiter and went to the chartroom to plot it on the chart. Appellant entered the chartroom at approximately 2320 when the Chief Mate was ready to do the plotting. Appellant looked at the gyro repeater and exclaimed that the helmsman was steering 30 degrees off the course. Appellant rushed into the wheelhouse and ordered hard right rudder. The vessel was swinging to the right when she ran aground.

Prior to this time, Appellant had not checked the ship's heading since giving the order at 2040 which was intended to change the course of the ship 2 degrees into the wind; nor had there been any report given to Appellant as to the ship's course or heading at any time.

Appellant has no prior record.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the decision and the findings of the Examiner are contrary to the law and the evidence; the order of suspension is unduly severe under the circumstance even if the decision is proper under the law.

Appellant was not required to verify personally that a perfectly simple order given to a licenses officer, the Third Mate, was executed properly even though hindsight shows that the grounding would have been averted if Appellant had done so. There is a fatal deficiency in the proof in that there is no testimony as to what a reasonably prudent Master would have done under the same circumstances. On the bases of certain standards set up by the Examiner, the record does not support the conclusion that Appellant did not act as a reasonably prudent Master under the existing circumstances. In any event, the Examiner's opinion cannot be substituted for competent evidence as to what such standards should be.

It is respectfully urged that the Examiner's finding that Appellant was inattentive to duty should be reversed. Alternatively, it is suggested that the order be modified to an admonition in view of Appellant's unblemished record for

approximately 9 years as a Master, the impact which such a casualty has upon any Master, and the seven-month period after the collision during which Appellant knew that a decision was impending which might adversely affect his otherwise clear record.

APPEARANCE: Messrs. Krusen, Evans and Shaw of Philadelphia, Pennsylvania by Mark D. Alspach, Esquire, of Counsel.

OPINION

It is well established that the Master of a vessel, by virtue of his office and the rules of maritime law, has charge of the ship (Butler v. Boston S.S. Co. (1889), 130 U.S. 527); and that he is bound to keep a "vigilant eye" on the navigation of his ship. The Oregon (1895), 158 U.S. 186. Since one of the primary functions of a ship's navigator is to know what course the vessel is steering, it is apparent that Appellant did not comply with the required standard of vigilance when he failed to check on the ship's heading - either personally or through the Third Mate on watch - especially after Cape San Antonio Light should have been sighted at some time before 2300. It is evident that Appellant was in doubt about the location of the ship when he called the Chief Mate to the bridge shortly before 2300 to obtain star or planet sights. Nevertheless, Appellant did not attempt to verify that the ship's heading was approximately 133 degrees gyro as he thought it was.

Under these circumstances, it is my opinion that no expert testimony is required to establish the fact that a Master, who was acting with reasonable prudence during nighttime navigation, would have taken the fundamental precaution to check the present heading of the ship as well as any changes in course which might have materially altered the position of the ship to the left or right of the intended course line of 131 degrees. Since Appellant was on the bridge most of the time, this basic precaution could have been accomplished by Appellant with no difficulty at all and it would have prevented the grounding.

The normal burden on a Master to verify the heading of his vessel was also increased in Appellant's case by the following facts: the order given at 2040 (to bring the vessel "2 degrees to the wind") was not precise as to the course to be steered; Appellant did not require that the new course be reported to him after the order was carried out; and he left the bridge before receiving verification from the Third Mate that the order had been executed. Judging from the resulting course change to 103 instead of 133, the Third Mate probably misunderstood the order to mean a change of course 2 points away from the wind. Later, Appellant directed the helmsman to change course 5 degrees to the right but

there was no report received by Appellant that the ship was on course 108 degrees after this course change. Again, if such information had been required, the original error would have been discovered in time to avoid the casualty.

In view of the extent of the Master's responsibility for the navigation of his ship as stated in The Oregon, supra, it is my opinion that, for the above reasons, Appellant's failure to verify the ship's heading at various times, during the period of time alleged, constituted acts of omission which amounted to inattention to duty rather than simply omissions which appear to be negligence with the advantageous perspective of hindsight. Expert testimony in this matter would serve no function which is not performed by the evaluation of the facts in the light of the standard set forth in the judicial authority cited.

After considering Appellant's prior clear record and the other points raise don appeal with respect to modification of the order, I think that the order of one month suspension is fair and should be sustained.

ORDER

The order of the Examiner dated at Baltimore, Maryland, on 29 August 1956, is AFFIRMED.

A. C. Richmond
Vice-Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 1st day of May 1957.