

In the Matter of License No. 137326 and all other Licenses
Issued to: ALFRED PREEDE

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

983

ALFRED PREEDE

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 17 July 1956, an Examiner of the United States Coast Guard at Seattle, Washington, suspended Appellant's license upon finding him guilty of negligence. The specification alleges in substance that while serving as Master on board the American SS LEWIS EMERY, JR. under authority of the license above described, on or about 24 January 1955, while said vessel was departing from Coos Bay, Oregon, Appellant failed to ascertain the position of a following vessel, after Appellant slowed his vessel to disembark a pilot and before ordering full ahead and left rudder in such a manner as to cross the bow and crowd upon the course of the SS GEORGE S. LONG, such omission contributing to a casualty and extensive damage to both vessels.

At the hearing, which was conducted at Portland, Oregon, 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 and he entered a plea of "not guilty" to the charge and specification.

The Investigating Officer and Appellant's counsel made their opening statements. The Investigating Officer introduced in evidence several depositions without objection. Appellant testified under oath in his behalf. Both parties submitted written briefs in lieu of oral argument.

After consideration the record presented, the Examiner concluded that the charge and specification had been proved. He then entered the order suspending Appellant's License No. 137326, and all other licenses issued to Appellant by the United States Coast Guard or its predecessor authority, for five months on probation for a period of ten months.

Based upon my examination of the record submitted, I hereby

make the following.

FINDINGS OF FACT

On 24 January 1955, Appellant was serving as Master on board the American SS LEWIS EMERY, JR. and acting under authority of his License No. 137326 when his outbound ship was struck by the American SS GEORGE S. LONG in the Pacific Ocean near the seaward end of the channel to Coos Bay, Oregon. Shortly before the collision, both of these Liberty-type vessels had been following the channel range course of 296 degrees true with the LONG astern of the EMERY. Appellant knew that the LONG was astern of his vessel and had a pilot on board. The collision occurred at 1156 about 300 yards north of the marked channel. The bow of the LONG struck the EMERY amidships on the port side at an angle of about 60 degrees between the sterns of the two ships. The estimated damage to the two ships was approximately \$50,000. There were no injuries to personnel on either vessel.

Proceeding to sea, there are three buoys on the north side of the channel spaced at distances of about 500 yards. These are buoys No. 3, No. 1A and No. 1, in that order leaving Coos Bay. The EMERY went hard right just beyond buoy No. 3 in order to leave the channel and drop her pilot. Speed was reduced from 6 to 2 knots by the time the pilot disembarked to a pilot boat about 300 yards north of the channel at 1152 when the ship was on a heading of approximately 315 degrees true. Appellant then ordered the engines full ahead and left rudder to come back to the channel course of 296 degrees true in order to parallel the channel and take departure to the northward from the sea buoy. Appellant remained on the starboard wing of the bridge for 2 or 3 minutes after giving these orders. His view of the LONG was completely obstructed by the EMERY's pilothouse. When he eventually went to the port side and observed the LONG swinging to her right at a distance of 800 to 1000 feet, the EMERY was approaching her course of 296 degrees and her speed had increased to about 4 knots. Appellant order hard right rudder but it was too late to avoid the collision which occurred about a minute after he had given this last order. The heading of the EMERY was about 300 degrees true at the time of impact.

The movements of the LONG were influenced by the fact that her Master and pilot knew that the EMERY was bound for a port to the north. They assumed that the EMERY would head in that direction immediately after dropping her pilot. The pilot of the LONG intended to disembark after changing to a course paralld to one which he assumed the EMERY would take after dropping her pilot.

Due tot these circumstances, the LONG continued on the channel

range course farther than buoy No. 3 where the EMERY had turned. The LONG commenced changing course to the right at about 1154 when she was between buoys No. 1A and No. 1. Shortly thereafter, the engines were ordered full astern to reduce her speed of 7 knots. The LONG's rudder was hard right at the time of collision and she still had some forward way on despite the fact that her engines were going full astern.

Appellant has no prior record.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the Examiner erred in finding that the EMERY was on a heading of 330 to 340 degrees true when her pilot disembarked. It is also urged that the charge of negligence has not been sustained by substantial and probative evidence for the following reasons:

POINT I. Since the EMERY was the overtaken vessel, there was no duty to maintain a lookout to ascertain the position of the overtaking vessel, the LONG, before proceeding out to the entrance buoy. The existence of negligence presupposes a duty to perform the act omitted and a breach of that duty.

POINT II. There would have been no indication or cause to believe that the LONG intended to make a sharp right turn out of the channel if her position had been observed by Appellant at the time alleged (after the pilot disembarked and before Appellant ordered full ahead and left rudder). At that time, the LONG was on a course parallel to the course of 296 degrees true which was the intended course of the EMERY to the sea buoy. Hence, the failure to ascertain the LONG's position then could not have contributed to the collision because the conflict in courses did not occur until the LONG changed course.

APPEARANCE: King, Miller, Anderson, Nash and Yerke of Portland, Oregon, by Curtis W. Cutsforth, Esquire, of Counsel.

OPINION

Appellant does not specify any objections to the Examiner's findings of fact except the finding that the EMERY was on a heading of 330 to 340 degrees true when her pilot disembarked. This finding has been modified in my above findings of fact to state that "the ship was on a heading of approximately 315 degrees true." Otherwise, the detailed findings of the Examiner are incorporated

by reference, to the extent that they are material and not inconsistent herewith, since there is no dispute with respect to such findings.

Concerning Appellant's Point II on appeal, there is no disagreement with the statement that a momentary glance at the LONG, before Appellant ordered full ahead and left rudder, would only have disclosed to Appellant the fact that the LONG was still on the channel course of 296 degrees true. This is clear from the times mentioned in the findings of fact pertaining to the maneuvers of the two ships. But it is not conceded that the inquiry as to the propriety of Appellant's conduct should end at this point even though a literal reading of the specification would so require. The evidence indicates that it was the understanding of the parties that the issue was not limited to whether Appellant should have made an instantaneous observation of the LONG prior to issuing his orders; but whether he was negligent for not ascertaining the position of a vessel, known to be in the vicinity, sooner than he did.

It is apparent from the record that Appellant could have taken precautionary action to avoid the collision if he had gone to the port wing of the bridge at an earlier time and noticed the LONG when she first commenced changing course to the right. There were no ships to starboard which required Appellant's attention and there was ample open sea on that side when he was changing the course of his ship to port.

In this light, the remaining question to be considered is the one raised in Appellant's Point I: whether Appellant was under a duty to ascertain the position of the overtaken vessel while the EMERY was proceeding to take departure from the entrance buoy. Appellant cites good judicial authority for the proposition that, in an overtaking situation, the privileged, overtaken vessel is not required to maintain a lookout astern for a vessel known to be present when the overtaken vessel is making normal and foreseeable changes of course or speed. But it is my opinion that this was not an ordinary overtaking situation since each vessel was bound to anticipate the possibility that the other one would be maneuvering to drop her pilot before departing for her destination. Hence, I think that in addition to the overtaking rules, consideration must be given to Article 29 of the Inland Rules of the Road (33 U.S.C. 221) which requires, in part, the observation of "any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case."

It was the theory of the Examiner that, on the basis of Article 29, Appellant was negligent because he failed in his duty to exercise good seamanship when he did not keep the LONG under

observation while the EMERY was turning to port. I agree with the application of this theory to the facts in this case. This conclusion is supported by such cases as Stevens V. United States Lines Co. (C.A. 1, 1951), 187 F2d 670. It was held that the overtaken vessel was mutually at fault, even though she made no sudden change in course, because her Master failed to observe the "ordinary practice of seamen" to occasionally glance around to note the course and speed of another vessel approaching her. This case recognized the line of authority cited by Appellant but also noted that there are cases holding to the contrary and found that there were "special circumstances" which applied to the particular case being judged.

-ther appropriate case is The John Ruge (C.C.A 2, 1916), 234 Fed. 861, where the court adopted the view that the facts presented a situation of special circumstances, requiring both vessels to act prudently, regardless of the lower court's holding that the overtaking rules alone should apply. In part, the court stated:

"The steering and sailing rules apply to vessels navigating on steady courses. Where one of them is maneuvering merely, as, for instance, to get into or out of a dock, or, as in this case, winding around to get on her course, the situation is one of special circumstances * * *."

It is my opinion that this is a similar type case since the EMERY was on a turning after her pilot left. Hence, Appellant had a duty to keep the vessel astern under observation and to navigate with due regard for the presence of such vessels.

CONCLUSION AND ORDER

For these reasons, it is my conclusion that the charge of negligence is supported by substantial and probative evidence. Due to the apparently greater fault on the part of the LONG, the order is modified to provide for a period of three months' suspension, rather than five months, on ten months' probation.

As so MODIFIED, the order of the Examiner dated at Seattle, Washington, on 17 July 1956, is AFFIRMED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D.C., this 9th day of September, 1957.

