

In the Matter of License No. 255299 Merchant Mariner's Document BK-026202 and all other Seaman Documents

ISSUED TO: JAMES W. LA BELLE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1106

JAMES W. LA BELLE

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 2 June 1959, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for twelve months upon finding him guilty of negligence. The two specifications found proved allege that while serving as Master on board the United States SS CONSTITUTION under authority of the license above described, on or about 1 March 1959, Appellant contributed to a collision between his vessel and the Norwegian motor vessel JALANTA by operating the CONSTITUTION at an immoderate speed under conditions of fog and restricted visibility; and by failing to stop the engines of the CONSTITUTION and thereafter navigate with caution upon hearing the fog signal of a vessel forward of the beam of the CONSTITUTION, the position of which was not ascertained.

At the hearing, Appellant was represented by counsel of his own choice. Appellant entered pleas of not guilty to the charge and both specification.

The Investigating Officer and Appellant's counsel made their opening statements. The entire record of the Coast Guard casualty investigation of this collision, except the findings, conclusions and recommendations, was stipulated in evidence. The Investigating Officer then rested. Appellant testified in his own behalf. His counsel also called three witnesses who testified to Appellant's excellent reputation as a seaman and submitted numerous letters of commendation from passengers on Appellant's ships.

At the conclusion of the hearing, after considering the arguments and ruling on the proposed findings submitted by the parties in memorandum form, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. He then entered an order suspending all documents, issued to Appellant, for a period of twelve months.

This appeal has been timely filed.

FINDINGS OF FACT

On 1 March 1959, Appellant was serving as Master on board the United States SS CONSTITUTION and acting under authority of his Licenses No. 255299 when his ship collided with the Norwegian motor tanker JALANTA at a point approximately five miles southeast of Ambrose Light Vessel in the approaches to New York Harbor. The collision occurred at 1040 in dense fog which limited the visibility to approximately one-quarter of a mile. The bow of the CONSTITUTION penetrated into the starboard side of the JALANTA forward of her bridge at an angle of ninety degrees. The bow of the JALANTA was almost completely severed from the rest of the ship and it broke off shortly thereafter. The latter vessel was nearly dead in the water at the time of impact. There were no personnel injuries or deaths and no material failure was involved. The cost of the repairs to both vessels was more than one and one-quarter million dollars.

The CONSTITUTION is a passenger ship, 638 feet in length and 23,754 gross tons. She was approaching Ambrose Light Vessel on a northerly course en route from Newport News, Virginia to New York. No regular passengers were on board. The vessel was equipped with radar which was in good working condition and in operation at all pertinent times.

The JALANTA is a tanker, 570 feet in length and 12,228 gross tons. She was carrying ballast when she departed Brooklyn, New York bound for Aruba, Dutch West Indies. The JALANTA took her departure off Ambrose Light Vessel at about 1000 and five minutes later set a course of 144 degrees true which was maintained until the time of the collision. The JALANTA was also equipped with radar which was in operation.

At approximately 0955, the CONSTITUTION encountered fog while on course 004 degrees true, speed 18.6 knots. Fog signals were commenced and the engines were ordered on standby without any reduction in speed. Appellant stationed several lookouts and conned the ship by radar. Course was changed to 020 true to pass a south-bound ship at 1010, and then the CONSTITUTION was steadied on course 000 true at 1020.

At 1022, Appellant first observed a pip on the radarscope which represented the vessel later identified as the JALANTA. She was bearing five degrees on the port bow of the CONSTITUTION at a distance of 7 1/2 miles. Neither this range and bearing nor subsequent ones observed by Appellant were plotted or recorded in any manner. Based on further observation of the radarscope, Appellant concluded that the other ship was on an opposite, parallel course and would pass the CONSTITUTION to port at a distance of three-fourths of a mile. At 1032, the pip was lost in the sea return on the radarscope at an indicated range of two miles. Engine speed was reduced to 18.4 knots. Visibility was one-fourth of a mile. At approximately 1036, a fog signal on the port bow was reported to Appellant and he ordered a course change to 035 degrees true. About two minutes later, another fog signal was heard and engine speed was reduced to slightly more than 11 knots. Shortly thereafter, the bow of the JALANTA appeared out of the fog on the port bow of the CONSTITUTION. Appellant immediately ordered full astern and hard right rudder in order to strike

the JALANTA as far forward as possible. The collision occurred at 1040. Both vessels proceeded to New York under their own power, and the bow of the JALANTA was towed in later.

This casualty took place in waters governed by the International Rules of the Road.

Appellant has had no prior record during more than thirty years at sea.

BASES OF APPEAL

This appeal for clemency has been taken from the order imposed by the Examiner. Appellant contends that this order is excessive for three reasons:

1. Prior decisions indicate that the remedial purpose of these proceedings will be accomplished by a lesser order.

2. Appellant's prior unblemished record is evidence that it is not necessary to prevent him from sailing for a year.

3. Serious fault on the part of the JALANTA is shown by the fact that she radically altered course 36 degrees to port across the bow of the CONSTITUTION.

Wherefore, it is requested that the order imposed be remitted or reduced to a point where it serves the purpose of enforcing safety at sea in view of the above circumstances.

Appearance: Haight, Gardner, Poor and Havens of New York City
By James M. Estabrook, Esquire, of Counsel

OPINION

The two specifications are based on the wording contained in Rule 16 of the International Rules of the Road (33 U.S.Code 145n) which is very strictly enforced by the courts.

I agree with the Examiner's conclusions that there is no evidence in the record which would justify a finding that the JALANTA made a sudden change of course and that any fault on her part does not excuse the violations of the above rule which were committed by Appellant. The purpose of this proceeding is not to fix blame on the JALANTA or to exonerate her from fault. See Commandant's Appeal Decisions Nos. 1036 and 1091. Nevertheless, it is my opinion, based on the record herein, that the primary cause of this casualty was the failure of the CONSTITUTION to "go at a moderate speed * * * in fog" (33 U.S.C. 145N(a)) and the failure to "stop her engines and then navigate with caution * * * [upon] hearing, apparently forward of her beam, the fog-signal of a vessel the position of which * * * [was] not ascertained" (33 U.S.C. 145n(b)). These omissions were aggravated by the fact that the radar provided timely notice of the proximity of the other vessel. It has been stated repeatedly that the command to stop the vessel's engines is imperative when the

conditions described in the above Rule confront the navigator and that the observation of ship movements indicated by the radarscope is not sufficient to "ascertain" the position of another ship or to justify speed in fog which would otherwise be considered excessive. See Commandant's Appeal Decisions Nos. 955, 1078 and authorities cited therein.

Improper interpretation of the radar information obtained by Appellant could have been avoided by the simple expedient of plotting ranges and bearings of the JALANTA pip. Appellant admitted that he did not do this. The fact that the operation of the radar was adversely affected by sea return emphasizes again the statements that radar can be relied on only an aid to navigation and its use does not relieve the mariner of his statutory responsibilities under the rules to prevent collisions.

Despite Appellant's prior exemplary record at sea over a period of more than thirty years, I consider Appellant's violations of Rule 16 of the International Rules of the Road to be so serious that any reduction in the order of the Examiner would be unwarranted and contrary to the policy of the Coast Guard in promoting safety at sea.

ORDER

The order of the Examiner dated at New York, New York, on 2 June 1959, is AFFIRMED.

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

Dated at Washington, D. C., this 17th day of August, 1959.