

In the Matter of License No. 218134 and all other Seaman Documents
Issued to: WALTER SKIBEN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1357

WALTER SKIBEN

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 12 July 1961, an Examiner of the United States Coast Guard at Milwaukee, Wisconsin, suspended Appellant's seaman documents upon finding him guilty of negligence. The specification found proved alleges that while serving as a watch officer on board the United States SS PERE MARQUETTE 22 under authority of the document above described, on 21 January 1960, Appellant failed to obtain and use proper navigational information available from fixed aids to navigation thereby causing the vessel to strike an underwater object.

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

The Investigating Officer introduced in evidence the testimony of three witnesses, a copy of an extract from a logbook of the ship, a copy of a local notice to mariners and two Lake Michigan survey charts. At the close of the Government's evidence, Appellant moved to have the charge dismissed for want of proof. The motion was denied.

In defense, Appellant offered in evidence his testimony. He testified that he obtained (by radar) and plotted the range and bearing to the breakwater light; he then ordered the wheelsman to head directly for the light and also to steer a specific course; Appellant did not check the course by the compass but he did verify that the ship continued to head for the light; the shoal buoy was only relied on as a check point to be passed to port; the shoal buoy appeared to be off station to the south; the ship was not heading toward the pierhead light when the bottom struck while on course 288° true.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been

proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of one month outright plus three months on twelve months' probation.

FINDINGS OF FACT

On 21 January 1960, Appellant was serving as Third Mate on board the United States SS PERE MARQUETTE 22 and acting under the authority of his license while the ship was on Lake Michigan en route from Ludington, Michigan to Kewaunee, Wisconsin.

The MARQUETTE is a Great Lakes car ferry operating between ports in Michigan and Wisconsin. Her gross tonnage is 3550 and her length is 388 feet. On this date, the ship's draft was 12 feet, 4 inches forward and 15 feet, 10 inches aft. Her draft was not deep enough for the shoals along her approach to Kewaunee harbor to endanger the ship.

About 0700 on 21 January 1960, the MARGQUETTE, carrying box cars on rails, departed Ludington on course 305° gyro and true. This is the normal course from Ludington to a point about 2 miles outside the harbor at Kewaunee. In order to protect the cargo, the course was changed to 315° true from 0742 to 0805 due to rough sea conditions. Course 305° true was resumed at 0805, shortly after Appellant had begun his 0800 to 1200 watch. At 1045, Appellant determined by radar that Kewaunee Breakwater Light, at the end of the breakwater north of the harbor entrance, was bearing 289° true at a distance of 4 miles. Appellant plotted this course on the chart. It passed 350 feet north of the charted position of the Kewaunee Shoal Light which was 1 1/2 miles from the harbor. This light had been located to mark the outer end of the northerly edge of a shoal with a minimum depth of 17 feet within a radius of 1/4 of a mile. There was open water to the north of the light.

Appellant ordered the wheelsman to change course to steer directly toward the Breakwater Light and also to stay on course 289° true, the bearing of the light obtained by radar. The wheelsman changed course to steer on the light and, at that time and subsequently, reported that the course being steered was 289 (gyro and true). The only gyro-repeater was in front of the wheelsman but Appellant did not check on the wheelsman by looking at the compass. The heading toward the light was maintained by lining it up with the steering pole. The ship was proceeding at approximately 15 knots, visibility was excellent, the noticeable effect of the wind and sea was negligible. There was no pelorus or other instrument on board with which to take accurate visual bearings.

Kewaunee Shoal Light had been discontinued prior to 21 January 1960 in order to make repairs to the steel crib structure which was

the foundation for the light. On the latter date, the crib was entirely underwater. However, a buoy had been placed 300 feet bearing 0800° true from the crib as a shoal warning. When the MARQUETTE approached the shoal and the buoy was on the port bow, the Master entered the pilothouse. Without checking the compass, Appellant reported that the course was 289° gyro and that the ship was heading toward the Breakwater Light. The Master observed that the wheelsman was steering on the Breakwater Light and this had been periodically checked by the Appellant.

When the shoal was aft of the port wing of the bridge, the Master ordered the wheelsman "to come left easy" and to steer on the Pierhead Light which is at the end of the breakwater south of the harbor entrance. This was a course change of approximately three degrees. There is a third light called the North Pierhead Light which is located closer to the shore and between the other two lights as the harbor is approached from Lake Michigan. The Breakwater Light and North Pierhead Light form a range of 280° true.

As the ship came to a course of 288° gyro and was heading toward the Pierhead Light, the port side of her bottom struck the crib where the Kewaunee Shoal Light had been. Since the impact did not stop the ship, there was no attempt to determine the location of the collision. The MARQUETTE proceeded to Kewaunee harbor after the engines had been stopped momentarily. The ship sustained extensive bottom damage as a result of this incident. No one was injured.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the Examiner erred in finding that Appellant should have obtained a fix by cross bearings on the fixed aids at Kewaunee harbor; the Examiner erred in finding that the ship hit the light crib structure since there is no evidence as to what was hit or evidence of any underwater crib structure remaining on Kewaunee Shoal; the Examiner's conclusion that the shoal buoy was off station is not material to this decision since Appellant did not rely on it.

The evidence shows that Appellant plotted and followed a proper course utilizing the fixed aids to navigation in the only way he could. The Examiner's findings and conclusions are contrary to the evidence; they are based on speculation and assumptions not justified by the evidence. Therefore, it is submitted that the Examiner's decision should be reversed and the charges dismissed.

APPEARANCE: McCreary, Hinslea, Ray and Robinson
of Chicago, Illinois by
Theodore C. Robinson, Esquire
of Counsel.

OPINION

I agree with Appellant's contention that the difference in the angles to the three harbor lights was too small to obtain a fix by cross bearings and with the fact that the shoal buoy being off station, as admitted in Appellant's testimony, is not material to this decision since Appellant did not rely on it except to keep it on the port side. But, in view of the matters to be discussed below, I do not agree that there is no evidence as to what the ship hit or that Appellant did not negligently fail to properly use the fixed aids to navigation which were visible. In my opinion, there is substantial evidence to prove that Appellant did not exercise the care required under the circumstances with respect to the information available from the harbor lights and that the ship struck the crib which had been the foundation for the Kewaunee Shoal Light.

The basic issue raised is whether or not a prudent navigator would have acted as Appellant did. See Commandant's Appeal Decisions Nos. 1200, 1256. Appellant contends that he maintained a proper course toward Kewaunee from 4 miles out. Theoretically speaking, if the course of 289° gyro and true had been consistently maintained, the ship would have passed the crib abeam by 350 feet. The course of 289° is only 2° from the course of 287° to the crib from the same location, a distance of about 2 1/2 miles. After changing course, Appellant relied solely on the wheelsman to see that the plotted course was followed. Appellant did not at any time during the crucial part of the voyage look at the compass himself. The fact that the wheelsman was experienced does not exonerate Appellant from his duties as a navigator. See Commandant's Appeal Decision No. 456. The record shows that the wheelsman, while steering on the Breakwater Light, was ordered also to steer a compass course of 289°. The impropriety of this is that a vessel steering on a fixed object cannot steer a fixed course when its movements are affected by wind and current. Since it has been held that the care to be exercised must be in proportion to the danger to be avoided (The JOHN CARROLL (C.C.A. 2, 1921), 275 FED. 302), it is my opinion that making an allowance of 350 feet and 2° in the course set from the underwater crib at a distance of 2 1/2 miles was too small a margin of error for safety when the navigation was left largely in the hands of the wheelsman. The percentage of error relative to this 2 1/2 miles was 2 1/3 percent. A prudent navigator would not have ordered the wheelsman to steer for the light and also on course 289°. After ascertaining that the

radar bearing of 289° was correct, Appellant should have ordered a course of nothing to the left of 289° and kept the bearing of the light from increasing by constantly checking the course being steered with the relative position of the light. In this manner and by altering course as necessary, the ship could have been kept from going to the left of the 289° course line as plotted on the chart. By failing to do this, Appellant failed to properly utilize the bearing obtained on the Breakwater Light.

The evidence indicates that at the time of the impact the MARQUETTE was on course 288° true and heading toward the Pierhead Light. This is substantiated by the wheelsman and the Master (R. 16, 60, 79, 80, 83) although denied by Appellant. This locates the scene of the casualty on a line which cuts through the point where the Kewaunee Shoal Light is marked on the chart. Since a 3° course change is necessary to change from a heading toward the Breakwater Light to a heading toward the Pierhead Light when a vessel is in the vicinity of the crib, the MARQUETTE was steering a course of 291° true, rather than 289° true, on the Breakwater Light before changing course, if the ship was heading for the Pierhead Light when she was on 288° true.

Local Notice to Mariners No. 129, of 24 September 1959, states that Kewaunee Shoal Light had been temporarily discontinued to facilitate repairs to the light tower. The Master testified that the light was taken off, and then later, prior to 21 January 1960, the steel crib structure was cut off or taken off below the waterline (R. 56). In this immediate area, there was no other charted obstruction which would have impeded the progress of the MARQUETTE and the record contains no evidence of any such submerged object. Consequently, it would be highly speculative to assume that the ship hit something, other than the crib, which caused extensive damage to her bottom on the same side that it was Appellant's intention to pass the crib--the port side.

Considering the proximity of the plotted course to the crib, the lack of assurance that the ship did not navigate to the left of the plotted course line, the absence of evidence of any other obstruction and the severity of the impact, lead me to believe that the only logical conclusion is that the MARQUETTE struck the light crib. This was due to the fact that the vessel was set to the south of the course line when Appellant did not properly use the information available from the harbor aids. The wheelsman's testimony that he continued to steer on the Breakwater Light and on course 289° true (R. 15) cannot be accepted. It is evident that the bearing of the light gradually changed from 289° to 291° as the ship was set in a southerly direction before changing course 3° from the latter course to 288° true.

In addition to the above, there were several factors which indicate that Appellant should have been very careful. The course change to 289° was determined by a radar bearing which was subject to possible error; the speed of the ship was not reduced from approximately 15 knots; there was no instrument with which to take accurate visual bearings approaching the harbor; the change of course for 305° true toward the harbor was about 2 miles further east than it would have been except for the earlier course change to 315° true for 23 minutes; and the Master was not on the bridge until the danger was close at hand.

With open waters to the north of the shoal, Appellant could have followed other comparatively safe courses by proceeding farther 305° true before turning toward the harbor. This would have shortened the distance to travel before passing the crib abeam after changing course and it would have increased the distance of the crib when it was abeam. The easiest and safest way to have avoided the possibility of error while maintaining an accurate check on the ship's position would have been to have come in on the range of 280° true formed by the Breakwater Light and North Pierhead Light. This would have taken about a minute longer.

ORDER

The order of the Examiner dated at Milwaukee, Wisconsin, on 12 July 1961, is AFFIRMED.

E. J. Roland
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 11th day of December 1962.