

In the Matter of License No. 326460 Merchant Mariner's Document No.
Z-191279 and all other Seaman Documents
Issued to: Stephen J. Ergon

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1373

Stephen J. Ergon

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 15 May 1962, an Examiner of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's seaman documents for one month outright plus six months on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as Second Mate on board the United States SS SISTER KATINGO under authority of the license above described, on 30 March 1962, Appellant did not carry out the standing orders of the Master and the rules of good seamanship in that Appellant failed to reduce the speed of the vessel and he failed to sound fog signals when the vessel was in fog.

At the hearing, Appellant was represented by George Smill, Esquire. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of the Master and another witness as well as documentary exhibits.

Appellant and several other witnesses testified in his behalf. Appellant stated that he was constantly harassed by the Master and had been told by him that this would be a "rough" trip for Appellant; when Appellant saw the approaching fog, he took no action other than calling the Master because Appellant had been given verbal orders by the Master, contrary to the written standing orders, "not to touch any navigation equipment whatsoever without his permission"(R.41); the Master did not answer when he was called on the voice tube and the ship had been in dense fog (R.43) for about three minutes before the Master arrived on the bridge (R.46).

FINDINGS OF FACT

On 30 March 1962, Appellant was serving as Second Mate on board the United States SS SISTER KATINGO and acting under

authority of his Master's license while the ship was at sea off the Grand Banks of Newfoundland.

Appellant was standing the 0400 to 0800 bridge watch on this date. The ship was proceeding at maximum full speed of slightly more than fifteen knots when the vessel entered a dense fog shortly after 0700. Appellant did not order any change in speed or commence sounding fog signals. This was contrary to the Master's written standing orders for all licensed deck officers, with which Appellant was familiar, which were posted in the charthouse and stated, in part, that during any period of "low visibility" speed should be reduced as required and whistle signals should be commenced as required.

Although the Master was not aware of any attempt by Appellant to awaken him, he awoke at this time and saw the fog through a porthole. The Master arrived on the bridge about three minutes after the ship had entered the fog. Since he could not see beyond the ship's bow, the Master immediately ordered Appellant to start sounding fog signals and changed the engine room telegraph (annunciator) from full ahead to stand-by. The latter action had the effect of ordering the speed reduced from maximum full speed to either standard full speed or maneuvering speed, and of alerting the engine room personnel to be prepared to maneuver without delay. The ship was navigating in this fog bank for approximately seven minutes according to the logbook on the bridge (R. 17, 18, 19).

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the order of suspension imposed is too severe since the ship was in a small fog patch for not more than six minutes and a distance of not over one mile. The absence of danger is shown by the fact that the Master did not reduce speed when he reached the bridge but merely placed the telegraph on stand-by.

Since there was no substantial fog, Appellant's action of simply calling the Master was proper and the order should be set aside.

APPEARANCE on appeal: Harold, Luca, Persky and Mozer of New York City by Robert J. Mozer, Esquire, of Counsel.

OPINION

The best estimate, from Appellant's testimony alone, is that

the ship was in the fog between six and nine minutes. Both Appellant and the Master testified that it was dense fog. Even accepting the six minute period claimed on appeal, the ship would have travelled a mile and one-half in the fog while proceeding at fifteen knots. Obviously, this presented a dangerous situation when, as testified to by the Master, the bow of the ship was barely visible through the fog. The danger was increased by the failure to sound fog signals.

As indicated in the findings of fact above, the Master did order the speed reduced to some extent when he changed the telegraph from full ahead to stand-by. But this factor is not material with respect to whether Appellant was guilty of failing to obey the Master's standing orders to his subordinate officers.

The facts show that Appellant was required not only by the Master's standing orders but also by the International Rules of the Road to reduce speed from fifteen knots and to sound fog signals under the existing conditions. The Examiner did not believe Appellant's testimony that he had received verbal orders from the Master not to touch any navigation equipment. But even if Appellant had been given such orders, it would have been his responsibility to comply with the Rules of the Road for navigation in fog until the Master reached the bridge of the ship. Nevertheless, the ship proceeded for three minutes in the fog, according to Appellant (R. 46), before the Master arrived on the bridge and initiated precautions which should have been by Appellant.

For these reasons, the order is not considered to be excessive.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 15 May 1962, is AFFIRMED.

D. McG. MORRISON
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 11th day of MARCH 1963.