

In the Matter of License No. 237823 and all other Seaman Documents
Issued to: William B. Morel

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1393

William B. Morel

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 11 May 1960, an Examiner of the United States Coast Guard at Long Beach, California suspended Appellant's seaman documents for nine months on eighteen months' probation upon finding him guilty of negligence. The two specifications found proved allege that while serving as Master on board the United States MV MAGIC ISLE under authority of the license above described, Appellant failed to navigate with due caution, thereby contributing to a collision with a fireboat shelter at Long Beach on 24 June 1958 and a collision with a towed barge on 3 August 1958. The MAGIC ISLE an inspected merchant vessel 107 feet in length and 99 gross tons. She is a twin-screw vessel authorized to carry up to 250 passengers between San Pedro Bay and Catalina Island.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and each specification. Both parties introduced the testimony of witnesses and other evidence. Appellant testified in his behalf.

The decision was served on 14 May 1960 and Appellant was granted numerous delays for the purpose of preparing and submitting a brief in support of his notice of appeal which states only that the entire decision is contrary to law. No such brief has been received.

The evidence establishes that, on 24 June 1958, the MAGIC ISLE was moored port side to the pier, ahead of the fireboat shelter, before backing in order to head in the opposite direction toward the basin. The vessel backed until her bow was swinging to the left and was almost at a right angle to her original position. At this time and while she was heading toward the shelter at a distance of approximately 300 feet, Appellant ordered slow on both engines although there was open water to the left and 800 feet astern. A subsequent order given to reverse the port engine was

not immediately out the engineer left the controls in the engine room for some eight or ten seconds and experienced mechanical difficulty in reversing the port engine when he returned. The MAGIC ISLE moved forward toward the fireboat shelter until her bow struck it approximately in the middle.

Prior to the accident on 3 August 1958, the MAGIC ISLE was returning from a trip to Catalina Island with 135 passengers on board and heading for the harbor entrance in clear visibility during daylight while Appellant had a tug (and two barges in tow astern) under observation on the port side more than a half hour. When the distance to the tug was about a quarter of a mile and her relative bearing remained unchanged, Appellant put the wheel hard right, saw a motorboat nearby on the starboard beam, and shifted the rudder to left full. The MAGIC ISLE passed down the starboard side of the tug and the first barge and was coming closer to the second barge when Appellant attempted to maneuver between the two barges and struck the second one.

OPINION

Since the appeal is based solely on the bare contention that the decision of the Examiner is contrary to law, the above summary of the facts is sufficient for the purpose of this decision. The detailed findings of fact of the Examiner are adopted and incorporated herein by reference to his decision of 11 May 1960.

In terms of the charge of negligence, the following question is presented. Did Appellant exercise a reasonable degree of skill and care, as a Master, under the circumstances pertinent to each of the two casualties? In my opinion, the answer is negative only with respect to the second incident.

Concerning the casualty on 24 June 1958, the evidence indicates that the swing of the bow to the left would have continued and the collision with the fireboat shelter would have been avoided except for the conduct of the engineer who left the controls for about ten seconds and the temporary mechanical failure when reversing the port engine to comply with the orders given by Appellant. It would have been preferable to have maneuvered the MAGIC ISLE to a heading on which she would have cleared the shelter before ordering both engines ahead. Nevertheless, I do not think that the failure to do this constituted negligence since Appellant had no reason not to expect his engine orders to be carried out promptly. The conclusion that the first specification was proved is set aside and the specification is dismissed.

Although the MAGIC ISLE was the privileged vessel in a crossing situation with the tug and two barges which developed on 3 August 1958, a greater than usual degree of care was required,

with passengers on board, while approaching an encumbered vessel. Appellant recognized the danger of collision for at least eight minutes prior to hitting the barge and, therefore, he should have stopped his vessel when the tug gave no indication of taking adequate action to stay clear of the MAGIC ISLE. After Appellant failed to take this action, the collision still would have been avoided if Appellant had ordered the port engine full astern when turning to port in order to pass the tug and two barges to starboard.

Proof of the second specification is sufficient to justify the probationary suspension despite Appellant's prior clear record and the absence of injury or major property damage.

ORDER

The order of the Examiner dated at Long Beach, California, on 11 May 1960, is AFFIRMED.

D. McG. MORRISON
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 31st day of May 1963.