

In the Matter of License No. 339910
Issued to: ROBERT T. LATHROP

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1469

ROBERT T. LATHROP

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 13 April 1964, an Examiner of the United States Coast Guard at New York, New York, suspended Appellant's license for three months upon finding him guilty of negligence. The specifications found proved allege that while serving as master on board the United States SS VERRAZZANO under authority of the license above described, on or about 23 September 1963, Appellant negligently failed to keep out of the way of a privileged vessel and to maintain an adequate lookout at night, both faults contributing to a collision with another vessel.

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

The Investigating Officer introduced in evidence the testimony of the pilot of the other vessel and that of the assistant captain and a deckhand of VERRAZZANO.

In defense, Appellant offered in evidence his own testimony, and that of two other ferryboat captains, a New York harbor docking pilot, and a pilot formerly employed aboard the other vessel.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and both specifications had been proved. The decision was served on 14 April 1964. Appeal was timely filed on 16 April 1964.

FINDINGS OF FACT

On 23 September 1963, Appellant was serving as master on board the United States SS VERRAZZANO and acting under authority of his license while the vessel was operating in the port of New York and operated on the run between St. George, Staten Island, and the

Battery.

Shortly before 0500 on 23 September, preparations were made for a run from Manhattan to St. George. The weather was clear with unlimited visibility, although it was dark. William Wagner, deckhand, was standing lookout on the main deck at the bow. He was acting under a general instruction, given by Appellant on Wagner's first reporting to work aboard VERRAZZANO, that he was to be the lookout on all runs to Staten Island. Appellant also stationed another deckhand, one Fitzgerald, as lookout on the starboard side in the wheelhouse.

Appellant piloted the ferry from the slip and then turned the wheel over to Alexander Westlake, a licensed first class pilot. Appellant stationed himself on the port side in wheelhouse, keeping watch on the anchorages to the left for moving vessels. The trip was uneventful up to the time the ferry at normal full speed, passed Buoy "27," south of ROBBINS REEF. The vessel was then headed to approach slip 5 at St. George. Between Buoy "27" and the projected Constable Hook range, the pilot reduced speed to slow ahead. Appellant and the pilot were looking ahead, concentrating on the approach to the slip. Wagner left the bow and went to open doors to the passenger spaces.

Appellant heard a single blast whistle signal from somewhere on his starboard hand. He ran from the port side of the wheelhouse to the starboard wing. He saw a red sidelight close aboard and about twenty-five feet aft of his bow. He sounded a danger signal and ordered the engines full ahead.

The coastal tanker POLING BROS. NO. 8 struck the overboard side of VERRAZZANO amidship, the bow of the fully loaded vessel going below the ferry's sponson and penetrating the hull. VERRAZZANO lost all power. The pilot steered for the rack to cushion the blow against the ferry bridge.

VERRAZZANO flooded rapidly and sank in the slip to a point where the main deck was just above water. It is not clear whether the ferry sank to the bottom.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the Examiner erred in finding

- (1) That Appellant had failed to maintain an adequate lookout.

- (2) That Appellant should have used radar.
- (3) That the collision occurred a fifth of a mile from the ferry slip.

It is also urged that the order of suspension is cruel.

APPEARANCE: Richard L. Newman, Esquire, of New York City.

OPINION

I

Certain discrepancies in the testimony of the pilot of POLING BROS. NO. 8 make the facts in this case difficult to ascertain, especially since no one aboard VERRAZZANO saw the tanker pilot was the only witness called who did see the approach.

His oral testimony was that he first saw VERRAZZANO at a range of about a mile. The positions of the vessels as he placed them on the chart (Exhibit 1) make the range at slightly less than six tenths of a mile. He estimated that about five minutes elapsed between first sighting and collision. At a speed of twelve knots, this would place him so far back in the Kill that he would not have turned onto the Constable Hook Range at the time. The distance that he charted from his position at first sighting to collision is only about four hundred yards. The distance he would have covered, even considering his last second stopping and reversing, in little over a minute.

He claimed to have been on course 110° true or 112° true, conforming to the range, at all times, doubting that his heading had responded to the full right rudder at the moment of impact. But his marks on the chart show an estimated displacement of the collision point from his track of two hundred yards to the right.

One point on which his oral testimony and his chart estimates agree is that his one blast signal was sounded with the ferry between a quarter of a mile and three tenths of a mile distant.

II

While the maneuvers of POLING cannot be determined with accuracy from this record, the lack of information is not fatal. This proceeding is not concerned with possible fault of POLING or its pilot.

The undisputed facts are that the vessels were approaching each other in such fashion that VERRAZZANO was the burdened vessel

in a crossing situation and that no one connected with the navigation of the ferry had any knowledge of the presence of the tanker until its one blast signal. The Examiner found as a fact that this signal was given when the vessels were about a quarter of a mile apart and there is no reason to disturb this.

At this time the minimum relative speed of the vessels was about thirteen knots, leaving just over a minute to collision. Of course, if VERRAZZANO had not yet got down to the five knots for which it was turning, the relative speed was higher and the time to collision appreciably reduced. Indeed, this latter possibility appears likely since Appellant had time only to run from the port side to starboard, sound a danger signal, order full ahead, and watch VERRAZZANO move forward about 150 feet before the collision occurred. It seems then that at the time of POLING's signal collision could not be avoided by any combination of maneuvers of the two vessels.

III

There is much discussion in the record of the failure of Appellant to use radar. This discussion was irrelevant. The night was dark and clear. All witnesses agreed that the minimum visibility was at least the distance of VERRAZZANO's entire run. Appellant himself called the visibility unlimited.

I am inclined to agree with his statement (R-114), "There was unlimited visibility, and a man's eye is certainly superior to a radar."

The qualification must be made that the man's eye must be properly used, as was not the case here.

IV

Tied in with the question of the adequacy of the lookout maintained is the evidence that shore lights on Staten Island tend to make difficult the identification of vessels coming out of Kill Van Kull.

The contention was made on the record that Appellant's duty because of this condition was the same as if there had been fog and that, according to his usual practice, "Every man should be a lookout." The morning of 23 September was no reason to treat it as such.

Appellant did post two lookouts, one on the bow and one on the starboard side of the wheelhouse. He stationed himself on the port side of the wheelhouse to aid in lookout work. It cannot be said

under the circumstances that the number was inadequate.

This case is in some respects different from the 1956 DONGAN HILLS - TYNEFIELD collision which occurred in the same vicinity under somewhat similar conditions. In that case the District Court found ". . . that customarily no lookouts, as such, were ever posted on the city's Staten Island ferries." (Northern Petroleum Tank Steamship Co v. City of New York, 181 F. Supp. 192 (S.D.N.Y. 1960))

The later practice adopted by Appellant, and by the other ferry masters who testified, of posting lookouts with no other duties must be regarded with approval. It also appears here that the lookout assigned to the bow had excellent qualifications.

The fact is however that both lookouts failed to see a properly lighted vessel approaching on the starboard hand. The bow lookout, in fact, had left his post and was performing work which had not been assigned to him.

The first question in the lookout matter is, then, whether the neglect or inattentiveness of the lookouts can be attributed personally to the master. I think not. Assuming that they were qualified and properly stationed, their faults are not his.

The next question then is whether the master's own failure to observe POLING BROS. NO 8 can be the basis for a charge of failing "to maintain an adequate lookout." In decision on Appeal No. 1191, a case involving the DONGAN HILLS - TYNEFIELD collision, I said:

"Neither the Master nor the helmsman can be considered a lookout within the requirements of maritime law. The Big Chief, 75 F. Supp., 496 (1948). But regardless of the inability of Appellant to be the legally required, fulltime lookout, it is common maritime knowledge that the officer having responsibility for the movements of a vessel should be his own best lookout in fact: great responsibility induces great vigilance."

Since the master is not a lookout his own failure to observe the other vessel cannot be the basis for finding the second specification proved.

V

Fault there is, however, in keeping with the doctrine that the responsible officer should be his own best lookout. It can be seen here that Appellant cannot be excused for his lack of knowledge of the presence of POLING because his lookouts were remiss. The

record clearly shows that on the approach to the St. George slips the greatest danger to a ferry lies in Kill Van Kull. There is where privileged traffic may be expected.

The condition of shore lighting has been stressed. It cannot be found as a fact that this condition makes detection of properly lighted, rapidly moving vessel impossible. Extra vigilance may be required, but that is simply a matter of prudent piloting. Appellant had long experience in the area and was well aware of the hazards to be expected. His own testimony is, however, that he remained throughout the run on the port side of the wheelhouse watching for traffic from the anchorages across a nine hundred yard wide channel when the greatest danger was to be expected from privileged vessels in the Kill.

Appellant's failure to detect the presence of the tanker is not specifically a failure to maintain a proper lookout but it was the proximate cause of his violation of the starboard hand rule.

Had he timely known of the presence of the other vessel he could have complied with the rules and avoided collision.

VI

It has been urged in separate correspondence from twenty-two ferry captains employed by the City of New York that the rule of special circumstances should be applied in this case and that Appellant should be exonerated. The point of collision is asserted to have been directly in front of the ferry slip and this, it is argued, has a bearing upon the relative duties of the vessels.

There is a conflict in the evidence as to the point of collision. Appellant testified that it was within three hundred feet of the slip. On other evidence the Examiner found that the distance was near four hundred yards. Since the finding was based on substantial evidence, it is accepted.

Courts are loath to apply the rule of special circumstances to ferries. In fact, in The Mauch Chunk, 154 Fed. 182, (2d Cir. 1907), the rule for crossing vessels was strictly applied to a situation in which one ferryboat in New York was leaving its slip while the other was maneuvering to enter the adjacent slip.

But the controlling factor here is not the point of collision nor is it relative positions of the vessels at the time when Appellant first became aware of the other vessel's presence. An alert watch would have detected POLING BROS. NO. 8 at a time when Article 19 clearly applied and no "special circumstance" would have developed. Appellant is in the position of being the master of a

vessel, bound by the rules to yield the right of way, which did not give way to the privileged vessel. Since this violation was the result of his own culpable ignorance of the situation I must hold that the specification alleging violation of the crossing rule was adequately proved.

VII

In assessing the suspension order in this case there are several matters which I must consider.

The first is the conduct of POLING BROS. NO. 8. I wish to make it clear that I am not prejudging the conduct of its pilot, which might be subject to scrutiny in another proceeding. I am commenting only on the record presented in the case of this Appellant. As given here, the action of the tank vessel seems woefully inadequate.

I am mindful that the Second Circuit does not require crossing signals in a crossing situation. The Montauk, 180 Fed. 697 (2d Cir. 1910). The one blast given by POLING BROS. NO. 8, a minute or less before collision, cannot therefore be said to have been untimely. But it does seem that, prior to this, Rule III of Article 18 had become applicable and danger signal from the tanker given earlier might well have alerted Appellant to take legally required action in ample time to have complied with his duty.

A second element for consideration, also noted by the Examiner, is Appellant's excellent prior record, attested to by his fellow pilots.

The third consideration is given to the nature of ferry operation itself. The pilots have cause to be proud of their safety record, a testimonial to their skill. The instant case gives evidence of the unremitting vigilance which is essential.

Ferries may be thought to be relatively invulnerable because of their construction, but here we see that a low lying craft, striking below the sponson, can wound the ferry mortally.

Within the limitations of 46 U.S.C. 459, VERRAZZANO can carry almost 3000 persons aboard. Had this collision occurred during a peak loading period, or had it occurred in more open water, the catastrophe would stagger the imagination.

A serious breach of duty warrants a remedial outright suspension. Since the breach of duty in the DONGAN HILLS case was no less serious than the breach here, the order of the Examiner will be modified to conform to the earlier order.

CONCLUSION

It is concluded that it has been established by substantial evidence that the master of VERRAZZANO negligently failed to give way as burdened in a crossing situation, contributing to a collision with POLING BROS. NO. 8. It was not established that appellant negligently failed to "maintain" an adequate lookout.

The order should be reduced to two months' suspension.

ORDER

The findings of the Examiner on specification two are SET ASIDE and the specification is DISMISSED. The findings of the Examiner on specification one and on the Charge are AFFIRMED. The order of the Examiner is modified to provide for a two months' suspension, and, as modified, is AFFIRMED.

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

Signed at Washington, D. C., this 4th day of September 1964.