

IN THE MATTER OF LICENSE NO. 308174 AND ALL OTHER LICENSES

Issued to: ELLIS W. HILDRETH

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1510

ELLIS W. HILDRETH

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 25 September 1964, an Examiner of the United States Coast Guard at Baltimore, Maryland suspended Appellant's seaman license for three months outright plus six months on nine months' probation upon finding him guilty of negligence. The specification proved alleges that while serving as the Pilot on board the Norwegian MV FERNVIEW under authority of the license above described, on 14 November 1963, Appellant failed to navigate this vessel at a moderate speed in fog and restricted visibility, thereby contributing to a collision between the FERNVIEW and the United States SS DYNAFUEL in Buzzards Bay, Massachusetts.

At the hearing on 2 December 1963, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of the Master of the FERNVIEW. In defense, Appellant testified after calling the Chief Mate of the FERNVIEW as his witness.

Appellant testified that he has been piloting ships in Buzzards Bay since 1919; as a pilot, he acts in an advisory capacity to the Master who determines the speed of the vessel; Appellant thought the speed of the FERNVIEW was 17 knots at the time in question and that the ship could stop in approximately one-half mile at this speed; he did not consider this speed to be excessive and did not discuss the matter with the Master although the rules require a vessel in fog to be able to stop in half the distance of visibility; the DYNAFUEL was seen at a distance of nearly one-half mile; it was later determined that the DYNAFUEL was not contacted on radar because the forward booms on the FERNVIEW blocked the radar signals and caused blind spots seven to eight degrees on both sides of the bow. On 25 September 1964, the Examiner rendered a decision in which he concluded that the charge and specification had been proved. The Examiner then entered the above order of suspension against Appellant's license.

FINDINGS OF FACT

On 14 November 1963, Appellant was serving as the Pilot on board the inbound Norwegian MV FERNVIEW and acting under authority of his license when this ship collided with the outbound United States MV DYNAFUEL in the main channel near the southwesterly entrance to Buzzards Bay, Massachusetts, in water governed by the Inland Rules of the Road. The collision occurred at 0655 (FERNVIEW time), during the morning twilight, in patchy fog which limited the visibility to less than 1000 yards in the vicinity of the collision. The bow of the FERNVIEW penetrated the port side of the DYNAFUEL at an angle of about 30 degrees (between the port sides) aft of the midships deck house. There were no injuries or deaths other than four injured persons on the DYNAFUEL. No failure of machinery caused the casualty. The DYNAFUEL was declared a total loss of \$2,000,000 and there was \$20,000 damage to the bow of the FERNVIEW.

The FERNVIEW is a diesel freighter, 510 feet in length and 6732 gross tons. She was on a northeasterly course en route from New York City to Boston, Massachusetts via the Cape Cod Canal with a general cargo. The Ship was equipped with radar which was in good condition and in operation at all pertinent times.

The DYNAFUEL was a diesel tanker, 309 feet long and 3100 gross tons. She was in ballast while proceeding down Buzzards Bay after passing through the Cape Cod canal. The FERNVIEW was picked up on the radar at a distance of eight miles. The DYNAFUEL changed course to the right approaching the scene of the collision and slowed down. At the time of the impact, the engines of the DYNAFUEL were going astern and she was practically dead in the water (R. 48, 49, 55).

Appellant, age 76, boarded the FERNVIEW at Brooklyn, New York on 13 November. He was hired because he had a Master's license with pilotage endorsements for the Cape Cod Canal, Buzzards Bay, and other waters in this vicinity.

Appellant was in charge of conning the FERNVIEW at all times after 0600 on 14 November as the ship neared Buzzards Bay. The Chief Mate was on watch and the Master was on the bridge after 0620. The wind was from the northeast at 17 knots, the sea was choppy, and the tide was slack. The ship's speed had been set at approximately 18 knots prior to Appellant's arrival on the bridge and was not changed until after the DYNAFUEL came into sight about a minute before the collision. No pip representing the latter vessel or any other moving object was observed on the radarscope as the two ships approached each other on reciprocal courses. This was due to the fact that the forward cargo booms of the FERNVIEW were secured in upright positions and caused blind zones about seven to eight degrees on either bow because the booms were higher than the radar antenna.

At 0630, the FERNVIEW passed Buzzards Bay Entrance Light abeam to starboard at a distance of one-half mile and steadied on course 024 degrees true. At 0638, fog signals were commenced, the engines were placed on standby, and a lookout was posted on the bow due to patchy fog which steadily became thicker causing the visibility to decrease. The Master and Chief Mate alternately manned the radar which was on the six-mile scale. Appellant looked at the radar occasionally to check the position of the vessel relative to the channel buoys ahead. At 0644, Hen and Chickens Buoys No. 3 was observed visually as it was passed abeam to port at a half mile and

course was changed to 064 degrees true. Visibility was still decreasing. At 0653, the FERNVIEW passed between buoys No. 3A and 4 which are about a mile apart. Although neither buoy could be seen, the radar indicated that the ship was slightly on the south side of the fairway.

At 0654, the Master observed a weak pip on the radarscope about a half mile off on the starboard bow just before the DYNAFUEL came into sight. She was in position to cross the bow of the FERNVIEW from starboard to port. The Master immediately ordered the rudder hard right and the engines full astern. At 0655, the bow of the FERNVIEW struck the DYNAFUEL while she was practically dead in the water. There was no material change in the course or speed of the FERNVIEW prior to the collision.

After the vessels were parted some time later, the FERNVIEW proceeded to Boston without assistance. The DYNAFUEL capsized and sank.

Appellant's prior record consists of an admonition in August 1961 as a result of collision.

#### BASES OF APPEAL

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

Point I. The Coast Guard lacks jurisdiction because the FERNVIEW was not in compulsory pilotage waters and, therefore, Appellant was not "acting under the authority of" his pilot's license as required by 46 U.S. Code 239(g).

Point II. Appellant had insufficient time to prepare his defense after receiving notice as to the date of the hearing.

Point III. The Master of the FERNVIEW set the speed and was at all times in command.

Point IV. Appellant's testimony shows that he was blameless. He had no reason to doubt the ability of the radar to pickup objects ahead and there would have been no collision if the DYNAFUEL had not attempted to cross the bow of the FERNVIEW.

Point V. The failure to produce witnesses from the DYNAFUEL, whose actions caused the collision, deprived Appellant of a fair hearing since all the relevant and material facts were not brought out.

Point VI. At the hearing, counsel for Appellant vigorously protested the absence of witnesses from the DYNAFUEL.

Point VII. The Examiner's delay of nine months in rendering a decision was a denial of justice.

In conclusion, it is submitted that the decision should be reversed; the charge and specification should be dismissed.

APPEARANCE: Dow and Stonebridge of New York City by Wilbur E. Dow, Jr., Esquire, of Counsel.

### OPINION

In view of the existing condition of visibility in this busy channel, it is my opinion that the FERNVIEW was moving at an excessive speed during the time leading up to the collision. This was negligent conduct on the part of Appellant since it was his responsibility as the Pilot to control the ship by navigating her at proper speeds as well as on suitable courses.

Point I. There is jurisdiction. Considering the remedial purpose of these proceedings to promote the safety of life and property at sea, the logical conclusion, as stated in Commandant's Appeal Decision No. 1400, is that the jurisdiction limitation of "acting under the authority of" a document was intended only to preclude action in cases of negligence, misconduct and incompetence which are totally unrelated to a seaman's profession rather than intending that the right to suspend or revoke a seaman's document should exist only in those cases where a document is required by law. Hence, a seaman is "acting under the authority of" his document when he performs functions related to his status as a seaman. Although jurisdiction has been limited by regulation to instances where a document is required by law, regulation, or the employer (46 CFR 137.01-35), there is no doubt in this case since Appellant was employed because he was licensed as a pilot for these waters. See Commandant's Appeal Decision No. 1366.

Point II. The record does not indicate that Appellant had insufficient time to prepare his defense even though he was served on Friday, 29 November 1963, to appear at the hearing to be held on Monday, 2 December, due to the departure of the FERNVIEW on 3 December. Counsel did not raise this objection at the hearing and he was aware of the issues since he represented Appellant at the casualty investigation of the Coast Guard earlier in November at which Appellant was designated a party in interest. In his opening statement at the hearing, counsel mentioned his knowledge of the case as a result of the investigation (R. 6, 7).

Point III. The Master of the FERNVIEW was in command and he had set the speed of the vessel at 18 knots before Appellant arrived on the bridge to take charge of the navigation of the vessel. In his capacity as Pilot, it was Appellant's responsibility to comply with the Rules of the Road while he was in charge of the ship's navigation. Commandant's Appeal Decision No. 1304. In this case, the most obvious duty was to advise the Master to reduce speed as the density of the fog increased. Appellant did not do this (R. 15).

Point IV. On the contrary, Appellant testified that he did not consider the speed (which he thought was 17 knots (R. 59) to be excessive (R. 46) according to the requirement of the rule that a vessel in fog is supposed to be able to stop in half the distance of visibility (R. 58). But Appellant's stated opinion that the speed was moderate in terms of the rule is refuted by his other testimony that it would have required "roughly" the full distance of visibility of one-half mile, at which distance he testified the DYNAFUEL was seen, to stop the FERNVIEW (R. 58). Furthermore, it was the opinion of the Master and Chief Mate of the FERNVIEW that she was going too fast (R. 20, 40); the

Master testified that the FERNVIEW could not have stopped in half the distance of visibility unless the speed had been "down to three knots" (R. 22); and the evidence indicates no appreciable change in the speed of the FERNVIEW prior to the collision.

As stated by the Examiner, there is no authority for the proposition that the use of radar affords relief from the requirement to proceed at moderate speed in fog. Consequently, the fact that the high cargo booms blind zones, which prevented the detection of the DYNAFUEL by radar, does not free Appellant from blame.

Any fault on the part of the DYNAFUEL has no bearing on whether or not Appellant is guilty since the basic criterion applied in these proceedings is negligence rather than contributory fault. Commandant's Appeal Decision Nos. 586, 728, 730, 868, 946, 989, 1166, 1349, 1353 and 1366. Since Appellant fully realized that the FERNVIEW was moving at a speed which was too great for her to stop in her share (one-half) of the distance at which a vessel could be seen approaching from the opposite direction, it is apparent that he did not exercise the degree of judgment expected of a prudent pilot under the same circumstances in a channel referred to by counsel for Appellant as "one of the busiest anywhere in the world" (R. 7). Therefore, Appellant was guilty of negligence.

In addition, there is adequate evidence in the record to show that the excessive speed of the FERNVIEW was a "cause" which contributed to the collision. Regardless of whether or not there was some fault on the part of the DYNAFUEL for navigating in such a manner that she was almost directly ahead of the FERNVIEW and crossing her bow when sighted, the fact remains that the DYNAFUEL had been proceeding at a much slower speed than the FERNVIEW and was dead in the water or almost so at the time of collision, while the FERNVIEW was still moving ahead at about 18 knots. Hence, the alleged ultimate fact of "contributing to a collision" is established predominantly by the facts that the speed of the FERNVIEW placed her in the danger zone (beyond one-half the distance of visibility ahead) where the collision occurred and that she had not stopped when the two ships came together. Thus, it is a perfectly reasonable inference to conclude that there was a casual connection between the immoderate speed of the FERNVIEW and the collision.

Point V. and VI. For the reasons stated in IV above, the failure to produce witnesses from the DYNAFUEL did not deprive Appellant of a fair hearing. Any testimony by such witnesses could not have disclosed facts concerning the navigation of the DYNAFUEL which proved that Appellant was not guilty of negligence which contributed to the collision. Therefore, there was no failure to bring out facts which were material to the allegations in the specification.

Point VII. The record does not disclose any reason for the Examiner's delay of the nine months in rendering his decision. Although any such unjustified delay is reprehensible and repugnant to the purpose of these remedial proceedings, it does not constitute reversible error. However, the order of the Examiner will be modified due to this and Appellant's otherwise unblemished prior record over a period of many years except for the admonition in 1961.

#### ORDER

The order of the Examiner dated at Baltimore, Maryland, on 25 September 1964, is modified

to provide for an outright suspension of two (2) months.

As MODIFIED the order is AFFIRMED.

W.D. Shields  
Vice Admiral, United States Coast Guard  
Acting Commandant

Signed at Washington, D.C., this 14th day of July 1965.

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