

UNITED STATES OF AMERICA  
UNITED STATES COAST GUARD vs.  
MERCHANT MARINER'S DOCUMENT NO. 435-38-3955  
LICENSE NO. 10801  
Issued to: Martin Leroy CANNON

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

2031

Martin Leroy CANNON

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, now 5.30-1.

By order 23 October 1974, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana, suspended Appellant's seaman documents for two months outright upon finding him guilty of negligence. The specifications found proved allege that while serving as Operator on board the M/V ATCHISON, under authority of the document and license above captioned, on or about 20 August 1974, Appellant while said vessel was upbound on the Mississippi River in the vicinity of the Luling to Destrehan ferry crossing (1) did wrongfully fail to yield the right of way to the M/V GEORGE PRINCE which was crossing from his starboard side, thereby contributing to a collision with the M/V GEORGE PRINCE; and (2) did wrongfully fail to screen the sidelights on the lead barge of the tow as required by the applicable Rules of the Road.

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

The Investigating Officer introduced in evidence two exhibits and the sworn testimony of two witnesses.

In defense, Appellant offered in evidence his own sworn testimony and two exhibits.

At the end of the hearing, the Judge rendered a written decision in which he concluded that the charge and both specifications had been proved. He then served a written order on Appellant suspending all documents and licenses issued to Appellant, for a period of two months outright.

The entire decision and order was served on 23 October 1974. Appeal was timely filed.

## FINDINGS OF FACT

On 20 August 1974, Appellant was serving as an operator on board the M/V ATCHISON and acting under authority of his license and document while the ship was underway in the Mississippi River when that vessel was involved in a collision with the M/V GEORGE PRINCE.

At 0001 on 20 August 1974, the M/V ATCHISON, an inland river towboat was northbound in the Mississippi River pushing ahead the T/B SCNO-1102, a covered tank barge which was in a partially laden condition. The M/V ATCHISON was displaying navigation lights in accordance with the provisions of Rule 3 of the Rules of the Road for Western Rivers (33 U.S.C. 312) indicating that a tow was being pushed ahead. The T/B SCNO-1102 was displaying navigation lights in accordance with the provisions of Rule 7(b) of the Rules of the Road for Western Rivers, but the colored sidelights were not fitted with inboard screens as required by 33 CFR 95.29(c). All of the navigational equipment of the M/V ATCHISON and tow was in proper working order.

Appellant had taken the watch at midnight and was operating the M/V ATCHISON at a speed over the ground of approximately 8 m.p.h. on a voyage from the Southern Pacific Molasses Dock on the west bank of the river at Gretna, Louisiana, to the Sioux City and New Orleans Terminal Corp. fleeting facility on the west bank of the river just above Luling, Louisiana. The weather was clear and there was 5 to 6 miles visibility. The current was approximately 3 m.p.h., and the river is fairly straight and about 1,000 yards wide at that point. The M/V ATCHISON and tow had been on a course just off and parallel to the west bank. Appellant widened out when reaching a point just below the Monsanto dock, clearing it by approximately 150 feet. Appellant had observed no other traffic on the river when he came on watch.

When the M/V ATCHISON and tow reached a point abreast of the water intake structure just below the ferry crossing on the west bank of the river at Luling, Appellant observed the M/V GEORGE PRINCE, a ferry. Appellant testified that he then sounded two blasts on his whistle to indicate his intention of overtaking on the port side of the M/V GEORGE PRINCE. Appellant maintained the course and speed of the M/V ATCHISON for 25 to 30 seconds after he sighted the M/V GEORGE PRINCE. When the bow of the M/V GEORGE PRINCE was approximately 150 to 200 feet from the barge, Appellant placed both engines full astern and flashed his searchlight across the barge. The two vessels collided less than a minute later.

Captain Harold Gerkin, the master and pilot of the M/V GEORGE PRINCE, testified that, as was his custom, he called on VHF radio Channel 13 to ascertain whether there was any upbound traffic on

the river near the Luling-Destrahan ferry crossing and received no reply. The M/V GEORGE PRINCE then departed Destrahan for Luling on the west bank. The only operating radar on the M/V GEORGE PRINCE was set on the 2-mile range, on which it had a tendency to pull targets together and make them appear as one target. Captain Gerkin was adjusting the range control knob and heard no whistle signals or radio calls directed to him from the M/V ATCHISON. He did not see the M/V ATCHISON and tow until the M/V GEORGE PRINCE was 185 to 200 feet off the pontoon ferry landing at Luling, and the bow of the tow was then about 185 to 200 feet off the port bow of the ferry. In preparation for docking, he had stopped the starboard engine and was coming full ahead on the port engine to turn the M/V GEORGE PRINCE into the current. The M/V GEORGE PRINCE'S speed was about 5 m.p.h. over the ground. Upon seeing the M/V ATCHISON and tow, Captain Gerkin immediately backed both engines, but was unable to stop the ferry before her port bow rode up on the starboard bow of the barge, causing relatively minor (but unappraised) damage to the starboard bow and cover of the barge and the guardrail of the ferry. Damage to the barge included a break through the skin, a caved-in hatch cover, and knocked-off valves and steam pipes. There were no injuries to personnel.

When Appellant came on watch at 0001, 20 August 1974, the lights (without screens) had already been placed at the head of the tow. Appellant was told by the person he relieved of the watch that the lights had been placed on the tow and were in operating condition. These lights were not visible from the M/V ATCHISON'S wheelhouse.

The sidelights on the T/B SCNO-1102 were purchased by Appellant's employer, Sioux City & New Orleans Barge Line, from purveyors who represented them to be "Coast Guard approved." After the collision occurred and upon inquiry by representatives of the barge line, the supplier of the lights informed them that the required screens were available.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that

- (1) the Administrative Law Judge erred in concluding as a matter of law that Captain Cannon's failure to keep out of the way contributed to the collision between the M/V ATCHISON and tow and the M/V GEORGE PRINCE; and
- (2) the Administrative Law Judge erred in concluding as a matter of law that Captain Cannon's navigating the M/V ATCHISON with unscreened sidelights on its tow constituted

negligence.

APPEARANCE: Lemle, Kelleher, Kohlmeyer & Matthews of New Orleans, Louisiana, by Ashton R. O'Dwyer, Esq.

### OPINION

#### I

Appellant's primary attack on the conclusion of the Administrative Law Judge that Appellant's failure to keep out of the way contributed to the collision between the ferry and barge is based on his contention that the fault in the collision lay with the master of the ferry. It is argued that the Administrative Law Judge could not properly conclude that Appellant's failure to yield the right of way contributed to occurrence of the collision without considering the possibility of negligence on the part of the master of the ferry. However, this hearing was concerned only with the allegations of negligence of the Appellant. The possible fault of Captain Gerkin of the M/V GEORGE PRINCE was not an issue for determination. The Appellant's attempted application of the major-minor fault doctrine is not applicable to these proceedings. The possible fault or negligence of another person or vessel in no way mitigates the Appellant's negligence or contribution to the collision. Regardless of any possible fault of Captain Gerkin, the Administrative Law Judge was not precluded from determining that Appellant's negligence in failing to keep out of the way of the privileged vessel contributed to the occurrence of the collision. I find the Judge's conclusion to be logical and proper in view of the facts on the record.

#### II

Appellant urges that his actions were reasonable under the circumstances and in view of the custom of the Luling ferry to give way to upbound vessels. The Administrative Law Judge gave ample consideration to the issues of whether such a custom did, in fact, exist and whether it was reasonable for Appellant to rely on custom where it is contrary to the rules of the road. The opinion of the Administrative Law Judge that the alleged custom cannot be deemed to supercede the prescribed rule is affirmed.

#### III

Appellant's contention that there must be proof beyond a reasonable doubt of his fault is erroneous. The burden of proof applicable to a criminal action in court is not appropriate in these administrative proceedings. The findings of the Administrative Law Judge must be supported by substantial evidence

of a reliable and probative character. [46 CFR 5.20-95(b)]. The evidence contained in the record of this case satisfies the appropriate standard.

#### IV

On the issue of negligence in using unscreened sidelights on the barge, Appellant contends that the opinion of the Administrative Law Judge rests on the "assumption" that Appellant was aware of the type of navigation lights supplied by his employer. He further contends that the opinion fails to state any acts or omissions which constituted negligence. However, the Administrative Law Judge found that Appellant had a duty to inspect the navigation lights before sailing on a voyage which would require their use. He also found that Appellant had an opportunity to know of the absence of inboard screens on the sidelights. In the face of this duty and opportunity, Appellant operated the vessel at night without properly screened sidelights on the tow. His act of negligence, therefore, was his failure to take those precautions which he was duty-bound to take. It was not necessary that the absence of inboard screens be a causative factor in the collision for Appellant's action to constitute negligence.

#### CONCLUSION

The findings of the Administrative Law Judge, supported by substantial evidence, establish a situation in which it was the duty of Appellant to keep out of the way of the approaching ferry and to ensure that his tow was equipped with properly screened sidelights. Appellant was negligent in failing to fulfill these duties.

#### ORDER

The order of the Administrative Law Judge dated at New Orleans, Louisiana, on 23 October 1974, is AFFIRMED.

E. L. PERRY  
Vice Admiral, U. S. COAST GUARD  
Acting Commandant

Signed at Washington, D. C., this 5th day of Sept. 1975.

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