

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 423 492 and
MERCHANT MARINER'S DOCUMENT Z 249729
Issued to: Luis Jorge RIVERA

DECISION OF THE VICE COMMANDANT
UNITED STATES COAST GUARD

2175

Luis Jorge RIVERA

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 18 May 1977, an Administrative Law Judge of the United States Coast Guard at San Juan, Puerto Rico, suspended Appellant's license for one month and for an additional two months on four months' probation upon finding him guilty of negligence. The specification of negligence found proved alleges that Appellant while serving as Pilot aboard SS PONCE DE LEON, under authority of his license and document, on 7 December 1976 negligently navigated SS PONCE DE LEON without the use of available tugboats while the vessel was attempting to negotiate the turn from Army Terminal Channel to Puerto Nuevo Channel, Bahia de San Juan, Puerto Rico, thereby contributing to a collision between the PONCE DE LEON and Puerto Nuevo Terminal Dock.

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

The Investigating Officer introduced into evidence the testimony of four witnesses and five documents.

In defense, Appellant offered his own testimony.

Subsequent to the hearing, the Administrative Law Judge entered a written decision in which he concluded that the charge and specification had been proved. He then entered an order of suspension for a period of one month and further suspension for two months on four months' probation.

The decision was served on 2 June 1977. Appeal was timely filed on 16 June 1977 and perfected on 9 September 1977.

BASES OF APPEAL

This appeal has been taken from the order imposed by the

Administrative Law Judge. Appellant contends that the burden of proof was not met and that the findings are not in conformity with the evidence.

APPEARANCE: Harry A. Ezratty, Esq., San Juan, Puerto Rico.

FINDINGS OF FACT

On 7 December 1976, Appellant was serving as Pilot under authority of his above-captioned license aboard SS PONCE DE LEON. Appellant boarded the vessel within Anegado Channel, Bahia de San Juan, Puerto Rico, in the early morning, enroute Berth C, Puerto Nuevo Terminal. In order to approach its assigned berth the vessel had to transit Anegado Channel to Army Terminal Channel and southerly through that waterway for its length of approximately 1600 yards to Army Terminal Turning Basin. At the turning basin the vessel had to execute a 120 degree turn to port into Puerto Nuevo Channel where she would moor starboard side to Berth "C". Buoy "7" marks the easterly end of Army Terminal Channel and the commencement of the turning basin. The buoy lies approximately 500 yards from the end of Army Terminal Pier across the turning basin and 650 yards from the Puerto Nuevo dock.

PONCE DE LEON is 653 feet long, 93 feet in breadth and of 15,134 gross tons. The vessel is configured so that tugs make fast to the vessel without crew assistance. The flair of the hull prevents bridge personnel from seeing the tug make fast. The status of the maneuver is standardly communicated by radiotelephone. Tug assistance is normally required to negotiate the turn within the turning basin. Normally the assistance is provided from the port side, the forward tug making fast and holding the bow through the turn while the second tug pushes the stern around.

Two tugboats, ROSEMARY McALLISTER and PETER B. McALLISTER, were dispatched to assist PONCE DE LEON as required. The tugs were awaiting the approach of the vessel in the vicinity of Buoy "13" at the entrance to Army Terminal Channel. The tugs' maximum speed were 11 and 6 knots, respectively.

Both tugboats were in communication with Appellant via walkie-talkie. Appellant was the only person aboard PONCE DE LEON who spoke to the tugboat operators. As the vessel approached Army Terminal Channel, Appellant instructed the tugs as to the manner in which he desired them tied up. PONCE DE LEON overtook the tugs which were unable to make fast. Neither tug was able to catch up with the vessel as it transited Army Terminal Channel until it approached Buoy "7". During the attempt to make fast and the transit of the channel, the operator of ROSEMARY McALLISTER made

several requests to Appellant via radiotelephone for PONCE DE LEON to decrease speed.

The vessel was proceeding at approximately 4 to 5 knots as it passed close aboard buoy "7", the far limit of Army Terminal Channel and the entrance to Army Terminal Turning Basin. As she cleared the buoy her head was swinging to starboard toward clear water but away from the required turn. The tugs closed on the port side but were unable to make fast. The PETER B. McALLISTER attempted to push PONCE DE LEON's stern through the turn but the PONCE DE LEON had too much way on for the tug to maintain a perpendicular pushing attitude.

When PONCE DE LEON was in the vicinity of buoy "7", Appellant advised the Chief Mate of the fact that the tugs were not made fast and directed the anchors to be made ready. Upon learning of this circumstance the master ordered left rudder and an increase in shaft RPM to gain rudder effect. The vessel's head moved sluggishly to port and the master directed the port anchor dropped and the engine full astern. The anchor was dropped approximately 250 feet from the dock but this was insufficient to prevent the ship from alliding with Berth "B", Puerto Nuevo Terminal Dock.

OPINION

The charge and specification in this case allege negligence, a failure to use available tugs while negotiating a turn within a confined waterway. The vessel, as it approached Army Terminal Turning Basin from Army Terminal Channel, had to prepare for the nearly 120 degree turn to port necessary to enter Puerto Nuevo Channel. At buoy "7", the entrance to the turning basin, Appellant advised the bridge of PONCE DE LEON that the tugs were not made fast and it would be necessary to use the ship's anchors. Appellant asserts that the Administrative Law Judge's findings that notification was given as to the fact that the tugs were not made fast when the vessel was 300 feet from the pier was error that requires reversal. Both the Chief Mate and the master of the PONCE DE LEON were clear in their testimony that they were advised by Appellant of the fact that tugs were not made fast while in the immediate vicinity of buoy "7". Buoy "7" is, in fact, approximately 650 yards from the ultimate point of impact with the dock and approximately 500 yards from Army Terminal Pier. While this finding of the Administrative Law Judge is not supported by substantial evidence and is in error, it does not affect the ultimate conclusion found by the Administrative Law Judge.

The fact that Appellant directed that the anchors be made ready is only indicative of action taken to mitigate the gravity of the error for which he has been charged. Appellant attempts to

show that the subsequent acts of the vessel's crew were the cause of the allision.

There is substantial evidence to support the fact that Appellant was exercising his responsibility as pilot as the vessel proceeded through Army Terminal Channel. There is also ample testimony to support the fact that the speed of PONCE DE LEON through Army Terminal Channel did not permit the awaiting tugs to maneuver alongside and make fast. The fact is also clear that Appellant was aware of this situation. The testimony of the master and Appellant established that tug assistance was required to negotiate the turn into Puerto Nuevo Channel. Appellant was therefore responsible for having placed the vessel in extremis at the turn basin, and his failure to prudently navigate the vessel with tug assistance contributed to the ultimate collision.

After learning the fact that tugs were not made fast, the ship's captain took immediate measures to attempt the turn unassisted. Left rudder and half ahead were ordered. Soon thereafter the port anchor was ordered dropped and the engines directed astern. Appellant desires to argue the response of the ship's Master upon finding collision imminent as intervening cause. Initially, it should be noted that a response set in motion by one's conduct cannot be considered as intervening since the origin is neither external nor independent and the response is merely attributable to the earlier conduct of the negligent action. Furthermore, "the issue before an Administrative Law Judge is the negligence of the person charged and the fault of others, even if proved to be a greater fault, cannot be used to excuse fault on the part of the party charged." Decision on Appeal No. 2012. The possible fault of another person does not in any manner mitigate Appellant's negligence or his contribution to the allision. Decision on Appeal No. 2031.

Appellant's argument fails to address the gravamen of the offense, the failure to have tugs alongside and made fast while attempting to navigate a tight turn within a narrow waterway. The necessity to have the tugs was established. Appellant's own testimony would indicate that the probability of stopping the vessel prior to the allision, after giving notice of the tugs' absence, was slight. The evidence indicated that the turn into Puerto Nuevo Channel cannot normally be accomplished without tug assistance for a vessel the size of PONCE DE LEON if that vessel continues to maintain steerageway. Appellant maneuvered the PONCE DE LEON in a manner to prevent tug assistance and continued in this manner until the situation was critical, and by doing so significantly and unreasonably increased the risk of allision. I find, therefore, that the Investigating Officer met his burden by establishing the elements of the charge and specification with

substantial evidence of probative and reliable character.

ORDER

The order of the Administrative Law Judge dated at Houston, Texas, on 18 May 1977, is AFFIRMED.

R. H. SCARBOROUGH
VICE ADMIRAL. U. S. COAST GUARD
Vice Commandant

Signed at Washington, D.C., this 3rd day of Jan. 1980.

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