

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
LICENSE NO. 182287
Issued to: Robert D. ASHLEY, Jr.

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2369

Robert D. ASHLEY, Jr.

This appeal has been taken in accordance with 46 U. S. C. 239(g) and CFR 5.30-1.

By order dated 23 February 1983, an Administrative Law Judge of the United States Coast Guard at Long Beach, California, suspended Appellant's license for two months on twelve months' probation, upon finding him guilty of negligence. The specification found proved alleges that while serving as Operator on board the United States M/V ELDORADO under authority of the license above captioned, on or about 1400, 22 January 1983, Appellant failed "to maneuver his vessel with caution, placing it in risk of a collision with the SS EXXON GALVESTON, and making it necessary for the SS EXXON GALVESTON, which was to the right in a crossing situation, to make an emergency maneuver."

The hearing was held at Long Beach, California on 10 February 1983.

At the hearing, Appellant elected to act as his own counsel and entered a plea of not guilty to the charge and specification.

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

In defense, Appellant offered in evidence the testimony of four witnesses and two exhibits.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He then entered an order suspending Appellant's license for a period of two months on 12 months' probation.

The entire decision was served on 28 February 1983. Appeal was timely filed on 1 March 1983 and perfected on 13 June 1983.

FINDINGS OF FACT

On the afternoon of 22 January 1983, Appellant was serving as Operator aboard the M/V ELDORADO, and acting under the authority of his license. The M/V ELDORADO is a small passenger vessel. On 22 January 1983, it had passengers aboard and was on a whale-watching excursion.

On the same afternoon, the SS EXXON GALVESTON was bound for Los Angeles on a course of 090° true. The SS EXXON GALVESTON is a tank vessel of 12,769 gross tons and 530 feet in length. It was within the southbound coastwise traffic lane approaching Long Beach, California and proceeding at a speed of six and one-half to seven knots. At approximately 1330, those on the bridge of the SS EXXON GALVESTON became aware of three other vessels proceeding in a southeasterly direction on her port side. The bearing to these vessels did not appreciably change as they approached. Eventually one of the vessels reduced speed and passed under the stern of the SS EXXON GALVESTON. However, the other two vessels, one of which was the M/V ELDORADO, came closer and closer until they were within approximately one-fourth to two-tenths of a mile. At this time, the master of the SS EXXON GALVESTON sounded the danger signal and ordered hard right rudder. This maneuver, to avoid the M/V ELDORADO and the other vessel, brought the SS EXXON GALVESTON dangerously close to a tug and tow, which were also in the southbound coastwise traffic lane. Fortunately, no collisions occurred between any of the vessels. Prior to the evasive maneuver, those aboard the SS EXXON GALVESTON had tried to contact the M/V ELDORADO by radio on channel 16, but were unsuccessful. The closest point of approach between the M/V ELDORADO and SS EXXON GALVESTON was approximately two-tenths to one-quarter mile, and occurred at 1407.

BASES OF APPEAL

This appeal has been taken from the Decision and Order of the Administrative Law Judge. Appellant contends that:

(1) There was never a risk of collision between his vessel and the SS EXXON GALVESTON so as to justify a finding of negligence; and

(2) That the Administrative Law Judge unfairly characterized Appellant as displaying "a remarkable lack of knowledge of the rules of the road."

APPEARANCE: Michael G. Nott of Vandenberg, Nott, Conway, & Newell.

OPINION

Appellant urges that he should not be found negligent because there was no risk of collision between the M/V ELDORADO and the SS EXXON GALVESTON. I do not agree.

The specification alleges, the Administrative Law Judge found, and the evidence supports, that the M/V ELDORADO and the SS EXXON GALVESTON were in a crossing situation with the SS EXXON GALVESTON to the starboard side of the M/V ELDORADO. The evidence further shows that the relative bearing from the SS EXXON GALVESTON to the M/V ELDORADO remained approximately constant for a period of time. This indicates that there was a risk of collision unless one of the vessels changed its course or speed.

Under these circumstances, Rule 15 of the International Regulations for Preventing Collisions at Sea, 1972, required the M/V ELDORADO to keep out of the way of the SS EXXON GALVESTON, Rule 17 required the SS EXXON GALVESTON to maintain its course and speed, and Rule 16 required the M/V ELDORADO to "take early and substantial action to keep well clear." Appellant failed to meet this obligation when he allowed his vessel to approach within one-quarter to two-tenths of a mile of a large oceangoing vessel proceeding along an established traffic lane. Such a violation of the navigation rules is negligence. Appeal Decisions 2261 (SAVOIE), 2296 (SABOWSKI), 2358 (BUISSET).

Appellant argues that, in fact, there was no risk of collision because his vessel was highly maneuverable and could be stopped short of a collision. This misses the point. By remaining on a collision course with the SS EXXON GALVESTON until within one-quarter to two-tenths of a mile while both vessels were in open water he created a reasonable fear on the part of those operating the SS EXXON GALVESTON that the M/V ELDORADO would not keep out of the way as required by Rule 15, and would, unless the SS EXXON GALVESTON acted, hold her course and speed until a collision occurred. The SS EXXON GALVESTON, being far less maneuverable, could not have waited longer to act. The emergency action the SS EXXON GALVESTON was forced to take disrupted its relationship with other vessels using the traffic lane and greatly increased the risk of collision with them. By failing to take early and substantial action as required by Rule 16, Appellant created the risk of collision for the purpose of these rules.

The Administrative Law Judge properly found Appellant negligent because of his violation of the International Regulations for Preventing Collisions at Sea. This is true, whether or not Appellant, himself, could have avoided a collision because of his vessel's maneuverability.

II

Appellant further complains that the Administrative Law Judge unfairly characterized him as lacking knowledge of the navigation rules. I do agree.

Examination of the overall record, I believe, supports the Administrative Law Judge's conclusion that Appellant "displayed a remarkable lack of knowledge of both the rules of the road and of elementary principles of navigation." Not only did he allow his vessel to proceed dangerously close to the SS EXXON GALVESTON when it was obligated to keep well clear, but during the course of the hearing he also asked many questions of the witnesses from the SS EXXON GALVESTON regarding their knowledge of the local whale watch program and the yellow-and-black flag with the picture of a whale, which his vessel was flying. These questions and presentations by Appellant and his co-respondent contain the strong implication that he was under the misconception that his vessel had some navigational privilege because of the flag. However, even if the Administrative Law Judge's comment were not supported by the record, it has not prejudiced Appellant. The sanction awarded was entirely probationary, allowing him the full use of his license. Considering this, the two-month period of suspension ordered by the Administrative Law Judge is appropriate for the violation of the navigation rules alone.

CONCLUSION

There was substantial evidence of a reliable and probative nature to support the findings of the Administrative Law Judge. The hearing was conducted in accordance with the requirements of applicable regulations.

ORDER

The order of the Administrative Law Judge dated 23 February 1983 at Long Beach, California, is AFFIRMED.

B. L. STABILE
Vice Admiral, U. S. Coast Guard
VICE COMMANDANT

Signed at Washington, D. C., this 22nd day of August 1984.