

In the Matter of License No. 219781 and all other Seaman Documents
Issued to: ROBERT PRIEFER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1352

ROBERT PRIEFER

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 1137.11-1.

By order dated 25 November 1960, an Examiner of the United States Coast Guard at Milwaukee, Wisconsin suspended Appellant's Seaman documents upon finding him guilty of negligence. The specification found proved alleges that while serving as Master on board the United States SS MILWAUKEE CLIPPER under authority of the license above described, on 28 May 1960, Appellant proceeded at an immoderate speed in fog, thereby contributing to the collision of his vessel with the Milwaukee breakwater.

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

The Investigating Officer introduced in evidence a chart of the area and the testimony of four witnesses.

No evidence was introduced by the defense.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of one month outright plus two months on nine months' probation.

FINDINGS OF FACT

On 28 May 1960, Appellant was serving as Master on board the United States SS MILWAUKEE CLIPPER, a ferryboat, and acting under authority of his license when the ship struck the Milwaukee, Wisconsin breakwater approximately 200 feet below the southerly part of the entrance gap in the breakwater between Milwaukee harbor and Lake Michigan. This occurred in a dense fog while the ship was attempting to leave Milwaukee harbor on her scheduled ferry run from Milwaukee to Muskegon, Michigan with 442 passengers on board. The 500 feet wide harbor entrance is about a mile southeast of where the MILWAUKEE was moored. The breakwater extends to the north and south of the entrance.

The MILWAUKEE got under way from the City dock at 0810 in visibility of approximately 350 feet. There was little wind or sea. A lookout was posted on the bow and fog signals were sounded. The ferry proceeded on course 110 to the end of the channel and then changed course to 160. The latter course carried her to the west of the entrance. These courses were traveled with speeds of slow ahead, dead slow ahead or stop rung up by Appellant on the engine order telegraph. (Dead slow ahead was ordered by repeating the slow order.)

The Chief Mate was on the bow after approximately 0830. At one point, he saw the breakwater wall off the port side at a distance of about 200 feet. The fog became thicker after this.

The Third Mate was acting as lookout on the bridge for about five minutes before the collision. Appellant occasionally observed the radarscope although it was not effective for objects at distances less than and 1/4 to 1/2 mile. The ship was proceeding very slowly when Appellant ordered hard left rudder to head for the unseen entrance. He then rang up half ahead to assist in turning

to port. Less than 30 seconds after this order was given, the breakwater wall was sighted almost dead ahead at a distance of approximately 75 feet. It was first reported by the Chief Mate on the bow. Appellant immediately rang full astern twice on the telegraph to indicate an emergency. The ship was swinging slowly to the left and the engines were going full astern when the MILWAUKEE struck the breakwater wall at 0854 without any appreciable change in speed and rebounded from it as the engine speed took effect.

The MILWAUKEE suffered damage to her bow plates; her stem and frames were bent. There were no injuries. Appellant stopped the ship and then returned her to the point of departure.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the vessel was travelling at a speed which was no more than essential to maintain steerageway; the evidence is clear that the breakwater wall came into sight at about 75 feet and not 300 feet; the engines were going full astern before the breakwater wall was struck and this caused the bouncing effect.

Moderate speed depends on the particular circumstances of each case and the visible distance rule should not be applied to require vessels to drift without steerageway. A ferryboat navigated with caution in a dense fog is not at fault if necessary steerageway requires a speed that cannot be overcome in the distance of visibility; otherwise, ferryboats would be required to suspend operations contrary to the public necessities. *The ORANGE* (D.C. N.Y., 1891), 46 Fed. 408.

It is respectfully requested that the finding of negligently proceeding at an immoderate speed in fog be reversed.

APPEARANCE: Bradley, Pipin, Vetter and Eaton of Chicago,
Illinois by Donald L. Vetter, Esquire, of counsel.

OPINION

I agree with Appellant's contention that the evidence proves the MILWAUKEE was proceeding at a speed of bare steerageway. Since public necessity may justify the operation of ferryboats in dense fog (*The City of Lowell* (C.C.A. 2, 1907), 152 Fed. 593) and the MILWAUKEE was a passenger-carrying ferryboat operating on a regular schedule, it is my opinion that such speed did not constitute excessive speed in fog.

In support of the speed of bare steerageway, the witnesses repeatedly testified that the ship was proceeding at a very slow speed (R. 27, 40, 49, 66) and it took 44 minutes to cover the distance of slightly more than a mile. Other indications of this cautious speed are that the ship responded only slightly to the left full rudder (R. 79); the engines were ordered half ahead to assist in the turn to port (R. 59); the ship "seemed to crawl right up to" the breakwater according to the Chief Mate (R. 39); the collision was headon (R. 31); and yet there was time for the engines to be reversed to full astern before the impact (R. 60, 63, 69, 77, 81). *The* resulting damage was due more to the momentum of the ship than to her speed.

There is no doubt that the fog was very dense (R. 38, 53, 76, 79). The Chief Mate saw the breakwater wall at a distance of about 200 feet (R. 27) and after that the visibility approached zero (R. 36). Consequently, it is reasonable to accept the chief Mate's and the helmsman's definite testimony that the breakwater wall was seen at 75 feet (R. 30, 39, 51) rather than to decide that it came into sight at approximately 300 feet on the basis of the Third Mate's indefinite testimony that he saw it at 300 feet or less (R. 76), or within 300 feet (R. 79). Ferryboats are, of course, required to navigate prudently and to comply with the rules applicable in fog. It has been stated that the right to maintain steerageway in a dense fog and the obligation to go so slowly as to be able to avoid something after it is sighted approach inconsistency. The *Sagamore* (C.C.A. 1, 1917), 247 Fed. 743, 752. In the case under consideration, it was necessary to maintain steerageway in order to navigate toward the harbor entrance which was missed by only about 200 feet. Limited to the facts that this was a ferryboat and no other issued of negligence are decided in this decision, it is my opinion that the speed was not immoderate although it was too great to satisfy the visible distance rule of stopping.

The finding that the specification was proved is reversed.
The charge and specification are dismissed.

ORDER

The order of the Examiner dated at Milwaukee, Wisconsin, on 25
November 1960, is VACATED.

D. McG. Morrison
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 31st day of October 1962.

***** END OF DECISION NO. 1352 *****

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