

In the Matter of License No. 177580 and all other Seaman Documents
Issued to: DOUGLAS R. SMITH (Master)

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1353

DOUGLAS R. SMITH

In the Matter of

License No. 177580
and all Seaman Documents
Issued to: DOUGLAS R. SMITH (Master)

and

License No. 166447
and all other Seaman Documents
Issued to: RALPH T. MEGEE (Pilot)

This joint appeal was taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By orders dated 22 September 1960, an Examiner of the United States Coast Guard at Philadelphia, Pennsylvania, admonished

Appellant Smith and suspended Appellant Megee's seaman documents for three months on twelve months' probation upon finding them guilty of negligence. The two similar specifications found proved in each case allege that while serving as Master and Pilot, respectively on board the United States SS WILLIAM F. HUMPHREY under authority of the licenses above described, on 9 January 1959, the Appellants proposed a starboard to starboard passing in a meeting situation with the SS PELICAN STATE by sounding a two-blast signal contrary to the provisions of Article 18, Rule I, of the Inland Rules of the Road (33 U.S. Code 203) and then wrongfully altered course to the left without receiving assent to the two-blast proposal. There was a collision between the HUMPHREY and the PELICAN STATE.

At the hearing, Appellants were represented by counsel and entered pleas of not guilty to the charge and specifications.

Portions of the Coast Guard casualty investigation record were stipulated in evidence. Both of the Appellants and two other witnesses testified at the hearing.

FINDINGS OF FACT

At 1735 on 9 January 1959, Appellants Smith and Megee were serving as Master and Pilot, respectively, on board the United States SS WILLIAM F. HUMPHREY and acting under the authority of their licenses when the HUMPHREY, a tanker upbound on the Reedy Island Range (course 015° true) of the Delaware River, collided with the downbound freighter PELICAN STATE (after she turned from course 155° true on New Castle Range to the Reedy Island Range course of 195° true) in the anchorage area directly to the west of the Reedy Island Range. This was about a mile to the southeast of the entrance to the Chesapeake and Delaware Canal. The casualty occurred when the HUMPHREY (504 feet in length and 10,622 gross tons), in ballast, left the marked channel to cut across the anchorage ground heading in a northwesterly direction toward Delaware City and the loaded PELICAN STATE making 19 knots, went out of the channel to her right in an attempt to pass the HUMPHREY port to port. The port bow of the PELICAN struck the starboard bow of the HUMPHREY a glancing blow with an angle of 12 to 15 degrees between the sides of the ships and then the sides came together.

There were no deaths or injuries. The extent of the property damage is not indicated in the record. There is evidence in the record that one ship was anchored in the anchorage area. A ship two miles astern of the HUMPHREY had slowed down when the possibility of a dangerous situation ahead was observed.

The collision happened at dusk and in clear weather. There was a northwest wind of about 20 miles per hour. The ebb tide caused a current of approximately two knots.

Pilot Megee boarded the HUMPHREY from a tug on the Reedy Island Range about a mile below the New Castle Range. When he took charge of the navigation of the ship at 1730, the ship was well on her starboard side of the 800 foot wide marked channel, heading 5 to 8 degrees to the left of the channel course in order to maintain her position in the channel against the current and wind. She was making slight headway with the engine on slow ahead. The downbound PELICAN STATE was kept under observation. The Master, Captain Smith, was on the bridge but he did not at any time relieve the Pilot of the conn.

Pilot Megee intended to cross the anchorage ground as was the customary procedure when navigating light upbound vessels toward Delaware City. Shortly after Appellant Megee took over and when he saw the PELICAN STATE continuing to follow the channel by passing to the east of buoy 3N about 1/2 mile above the intersection of the two ranges and 1 1/2 miles from the HUMPHREY, he ordered left rudder, half speed ahead, and a two-blast whistle signal. Captain Smith blew the whistle signal. The HUMPHREY was angling slowly across the channel when the PELICAN STATE was on the Reedy Island Range just past buoy 1N at a distance of approximately three fourths of a mile from the HUMPHREY. Having heard no signal from the other ship as she continued to approach rapidly, Appellant Smith sounded another two-blast signal ordered by Appellant Megee. This was followed by full speed ahead and hard left rudder which remained in effect until the collision, except that the Pilot ordered full speed astern seconds before the impact. About the same time, the Master rang the general alarm.

The PELICAN STATE had been proceeding on the New Castle Range at 19 knots over the ground with the current. The HUMPHREY's red running light and range lights were seen at a distance of

approximately two miles. This was considered to be a meeting situation requiring a port to port passing. The Pilot did not hear the HUMPHREY's first two-blast signal. When the PELICAN STATE was rounding buoy 1N onto the Reedy Island Range and the HUMPHREY was observed swinging slightly to her left in the marked channel, the Pilot of the PELICAN STATE sounded a one-blast whistle signal. Since no answer was received, he sounded another one-blast signal, steadied momentarily on course 195° true, and then ordered the rudder hard right when there still was no answer. A few seconds later, the second two-blast signal of the HUMPHREY was heard as she was heading diagonally across the channel dead ahead of the PELICAN STATE. The latter sounded a danger signal and her engines were stopped a minute before the collision as the rudder remained hard right. The vessels came together approximately in the center of the anchorage area, 400 to 500 yards from the western edge of the marked channel.

Neither Appellant has any prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that his was never a meeting situation. This was a case where the rule of special circumstances governed, after the HUMPHREY remained at a "standstill" for 7 or 8 minutes ("the Humphrey was not underway, not on any course" appeal brief page 18), because she then followed the customary practice of turning to port to enter the anchorage ground in order to await the availability of a berth at Delaware City. The Pilot of the PELICAN STATE should have realized this when, as he testified, he saw the HUMPHREY "heading diagonally across the channel". The collision was caused solely by the reckless navigation of the PELICAN STATE, especially her continued high speed of 19 knots.

The excellent records of the two Appellants should not be blemished as a result of this casualty. Captain Megee's exemplary record as a pilot on the Delaware River since 1927 and his good character should alone be sufficient to warrant dismissal. The Master, Captain Smith, was not "navigating" the vessel, as alleged, but "permitting" the vessel to be so navigated by Pilot Megee. Also, Captain Smith was not guilty of negligence as defined by the courts in terms of the master-pilot relationship which existed.

APPEARANCES: Pyne, Smith and Wilson of New York City by Warner Pyne, William A. Wilson and Albert Robin for Captain Douglas R. Smith
Kelly, Deasey and Scanlan of Philadelphia, Pennsylvania, by Francis A. Scanlan, for Captain Ralph T. Megee

OPINION

It is not appropriate, in this decision, to consider the collateral issue of fault on the part of the PELICAN STATE since the question of negligence on the part of those navigating either vessel is not dependent upon a determination concerning fault on the part of the other vessel as in litigation to determine liability for damages based on fault contributing to a collision. It was again stated, in *Commandant's Appeal Decision* No. [1349](#), that the criterion in these administrative proceedings is negligence rather than fault contributing to casualty.

As is usual in this type of case, it is impossible to reconcile the evidence. But it is my opinion that the above findings of fact represent a fair evaluation of the evidence for the purpose of determining the relevant events. The Appellants agree in their testimony that they were concerned when the PELICAN STATE continued to bear down rapidly on the HUMPHREY and Captain Megee admitted at the investigation that he did not order hard left rudder and full speed ahead to "get over the anchorage" (I. 83) until he saw the PELICAN STATE passing to the east of buoy 1N (I. 87,91) as she came onto Reedy Island Range at a distance of about 3/4 of a mile from the HUMPHREY. The finding that the HUMPHREY was still in the channel at this time is supported by the testimony of the helmsman that he was steering 008° true to make good the channel course of 015° true and the testimony based on the course recorders of the two vessels that the PELICAN STATE was on the Reedy Island course of 195° true before the HUMPHREY's heading changed to the left of 006° true. The testimony of Captain Smith and the pilot of the PELICAN STATE verifies that the latter vessel steadied momentarily on a course of 195 ° true. The testimony of the PELICAN STATE's pilot that he saw the HUMPHREY "heading diagonally across the channel" referred to a time after the PELICAN STATE had sounded two one-blast whistle signals and her rudder was

hard right. It was then too late to go the other way. It is reasonable to conclude that the HUMPHREY's second two-blast signal, when her rudder was put hard left, was after the PELICAN STATE's rudder was placed hard right but before there was any pronounced change in her course to the right. Captain Smith's testimony seems to agree with this conclusion (R. 31) and his testimony at the hearing was given more credence by the Examiner than Captain Megee's.

Aside from the details as to the sequence of events as the distance between two ships decreased at the rate of approximately one mile in three minutes, it is my opinion that this was originally a meeting situation since the vessels were "approaching each other" within the meaning of 33 U.S. Code 203. In *Black Point S.S. Co. V. Reading Co.* (D. C. Mass., 1936), 14 F. Supp 43, aff 87 F. 2d 1014 (C.C.A.1, 1937), It was held that a tug under way and maneuvering at 2 knots or less in a narrow channel in order to bunch her tow was an "approaching" vessel in a meeting situation governed by 33 U.S. Code 203. This statute was also applied in *Bull S.S. Co. v. United States* (C.C.A.2, 1929), 34 F. 2d 614 where one of the vessels was making very little, if any, speed over the ground, and *The Arfeld* (D.C. La., 1930), 42 F. 2d 745 where one vessel was drifting with the current before maneuvering contrary to the statute. First, there is no doubt that the HUMPHREY was under way since she was not at anchor, or made fast to the shore, or aground (33 U.S. Code 155). Secondly, the Master testified contrary to the often repeated statement on appeal that the HUMPHREY was at a "standstill" awaiting the Pilot. The Master's testimony indicates that, before the Pilot was on board, the HUMPHREY was making slight headway (about 2 knots) over the ground with the engines on slow ahead (R. 33 I. 100). Finally, it is apparent that the navigation rules were applicable when the ships were about 1 1/2 miles apart and the HUMPHREY's first two-blast signal was sounded. The rules apply when the necessity for precaution begins, and the resulting casualty leaves no doubt that this time had arrived when the first signal was given. The navigation situation was not materially different when it became even more clear that the two vessels had commenced to navigate with respect to each other when the PELICAN STATE sounded her first one-blast at a distance of approximately one mile and the HUMPHREY was still in the marked channel swinging slightly to her left.

Although the two ships were on crossing courses due to the 40 degree bend in the channel ahead of each when they came within sight of each other, this did not preclude the application of 46 U.S. Code 203. The fact that the vessels were navigating on the same channel is the important factor rather than their temporary headings as they changed course to follow the bends of the channel. *Commandant's Appeal Decisions* Nos. [1304](#), [444](#), and cases cited therein.

The narrow channel rule (33 U.S. Code 210) requires that ships in narrow channels keep to their starboard side when it is safe and practicable. A narrow channel is one in which the flow of traffic is up and down in opposite directions, and not harbor waters where the necessities of commerce require navigation in every conceivable direction. *Commandant's Appeal Decisions* Nos. [1300](#), [807](#), and cases cited therein. This marked channel on the Delaware River not only satisfies the above general definition but the courts have specifically stated that this is a narrow channel within the meaning of the rule at places where the channel widths are 800 to 1000 feet. *Gulf Atlantic Transp. Co. v. The F. L. HAYES* (D.C. Pa., 1956), 144 F. Supp. 147; *Tug New York Co. v. The ROBIN DONCASTER* (D.C. Pa., 1955), 130 F. Supp. 136. Hence, the rules of navigation required the HUMPHREY and PELICAN STATE to remain on their respective starboard sides of the channel and pass each other port to port. The Case of *The AMOLCO* (C.C.A.1, 1922), 283 Fed. 890, presents a somewhat similar situation where the ship which insisted on a starboard to starboard passing was found solely at fault in violation of 33 U.S. Code 203 210. The main difference in that case was that the collision occurred before the ships left the channel.

After the meeting situation existed, the subsequent navigation of the HUMPHREY did not change the character of the situation since there was no "special circumstances" which rendered a departure from the meeting rules necessary in order to avoid immediate danger" (33 U. S. Code 212). *Griffin on Collision* (1949), section 22. The fact that it was a local custom for light vessels to cut across the channel toward Delaware City did not justify this departure from the rules since it was not essential for safety. *Griffin on Collision* (1949), section 253. Exceptions under the "special circumstances" rule are admitted by the courts "with great

caution and only when imperatively required". *The OREGON* (1895), 158 U.S. 186. It is recognized where the situation is *in extremis* or not covered by the other rules, where vessels are navigating in crowded waters, and where a proposed departure from the usual rules is agreed to by other vessel. The rule of "special circumstances" sometimes applies to vessels when one of them has begun a certain maneuver, which limits her ability to navigate freely, before the usual rules have become applicable. At times, this rule is applied to vessels moving across a crowded anchorage when either vessel is not on a steady course. But it does not apply to vessels in ordinary navigation which sight each other at an ample distance to comply with the regular steering rules. Therefore, the rule of "special circumstances" did not apply here because this was a meeting situation clear of the anchorage area and there is no reason why the proper application of the meeting rules would have resulted in any danger. The HUMPHREY could have waited about five minutes more for the PELICAN STATE to pass to port without inconvenience to the HUMPHREY or danger because of the ship two miles astern which was proceeding cautiously.

The facts were entirely different, than here, in the case cited on appeal where the court held that the rule of "special circumstances" applied and found the normally privileged vessel in a crossing situation solely at fault. *The ISAAC T. MANN* (D.C.N.Y., 1945), 63 F. Supp. 339. The exonerated vessel had just gotten under way to leave an anchorage area. Since her ability to maneuver was restricted by the anchored vessels and shoals to starboard, she sounded a two-blast whistle signal to warn a vessel entering the anchorage to her starboard. The latter continued navigating as a privileged vessel and struck the one which had been anchored. This was not a situation as here where neither ship was in the anchorage area at the time when the trouble started to develop.

In two other cases mentioned by Appellant, the courts did not allow the attempt to apply the "special circumstances" rule. Although both vessels were on an anchorage ground when the risk of collision began in *Northern Transp. Co. v. Davis* (C.C.A.2, 1922), 282 Fed. 209, the burdened vessel in a crossing situation was held solely at fault for the collision. The court stated that there was no reason to invoke the exception to the general rule that the regular steering rules applied because the burdened vessel was not hindered from acting in that capacity to stay clear of the

privileged vessel.

In the third case (*The ARFELD*, supra), the vessel intending to anchor sounded a one-blast signal and turned to her right in order to alter a clear situation of a starboard passing with another vessel. The court held that the former was solely at fault because this was a meeting situation which was not changed to one of "special circumstances" because the other vessel did not assent to the attempt to change the situation by the one-blast signal, and the other vessel was not bound "to anticipate" the conduct of the vessel changing course to anchor. As stated above, this case supports the proposition that an "idle" vessel (the one changing course to anchor) may become involved in a meeting situation if she is under way.

In conclusion with respect to the first specification, it is my opinion that the sounding of the two-blast whistle signal constituted negligence since this was a meeting situation where the navigation rules required a port to port passing after an exchange of one-blast signals. *Marshall Field and Co. v. United States* (C.A.A.2, 1931), 48 Fed. 763. Within the provisions of the rules, the two-blast signal could only be understood by the PELICAN STATE as a proposal for a starboard to starboard passing because there is no provision in the Inland Rules for signals to indicate changes of course alone as in the International Rules. The purpose of the one and two-blast signals in the Inland Rules is to signify the method of passing and these signals do not necessarily mean that a course change will be made. It is improper to construe the one and two-blast signals in Pilot Rule 80.03 as rudder signals which are provided for in the International Rules. Hence, the use of the two-blast to signal a course change, as such, toward the anchorage ground, as testified to by Captain Smith (R. 35) and Captain Megee (R. 46) was improper. The allegation that this signal contributed to the collision is found not proved because the two two-blasts did not influence the navigation of the PELICAN STATE.

Concerning the second specification, a vessel which initiates a proposal contrary to the passing rules must obtain the assent of the other vessel before changing course. *The D.S. DUMPER* (C.C.A.", 1935), 77 F. 2d 315. Consequently, the HUMPHREY'S change of course to port constituted negligence. The specification did not allege that his contributed to the collision.

For these reasons, Captain Megee was properly found guilty of negligent navigation despite his long, clear record as a pilot on the Delaware River. Captain Smith actively participated in the navigation since, according to his testimony, he sounded the two-blast whistle signals (R. 30, I. 102). Hence, he was guilty of more than simply "permitting" the navigation engaged in by the Pilot. It is my opinion that Captain Smith was guilty as alleged because as the Master, who is always in command, he should have relieved Pilot Megee when it was observed that his navigation was contrary to the rules and the ship was pressing into danger. This was a case of misapplication of the Inland Rules of Road rather than negligence based on the topography or other special local knowledge peculiar to pilots for these waters. See *Commandant's Appeal Decision* No. [1304](#).

ORDER

The orders of the Examiner dated at Philadelphia, Pennsylvania, on 22 September 1960, are AFFIRMED.

E. J. Roland
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 21st day of November 1962.

***** END OF DECISION NO. 1353 *****

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