

IN THE MATTER OF LICENSE NO. 413803
Issued to: Harold JOHNSON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1968

Harold JOHNSON
Z-412339

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.

By order dated 25 May 1972, an Administrative Law Judge of the United States Coast Guard at New York, New York suspended Appellant's license for one month outright plus two months on 12 months' probation upon finding him guilty of negligence. The specification found proved alleges that while serving as a Pilot on board the Tankship F. L. HAYES under authority of the license above captioned, on or about 3 January 1972 Appellant at about 1530 committed said vessel to an unsafe meeting situation with the M/V SHEILA MORAN and its tow thereby contributing to the grounding of said vessel on South Brothers Island, East River, New York.

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 in evidence the testimony of Henry W. Goldhorn, Jr., a copy of the Tankship F. L. HAYES'

Certificate of Inspection, and a chart of the East River.

In defense, Appellant offered in evidence the testimony of himself and William Vals, Master of the F. L. HAYES.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. The Administrative Law Judge then served a written order on Appellant suspending his license for a period of one month outright plus two months on 12 months' probation.

The entire decision was served on 26 May 1972. Appeal was timely filed on 31 May 1972.

FINDINGS OF FACT

On 3 January 1972, Appellant was serving as a Pilot on board the Tankship F. L. HAYES and acting under authority of his license while the ship was at sea.

On that date the HAYES ran aground on a shoal shortly after passing the tug M/V SHEILA MORAN in the 300 foot wide channel between North and South Brothers Islands in the East River. Appellant had the watch at the time of the grounding; there was good visibility and a two knot westerly current.

Appellant first sighted the SHEILA as she was about to enter the channel heading west. At that time the HAYES was still outside the western end of the channel heading east. Appellant noted that the SHIELA was very close to the center of the channel and her heading was noticeably to the left of the channel heading. Appellant initiated the signals for port-to-port passing and the SHEILA acknowledged. As the HAYES came around Buoy C"9" and entered the channel, Appellant brought her over to the extreme right side of the channel. The HAYES and SHEILA passed approximately half way through the channel with 15-30 feet between the port side of the HAYES and the port side of the SHEILA's outboard tow. The HAYES has a beam of 37 feet; the SHEILA with her tows along side had a width of 109 feet. As soon as the ships passed, Appellant brought the HAYES hard left in an attempt to get back to the center of the channel and about 30 seconds later went aground on the shoal from stem to stern.

BASES OF APPEAL

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

(1) the finding that Appellant's negligence arose because he did not exercise either of two alternatives has no precedence in the law; and

(2) the penalty is unduly severe.

APPEARANCE: Appellant by McHugh, Heckman, Smith & Leonard, New York, New York.

OPINION

Negligence is defined in 46 CFR 137.05-20(a)(2) as "The commission of an act which a reasonably prudent person of the same station under the same circumstances, would not commit, or the failure to perform an act which a reasonably prudent person of the same station, under the same circumstances would not fail to perform." There is a presumption that vessels do not ordinarily go aground without cause, which gives rise to a presumption of negligence when a vessel does go aground. In the instant case, leaving aside the questions of alternatives and whether or not the SHEILA contributed to the grounding, the question is simply was Appellant negligent in his actions; I am not here concerned with any possible negligence on the part of the Master of the SHEILA.

Appellant stated that at the time he first sighted the SHEILA entering the channel and prior to the time the HAYES entered the channel, he noted that the SHEILA was to the left of the channel centerline and that her heading was noticeably to the left of the channel heading. He also stated that he knew that the SHEILA had very poor maneuverability with a following current. As an experienced pilot, he is charged with the knowledge that the South side of the channel is irregular and treacherous. Regardless of whether or not it is safe for two ships like the HAYES and the SHEILA to pass in the channel in question, the facts admitted by Appellant show that there was serious question as to the

advisability of such passing in the instant case. In entering the channel in disregard of the questionable circumstances, Appellant did not act as a reasonable prudent pilot, with unique knowledge of this area, should have acted.

The Administrative Law Judge is given wide latitude in fashioning a remedy for any proven charge. Here Appellant was in a position of great responsibility and the order made by the Administrative Law Judge is meant to impress upon Appellant that where there is such a responsibility, there is also a commensurate duty of care required. Taken in this context, the order is not unduly severe.

ORDER

The order of the Administrative Law Judge dated at New York, New York on 25 May 1972, is AFFIRMED.

C. R. BENDER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 21st day of June 1973.

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