

In the Matter of License No. 87016
Issued to: REINHOLD FISCH

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

672

REINHOLD FISCH

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

On 23 January, 1953, an Examiner of the United States Coast Guard at Galveston, Texas, suspended License No. 87016 issued to Reinhold Fisch upon finding him guilty of negligence based upon one specification alleging in substance that while serving as Master on board the American SS ALBERT E. WATTS under authority of the document above described, on or about 9 January, 1953, while said vessel was at sea, in ballast, bound to a port in the Gulf of Mexico from Tremley Point, New Jersey, and while directing the navigation of the vessel on approaching the Florida Coast in the vicinity of Fowey Rocks Light, he did wrongfully fail to determine the positive position of the said vessel by compass bearings and/or other recommended practices for determining the vessel's position, and did thereby permit the said vessel to run aground on the Florida reefs in the vicinity of Star Reef approximate position 3 1/2 to 4 miles, 186° from Fowey Rocks Light.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and

the possible results of the hearing. The Appellant was represented by an attorney of his own selection. He entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer and counsel for Appellant made their opening statements and the Investigating Officer introduced in evidence, without objection, a duplicate original of Report of Marine Casualty or Accident (form CG-2692) executed by the person charged on 12 January, 1953; U.S.C.&G.S. Chart No. 1112, the sailing chart in use at the time of passage across the Straits of Florida from a position off Great Isaac Light; U.S.C.&G.S. Chart 1350 a large scale chart with the position of grounding as reported; and U.S.C.&G.S. Chart 1249 verifying the position of the vessel from bearings and entries made on Friday, 9 January, 1953, in the rough logbook of the ALBERT E. WATTS. The Investigating Officer called two witnesses, Duane David Blaine, Third Mate, and Reginald W. Hersey, Second Mate. The Investigating Officer and counsel for the person charged stipulated in evidence certified and authenticated copies of dispatches No. 161545Z and No. 162056Z to and from Commander, Seventh Coast Guard District, that at the time of grounding Fowey Rocks Light was functioning normally and the red sector was properly positioned. Also stipulated in evidence was the testimony taken at a preliminary investigation from Edmund M. Welsko, AB and lookout, and Kristen Louis Fredericksen, helmsman, aboard the ALBERT E. WATTS on 9 January, 1953.

In defense, the person charged testified and Richard A. Ohlund, Port Captain for the Sinclair Refining Company, Houston, Texas, and Master of the ALBERT E. WATTS from 1941 to 1946, was also called as a witness.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and both parties having waived the opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order suspending Appellant's License No. 87016 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of four months but suspension for the final two months not to become effective provided no charge under R.S. 4450, as amended, is found proved for acts committed

within fourteen months of date of order.

From that order, this appeal has been taken, and it is urged upon the record that Captain Fisch could not have obtained a positive position of the vessel and that he took all reasonable steps consistent with aids-to-navigation and navigational equipment available and operating reliably.

APPEARANCES: Messrs. Baker, Botts, Andrews and Parish of Houston, Texas, by Frank G. Harmon, Esquire, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

On 9 January, 1953, Appellant was serving as Master on board the American SS ALBERT E. WATTS and acting under authority of his License No. 87016 when his vessel grounded in the vicinity of Star Reef, off the coast of Florida, at or about 0422 hours while navigating a landfall in the vicinity of Fowey Rocks Light on a voyage, in ballast, from Tremley Point, New Jersey, to a port in the Gulf of Mexico.

The vessel had taken a departure from a position 13.7 miles 270° true from Great Isaac Light (Bahamas) at 2332 hours, 8 January, 1953, and set course 222° pgc and true to cross the Gulf Stream to a landfall on the Florida coast. The vessel steamed on this course at a speed determined to be 12 knots over the ground and by revolutions (83 rpm) 13.5 knots. The course had been laid to compensate for the northerly set of the Gulf Stream.

At about 0250 hours on 9 January, 1953, Fowey Rocks Light, in normal and proper operation, was sighted bearing approximately 15° on the starboard bow and, although there were intermittent rain squalls, the light was never obscured from this first sighting.

The person charged was on the bridge and in charge of navigation of the vessel from about 0350 hours until the grounding. He directed the officer on watch to lookout for the red sector of Fowey Rocks Light, and this sector of the light was not seen prior

to grounding. No means other than visual bearing estimates were used to determine the position of the ship; but if the red sector had come into view, course would have been changed. The person charged had crossed the Gulf Stream at this particular point on previous occasions and had used this same system of navigation.

The vessel was equipped with a properly functioning gyro compass, repeaters and azimuth, a radio direction finder, and a usable fathometer. There was no steering casualty. None of the mechanical means or recommended practices for determining a position of a vessel were employed.

The vessel freed herself at 1225 hours the same day and proceeded on her voyage, but a considerable amount of damage had been sustained.

OPINION

Anticipating a landfall after crossing the Gulf Stream, Appellant was on the bridge in charge of the navigation of the vessel for one and one half hours prior to grounding. For that period he neither used nor directed the use of any means at all, other than his "seaman's eye," to establish the position of the ship although he had readily available the usual navigational equipment for taking visual instrument bearings and radio direction finder bearings, as well as other recommended practices for estimating the position of a ship with some reliability.

If, in the hour and a half the person charged was in direct control of the navigation, a series of estimated positions had been determined, a normal precaution in maneuvering for a landfall, any abnormal current set to the northward could have been detected and the grounding avoided.

In lieu of using, or attempting to use, accepted methods to determine the vessel's position or estimated position by utilizing a single aid to navigation, the subject Master relied on visual bearings and the anticipated appearance of a red sector.

An officer in charge of the navigation of a ship has a duty to use every means available to insure the safety of his ship. If he fails to do so he is at least negligent. Vessels under careful

navigation do not go aground without cause in the ordinary course of events and this record fails to disclose any external cause such as a mechanism failure aboard ship or unusual force affecting the movement of the ship. This lack of any external force and the failure of the Master to use the means available to him to protect the safety of the ship raise a legal implication of negligence.

CONCLUSION

That the Appellant, the Master in direct charge of the navigation of the ALBERT E. WATTS, was negligent in his navigation of the vessel and that the subsequent grounding and damage were the direct consequence of that negligence.

ORDER

That the Order of the Examiner dated 23 January, 1953, is AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 30th day of June, 1953.

***** END OF DECISION NO. 672 *****

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