

In the Matter of License No. 34656
Issued to: FREDERICK G. IBSEN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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FREDERICK G. IBSEN

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.

By order dated 24 June, 1953, an Examiner of the United States Coast Guard at Philadelphia, Pennsylvania, suspended License No. 34656 issued to Frederick G. Ibsen upon finding him guilty of negligence based upon two specifications alleging in substance that while serving as Pilot on board the American SS DOROTHY under authority of the document above described, on or about 30 December, 1951, while said vessel was navigating the Delaware Bay during conditions of fog and low visibility, he contributed to a collision between the SS DOROTHY and the SS TYDOL FLYING A by wrongfully failing to obtain or properly use available information from radar observations to determine the course and speed of the latter ship (First Specification); and by wrongfully failing to stop and then navigate with caution after hearing the fog signal of another vessel forward of the beam (Second Specification).

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. Appellant was represented by

an attorney of his own selection and he entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, the Investigating Officer and counsel for Appellant made their opening statements. After stipulations as to certain facts were agreed upon, the parties further stipulated that the record of investigation which was conducted by the Coast Guard should be placed in evidence. This stipulation included several exhibits and excluded findings, conclusions and recommendations of the Investigating Officer who conducted the investigation of the collision.

In defense, Appellant offered in evidence his own sworn testimony. The Master of the DOROTHY also testified at the hearing. Both Appellant and the Master had testified at the investigation.

At the conclusion of the hearing, having considered the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the two specifications. He then entered the order suspending Appellant's License No. 34656, 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 two months on six months probation.

From that order, this appeal has been taken, and it is urged that the conclusions, findings and order of the Examiner are not supported by the evidence for the following reasons:

POINT I. The First Specification was not proved because all required action was taken when the two radar reports were received from the Chief Mate at about 0654 and 0700. At the time of the first report, there was no need to stop the engines since the object was 4 miles distant and Appellant intended to anchor after proceeding one mile farther in the next 5 minutes. When the second radar report was received, the DOROTHY was in the anchorage area and the final maneuvers for dropping the anchor were about to commence.

POINT II. The Second Specification was not proved because the ship was being maneuvered, in accordance with Appellant's prior decision to anchor, when the lookout reported a whistle ahead at 0700. The ship did not advance any farther than she would have if the engines had been stopped at 0700 since her engines were going full astern for 1 1/2 minutes before the collision at 0704. It was Appellant's duty to continue the speed of the ship in order to come to anchor "as soon as circumstances will permit." *La Bourgogne* (C.C.A. 2, 1898), 86 Fed. 475.

POINT III. In any event, there was no causal connection between the alleged acts of negligence and the collision. In order to subject Appellant to liability for causing the collision, it must appear that the negligence charged against him either caused or contributed to the collision. The TYDOL would have collided with DOROTHY whether or not Appellant had stopped the engines of the latter ship at 0700. The DOROTHY had no way on and was ready to drop her anchor when the collision occurred. (Appellant cites cases in which vessels guilty of statutory faults were exonerated because of the gross negligence of the other vessel and the failure of the fault of the former to contribute to the collision.)

POINT IV. The collision was due solely to the gross and inexcusable faults of the TYDOL. When radar bearings indicated that the bearing of the DOROTHY was drawing forward on the starboard bow of the TYDOL, she change course to the right and proceeded into the anchorage area to the westward of the channel although she had no intention of anchoring. Consequently, the TYDOL headed straight for the DOROTHY and the latter was practically dead in the water when the TYDOL came into sight. Since the TYDOL could tell by her radar that the DOROTHY was outside of the channel and Appellant could not be expected to foresee that the TYDOL would leave the channel, Appellant should be exonerated.

APPEARANCES: Messrs. Hunt, Hill and Betts of New York City, by John W. Crandall, Esquire, and Robert M. Donohue, Esquire, of Counsel.

Based upon my examination of the record submitted, I hereby

make the following.

FINDINGS OF FACT

On 30 December, 1951, Appellant was serving as Pilot on board the American SS DOROTHY and acting under authority of his License No. 34656 while the ship was enroute from New York to Baltimore via the Chesapeake and Delaware Canal.

At 0704 on this date, the DOROTHY, which is a liberty type cargo vessel of 7200 gross tons, was in a collision in fog with the TYDOL FLYING A, a tank vessel of 3157 gross tons. The collision occurred to the westward of the main ship channel in the Delaware Bay and approximately one half mile south of buoy No. 19. This buoy is at the junction of the Miah Maull Range to the north and the Brandywine Range to the south. The inbound course on the latter is 337 degrees true and on the former it is 326 degrees true.

Appellant was at the conn of the DOROTHY after she arrived at Overfalls lightship at 0545 on 30 December, 1951. The ship's draft was 5 feet 2 inches forward and 14 feet 4 inches aft as she proceeded up the Delaware Bay at full speed of 12 knots on a flood tide which gave her a speed of 14 knots over the ground. Fog was encountered after the ship was on the Brandywine Range. The DOROTHY commenced sounding regulation fog signals and her engines were placed on standby at 0625. The Master was on the bridge and the Chief Mate was operating the radar in the pilothouse. There was a lookout on the forecastle. At about 0653 when the ship was a half mile below Fourteen Foot Bank Light, the Chief Mate reported an unidentified target (later determined to have been the TYDOL) up ahead at a distance of four miles. Since the visibility was decreasing, Appellant decided to anchor to the westward of the channel about a mile above Fourteen Foot Bank Light and a mile to the south of buoy No. 19. The Master agreed to this plan because Appellant did not think that the area to the eastward of the channel was safe for anchoring.

At 0625, Appellant ordered a change of course to 328 degrees true from the range course of 337 degrees true. At this time, Fourteen Foot Bank Light was abeam to port at a distance of seven-tenths of a mile. The loom of the light was visible from the

DOROTHY. Between 0657 a(d 0658, the Chief Mate reported that the target was dead ahead at a distance of 2 miles. Appellant heard this report but there was no change in the speed of 14 knots over the ground. The ship was then about a half mile above Fourteen Foot Bank Light.

At 0700, the lookout reported to the bridge that he heard a whistle signal coming from ahead of the DOROTHY. The whistle signal was not heard on the bridge of the DOROTHY but the lookout's report was relayed to Appellant by the Chief Mate. The ship was then more than a mile above Fourteen Foot Bank Light. Speed was changed to one half ahead and the Chief Mate was ordered to the forecastle to prepare the starboard anchor for letting go. No one made use of the radar after the Chief Mate left the bridge although the visibility at 0700 had decreased to between 600 and 700 feet. Appellant did not request any additional radar ranges and bearings.

At 0702, Appellant ordered right full rudder and slow ahead in order to bring the ship around and head into the flood tide before dropping the starboard anchor. At 0702 1/2, Appellant gave orders to go full astern and to drop the starboard anchor. Shortly thereafter, Appellant heard a whistle signal ahead for the first time and he countermanded the order to drop the anchor just before he saw the lights of the TYDOL at a distance of a few hundred feet. At 0704, the port bow of the DOROTHY contacted the TYDOL abaft her bridge on the starboard side. The DOROTHY was practically dead in the water at the time of the collision. After a flash fire on the TYDOL was extinguished, both vessels anchored in the vicinity. There were no deaths or injuries as a result of the collision.

The TYDOL was outbound and proceeding down the Miah Maul Range on course 146 degrees true at full speed of about 11 knots over the ground. Her draft was 18 feet 10 inches forward and 19 feet 9 inches aft. The image of the DOROTHY was observed on the radar scope bearing 20 to 30 degrees on the TYDOL's starboard bow at a range of 5 miles, when the TYDOL was about 2 miles above buoy No. 19. After passing this buoy close aboard to starboard, the TYDOL's speed was reduced to slow ahead and fog signals were sounded. The radar indicated that the DOROTHY was then 5 to 7 degrees on the starboard bow of the TYDOL at a distance of more than one mile. The fog signals of the DOROTHY were heard on the TYDOL. The course was changed to 168 degrees true and when the DOROTHY appeared to be

dead ahead, course was altered to 182 degrees true. Shortly afterwards, the DOROTHY could be seen on the starboard bow of the TYDOL. The Master of the TYDOL ordered hard left rudder and then hard right rudder just before the collision. The speed of the TYDOL was 3 to 3 1/2 knots over the ground at the time of the collision.

There is no record of prior disciplinary action having been taken against Appellant. He has been going to sea since 1910 and has been a licensed officer since 1920.

OPINION

POINT I

The record does not support Appellant's contention that all necessary action was taken, at the time of the two radar reports, since he intended to proceed only one mile farther at the time of the first report when the TYDOL was 4 miles away and the DOROTHY was ready to anchor when the TYDOL was reported to be 2 miles distant.

The evidence supports the findings that the radar reports were at 0653 and 0657-58. Therefore, the DOROTHY proceeded approximately 2 miles after the first report and 1 mile after the second report to the point of the collision. Appellant did not give the order to let go the anchor until the ship was about one half mile beyond where he had intended to anchor. At the time of this order, the ship was about one-half mile instead of the intended 1 mile south of buoy No. 19.

The presence of dense fog and the other vessel required Appellant to take every precaution to avoid not only collision but also risk of collision. After Appellant was aware of the fact that there was an unidentified target in the vicinity, it was his duty to frequently check the range and bearing of the object in order to determine if it was a moving vessel and, if so, to obtain an estimate of her course and speed as long as there was any danger of collision.

A ship equipped with radar will be held to a higher standard

of care in fog based upon the analogy that there is a different standard of conduct required for a person with sound vision to avoid being negligent than there is for a blind man. The *Australia Star*, 1947 A.M.C. 1630. Prudent navigation requires that available data must be obtained from the radar and used intelligently. Nevertheless, Appellant did not obtain or request any radar information in addition to the two reports by the Chief Mate during the eleven minutes prior to the collision; and the radar was not even being observed by any one after the Chief Mate left the bridge at 0700 - four minutes before the two vessels collided. For these reasons, the First Specification was proved by substantial evidence.

POINT II

The case of *The La Bourgogne* (C.C.A.2, 1898), 86 Fed. 475 is cited as authority for the proposition that it was not necessary to stop the engines of the DOROTHY when the lookout reported that he heard a whistle signal ahead of the DOROTHY at 0700. In that case, the AILSA was held solely at fault when she was anchored in the channel and the LA BOURGOGNE struck the AILSA while the former was headed for a safe anchorage due to thick fog. Although no fog signals were heard on the LA BOURGOGNE and she had no radar, her engines were stopped before the AILSA was seen. The court held that the AILSA was inexcusably at fault for anchoring substantially in the channel and that the LA BOURGOGNE acted prudently in attempting to carry out her duty to anchor as soon as "circumstances" permitted. It was stated by the court that the conduct of the LA BOURGOGNE "was not in violation of a statutory rule."

But in this case, the most significant "CIRCUMSTANCE" is that Appellant was guilty of a statutory violation since the engines continued at one half and slow ahead for 2 1/2 minutes after the report of the lookout was received by Appellant. The requirements of Article 16 of the Inland Rules of the Road, that a "steam vessel hearing, apparently forward of her beam, the fog signal of a vessel the position of which is not ascertained shall, so far as the circumstances of the case admit, stop her engines, and then navigate with caution until danger of collision is over" (33 U.S.C. 192), are very strictly enforced by the courts, especially with

respect to the stopping of the engines. It has been stated that since this important statutory rule of law became effective by proclamation of the President on 1 July, 1897, "the command is imperative that he [the navigator] shall stop his engines when the conditions described confront him." *Lie V. San Francisco and Portland S.S. Co. (1917)*, 243 U.S. 291. Equally strong language, as to the mandatory nature of this law, is contained in the *Rules of the Road (1944)* by Farwell, pages 207 and 208, and in *Griffin on Collision (1949)*, page 317. The latter cites numerous cases including some wherein vessels whose engines were stopped within a minute of hearing the first fog signals forward of their beams were held at fault for not having taken immediate action to stop the engines.

This statutory violation was not excused by the facts that the whistle signal was not heard by Appellant until some time after the report by the lookout or that the DOROTHY was practically dead in the water when the collision occurred after the engines had been ordered full astern one and a half minutes before the collision. These facts were exactly the ones present in the recent case of *The Jessmore - Longview Victory (C.C.A.2, 1952)*, 196 F2d 689. The lookout on the LONGVIEW VICTORY reported that he "thought" he heard a fog whistle ahead 7 minutes before the collision. The mate waited he heard the signal about a minute later before he gave the order to stop the engines. Both ships were found guilty of contributory fault. The fault of the LONGVIEW was based primarily upon the failure of the mate to order the engines stopped immediately upon receiving the report from the lookout. The court stated:

"The only sensible interpretation of an anti-collision rule like Article 16 is that ships must stop when they hear something which they have good reason to suspect is a fog whistle ahead."

The position of the TYDOL cannot be said to have been "ascertained" after 0700 because the radar was not in use after that time. And it has been held that another vessel's position is not ascertained within the meaning of Article 16 unless her course as well as her momentary location is known. *The El Monte (D.C.N.Y., 1902)*, 114 Fed. 796.

In addition to failing to order the engines stopped, Appellant did not "navigate with caution" in other respects after 0700. He did not observe the radar; he navigated the ship a half mile beyond where he intended to anchor; and he failed to take any other appropriate action to avoid danger of collision, prior to reversing the engines at 0702 1/2, even though there was ample opportunity to avoid the collision since the two ships were slightly more than a mile apart at 0700 when the report from the lookout was received.

Appellant claims that the engine movements after 0700 retarded the forward progress of the DOROTHY as much as her speed would have been retarded if her engines had been stopped at 0700. In view of the requirements to navigate with caution until the danger of collision is over, this supposition by Appellant is not significant whether or not it is true. Undoubtedly, Appellant would have had the duty to reverse the engines - if danger of collision existed - even though the engines had been stopped at an earlier time in compliance with the law.

POINT III

Since Appellant was guilty of a statutory fault, there is a presumption that his fault contributed to the collision; and the burden is on Appellant to overcome this presumption by proving that his statutory violation could not have contributed to the collision. *The Pennsylvania (1873)*, 86 U.S. 125. Although the proper criterion in these remedial proceedings is negligence rather than contributory fault (see Appeal N. 586), I do not think that Appellant has produced evidence of such a nature as to overcome the presumption that his failure to obey Article 16 did, in fact, contribute to the collision.

Whether or not the DOROTHY had way on at the time of the collision is not controlling. *Lie V. San Francisco and Portland S.S. Co.*, supra; *The Jessmore - Longview Victory*, supra. A much more important fact is that each vessel proceeded a distance of about half a mile in the four minutes prior to the collision - a closing rate of speed of about 15 knots which was equally divided between the two ships. This clearly indicates that Appellant's negligence contributed to the collision even though the DOROTHY was

ready to drop her anchor at the time of the collision.

The judicial decisions cited by Appellant in his brief are not convincing because of the different circumstances. The only case cited wherein a vessel was exonerated although guilty of the statutory fault of not stopping her engines upon hearing the fog signal of another vessel ahead, is *The Providence (D.C.R.I., 1922)*, 282 Fed. 658. In that case, the presumption of contributory fault was overcome by proof that the presence of the other vessel on the wrong side of the channel would have made the collision unavoidable even if the engines of the exonerated vessel had been stopped at the proper time. The facts disclose that an entirely different situation was present with respect to Appellant in this case.

For the reasons set forth under points II and III, I conclude that the Second Specification was properly found proved, in toto, by the Examiner.

POINT IV

I cannot agree that the collision was due completely to the negligent navigation of the TYDOL. In addition to the reasons set forth above, there are other factors to consider.

The TYDOL changed course to the right and left the channel on her starboard side of the channel after radar observations indicated that the bearing of the DOROTHY was narrowing on the bow of the TYDOL. Probably due to the inaccuracy of the radar bearings, the Master of the TYDOL was led to believe that the DOROTHY would cross the bow of the TYDOL from starboard to port; and that a change of course to the right by the TYDOL would assist in this maneuver. The water outside of the channel is sufficiently deep for the navigation of large ships; and there was no more reason why the TYDOL should foresee that the DOROTHY intended to anchor than there was for Appellant to assume that the TYDOL was equipped with radar and had no intention of anchoring in the same area as where Appellant intended to anchor the DOROTHY. As a matter of fact, the second radar report by the Chief Mate should have caused Appellant to wonder whether the TYDOL was in the channel or to the west of it. Consequently, any negligence on the part of the TYDOL did not excuse Appellant from his duty to comply

with the rules of navigation. *Yoshida Maru* (C.C.A.9, 1927), 20 F2d 25.

ORDER

The order of the Examiner dated at Philadelphia, Pennsylvania, on 24 June, 1953, is AFFIRMED.

Merlin O'Neill

Vice Admiral, United States Coast Guard
Commandant

***** END OF DECISION NO. 728 *****

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