

In the Matter of License No. 57179
Issued to: ALPHONSUS J. GODFREY

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

595

ALPHONSUS J. GODFREY

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 20 June, 1951, an Examiner of the United States Coast Guard at Norfolk, Virginia, conducted a hearing as a result of which he suspended License No. 57179 issued to Alphonsus J. Godfrey upon finding him guilty of negligence based upon four specifications alleging in substance that while serving as Master on board the American SS CONCORD under authority of the document above described, on or about 20 May, 1951, he did:

"First Specification: while proceeding toward sea in the vicinity of Cape Henry, Virginia, fail to comply with the Inland Pilot Rules relative to fog signals during periods of limited visibility

"Second Specification: fail to carry a proper lookout during a period of reduced visibility caused by fog while proceeding in the vicinity of Cape Henry, Virginia

"Third Specification: fail to proceed at a moderate

rate of speed during fog in the vicinity of Cape Henry, Virginia, as a result of which a collision between the SS CONCORD and the SS WIDEAWAKE did ensue.

"Fifth Specification: . . . fail to keep out of the way of the SS WIDEAWAKE when same was observed bearing on the starboard bow of the SS CONCORD and in a crossing situation."

The Examiner found that the additional clause ("which contributed to a collision between the SS CONCORD and the SS WIDEAWAKE") contained in the first and second specifications was not proved with respect to either of the two specifications. The fourth specification, which alleged failure to take proper precautions based on radar observations of the WIDEAWAKE's movements, was found "not proved as a separate specification" since it was covered by the first three specifications to the extent that it referred to fog signals, a lookout and speed; and because it was not sufficient to impose any responsibility on Appellant to the extent that the specification referred to a crossing situation.

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 Appellant's counsel made their opening statements. The Investigating Officer introduced in evidence the testimony of Second Mate Seegar of the CONCORD and Harris M. Perry who had been the weather observer at Cape Henry on the day of the accident.

By stipulation between the Investigating Officer and counsel for Appellant, the records of the two investigations conducted in connection with the collision were received in evidence.

One of the investigations was held at Norfolk, Virginia, on 22 and 23 May, 1951. The record includes the testimony of the Master of the WIDEAWAKE and seven members of her crew as well as numerous sketches by these individuals and excerpts from the log and bell books of the WIDEAWAKE.

The record of the other investigation which was conducted at New York City on 25 May, 1951, contains the testimony of Appellant, the helmsman, the lookout, and the First Assistant Engineer of the CONCORD, in addition to sketches by the Master and certified copies of extracts from the engineroom bell book and the bridge log book of the CONCORD.

The case was submitted to the Examiner to be determined on the basis of the above evidence. On 4 April, 1952, the Examiner rendered the decision in which he concluded that the charge had been proved by proof of four specifications. He then entered the order suspending Appellant's License No. 57179, 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 six weeks.

From that order, this appeal has been taken, and it is urged that the decision of the Examiner is contrary to the law and the evidence; the Examiner's findings of fact are not supported by the evidence as to the speeds of the two ships, the visibility and weather conditions, the lookouts maintained by each vessel, and the respective maneuvers and signals of the vessels as they closed on collision courses; the findings of fact are partially immaterial, contradictory, speculative and conjectural, rather than supported by "reliable, probative and substantial evidence"; the Examiner misconstrued the applicable Rules of the Road since the limited visibility of one to one and a quarter miles which was caused by a fog bank ahead of the CONCORD did not justify the sounding of fog signals (First Specification), a lookout was posted when the presence of the WIDEAWAKE was known (Second Specification), the CONCORD could have been stopped dead in the water within half the distance of visibility and headway, in fact, had been killed by the time of the collision (Third Specification), and Appellant's attempt to comply with the crossing situation rule to keep out of the way of the WIDEAWAKE by ordering hard right rudder five minutes prior to the collision in order to pass under her stern was not effective because the WIDEAWAKE disregarded the obligations placed upon her when she did not respond to either of the CONCORD's two one-blast whistle or danger signals and when the WIDEAWAKE went to her port at an unusual rate of speed (Fifth Specification); the Examiner failed to require that the charge and specifications be

proven "beyond a reasonable doubt"; and, therefore, since the collision was due solely to the failure of the WIDEAWAKE to abide by the Rules of the Road and to navigate prudently, Appellant's license should be restored to him without blemish.

APPEARANCES: Messrs. Hughes, Little and Seawell of Norfolk, Virginia, by Leon T. Seawell, Jr., Esquire, of Counsel.

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

FINDINGS OF FACT

On 20 May, 1951, Appellant was serving as Master on board the American SS CONCORD and acting under authority of his License No. 57179 while said vessel was proceeding to sea enroute from Norfolk, Virginia, to Brooklyn, New York, three-quarters loaded with a cargo of about 7142 tons of coal. Her draft was 23 feet 1 inch forward and 23 feet 3 inches aft.

The CONCORD, Official No. 247870, is a Liberty type steam collier of 6700 gross tons, with triple expansion reciprocating engines capable of developing 2500 horsepower. At 1541 Eastern Daylight Time on 20 May, 1951, she was in a collision with the inbound American SS WIDEAWAKE which had departed from New York for the Canal Zone but was putting into Lynnhaven Roads for shelter after receiving hurricane warnings. The WIDEAWAKE, Official No. 245532, is a C-2 type steam vessel of 6214 gross tons. She was loaded with 5200 tons of general cargo and her draft was 20 feet 4 inches forward, 24 feet 4 inches aft. The collision occurred in the Inland waters of the United States bearing approximately 070 degrees true from Cape Henry Light at a distance of about four miles.

The CONCORD took departure from Old Point Comfort at 1415 E.D.T. on 20 May, 1951. There was no pilot on board and Appellant was at the conn until after the time of the collision. Second Mate Seegar was operating the radar prior to passing Thimble Shoal Light abeam at 1428 on course 108 degrees true and until after the WIDEAWAKE was sighted from the bridge of the CONCORD. The helmsman at the time of the collision was steering by hand electric wheel

and he had been at the helm since 1400. The weather was fair and the visibility good as the CONCORD proceeded down Thimble Shoal Channel in the direction of Cape Henry. She was making normal full speed ahead of about eleven knots (68 RPM) through the water when Cape Henry Lighthouse was passed abeam to starboard at a distance of approximately one mile at 1526. Subsequent to this time, her speed over the ground was increased to twelve knots by a favorable ebb tide of about two knots. The CONCORD was standing into fog and the gradually decreasing visibility was limited to less than one and a half miles ahead but no lookout was posted at this time and she did not sound any fog signals prior to the collision. The distance of visibility from the weather station at Cape Henry was three-quarters of a mile at 1530 E.D.T. and one-half mile at 1630. The sea was smooth and there was a northeasterly wind of about 15 miles per hour.

The Second Mate observed the image of the WIDEAWAKE on the radar scope at about 1525 while operating the radar on the six mile range. The distance of the WIDEAWAKE was 5.75 miles. At 1530 when buoy "2A" was about one and a half miles abeam to port, Appellant ordered a change of course to 079 degrees true in order to head for the Chesapeake Lightship. When the ship had steadied on her new course, the radar indicated that the WIDEAWAKE was bearing about 15 degrees relative on the starboard bow of the CONCORD at a distance of between two and a half and three miles. The bearing opened to about 17.5 degrees in the next two minutes and then remained practically constant from before 1534 until after the WIDEAWAKE was sighted. Seegar kept Appellant advised of these developments until 1534. The Mate did not plot the relative positions of the other vessel.

At 1536, Appellant sighted the WIDEAWAKE in a fog bank and on a crossing course of 285 degrees true. She was bearing approximately 15 degrees on the starboard bow of the CONCORD at a distance which was established by the radar to be 1.2 miles. A lookout was posted in the bow of the CONCORD at this time but Appellant did not order any change in course or speed. When the bearing of the WIDEAWAKE remained constant until 1539, Appellant rang up one-half speed ahead of seven knots (48 RPM) and ordered hard right rudder in order to pass under the stern of the WIDEAWAKE. At the same time, he sounded one blast on the whistle which was followed by the danger signal of four blasts since the one-blast answer of the WIDEAWAKE to the first signal was not heard

on the CONCORD. Then a one-blast signal was sounded again and followed by the danger signal when no reply was received. At 1540, Appellant ordered emergency full speed astern on the telegraph and sounded the three blast backing signal.

The WIDEAWAKE's speed decreased between 1539 and the time of collision but her heading remained substantially the same as when she was first seen from the CONCORD. The course of the CONCORD had altered about 10 degrees to the right and her engines had been going astern about one minute but her forward motion through the water had not been stopped when her port bow struck the port side of the WIDEAWAKE at an angle of approximately 15 degrees at 1541. The port anchor pierced the plates of the WIDEAWAKE above the waterline at a point about plumb with the forward end of the bridge and ripped her port side open to approximately 15 feet aft of the midships superstructure. There were no injuries on the CONCORD and only a few minor ones on board the WIDEAWAKE. The total damage to both ships was estimated to be about \$105,000. At the time of impact, Appellant ordered the engines stopped. He then contacted the WIDEAWAKE by radio and ascertained that she did not require any assistance. The CONCORD then proceeded back to Hampton Roads for survey.

Since the WIDEAWAKE was navigating in fog of various densities she commenced sounding fog signals and stationed a bow lookout at 1300 on 20 May, 1951; and continued these precautions until the CONCORD was sighted at 1539 bearing one to two points on the port bow at a distance of between one-quarter and one-half mile. The WIDEAWAKE was not equipped with radar.

The WIDEAWAKE was making one-half speed ahead of about seven knots (50 RPM) through the water when the Chesapeake Lightship was abeam at 1417 and the WIDEAWAKE changed course to 262 degrees true. At 1452, buoy number "2" was a ship's length abeam to starboard and Cape Henry junction buoy was close abeam to starboard at 1533. The WIDEAWAKE's course was changed to 285 degrees true at the latter time and her speed was increased to 60 RPM at 1535 in order to offset the effect of the prevailing two knot current. When the CONCORD came into view and appeared to be headed across the bow of the WIDEAWAKE, her engines were stopped and full astern was ordered shortly after the first one-blast signal of the CONCORD was answered. At 1540, the WIDEAWAKE was given full right rudder and

full speed ahead in a futile attempt to pull out of the path of the CONCORD. The collision occurred less than a minute later just as the WIDEAWAKE's engines were again ordered full astern and her rudder was put full left in an attempt to turn her stern away from the CONCORD.

OPINION

As pointed out by Appellant, the degree of proof required in these administrative proceedings is "reliable, probative and substantial evidence" rather than proof "beyond a reasonable doubt." My findings of fact are based upon a very careful review of the entire record in this case and they do not differ in any material respect from the Examiner's findings of fact, except that the Second Mate rather than the Chief Officer was the radar operator. Hence, I think that his findings are supported by substantial evidence, and that Appellant's contentions to the contrary are absolutely without merit.

I agree with the Examiner that the only way to account for the sighting of the WIDEAWAKE from the CONCORD three minutes prior to the time when the CONCORD was seen by the WIDEAWAKE is the fact that the WIDEAWAKE was in a heavy fog bank and, consequently, she could not as readily discern the outline of the CONCORD as she navigated in an area approaching the fog bank in which the WIDEAWAKE was enclosed. The difference in the distance at which the two ships sighted each other is adequately accounted for by the fact that the closing rate of the two vessels between 1536 and 1539 was slightly less than 19 knots because they were not headed directly for each other between these two times.

For the reasons stated by the Examiner, I also refuse to accept the testimony of Appellant and the Second Mate that the first one-blast signal was sounded and hard right rudder was ordered five minutes before the collision. The Examiner stated that if the rudder of the CONCORD had been hard right for five minutes, she would have passed well clear of the WIDEAWAKE; it is admitted that the rudder order and the signal were given concurrently; there is overwhelming evidence by the witnesses from the WIDEAWAKE that both one-blast signals were heard after they sighted the CONCORD at 1539; and, therefore, both of these events must not have occurred before 1539. In addition, the testimony

that the CONCORD changed course to starboard 25 to 30 degrees from 079 degrees true might have been correct if her rudder had been hard right for five minutes; but since there was no substantial change in the heading of the WIDEAWAKE after she changed course to 285 degrees true and the minimum estimate of many witnesses from both ships as to the collision angle was 15 degrees, the CONCORD could not have changed course more than 11 degrees to starboard after seeing the other ship. And Appellant testified himself that the WIDEAWAKE remained "practically ahead" of the CONCORD at all times. It is also relevant that, according to the testimony of the Second Mate concerning his radar reports to Appellant, the course change of 29 degrees from 108 to 079 took only about two minutes. It is also worthy of note that there is no entry in the bridge log book of the CONCORD as to when the WIDEAWAKE was sighted.

Appellant contends that the limited visibility caused by a fog bank ahead of the CONCORD did not require her to sound fog signals as alleged in the first specification.

This statement misconstrues the facts since visibility was limited to some extent by the presence of fog in the vicinity of Cape Henry. But regardless of this, a vessel is under obligation to observe the rule to sound fog signals not only when she is actually enveloped in a fog but also when she is so near the fog that it is necessary that her position be known to any other vessel which might happen to be within the fog. (*The Perkiomen (D.C. Mass., 1886)*, 27 Fed. 573.) Thus, Appellant was required to have sounded the fog signals for the benefit of the WIDEAWAKE and any other vessels in the surrounding fog banks off Cape Henry and in the area of decreasing visibility beyond there. The first specification is sustained.

With respect to the second specification, Appellant claims that a lookout was posted on the bow of the CONCORD when the presence of the WIDEAWAKE was known through the use of the radar.

The evidence discloses that the lookout was not stationed until the WIDEAWAKE could be observed visually from the bridge. Obviously, a bow lookout is for the purpose of informing the bridge of the presence of ships which cannot be seen from the bridge. As in the case of fog signals, the lookout should be posted before the ship enters a fog bank which she is approaching. *The Wyomissing*

(CCA3, 1934), 72 F.2d 834. And the presence of radar aboard will not excuse the posting of proper lookouts because radar is not infallible and it cannot hear. The second specification is upheld.

It is urged that the third specification has not been proven because the CONCORD's forward motion could have been checked so that she was dead in the water well within half the distance of visibility and because the CONCORD's headway actually had been killed by the time of the collision.

The latter proposition is not supported by the evidence and whether the CONCORD could have been stopped within the required distance is not particularly significant in this case. What speed is moderate is always dependent upon the surrounding circumstances. The outstanding circumstance here is that Appellant was aware of the exact relative positions of the WIDEAWAKE as a result of the radar information received from the Second Mate. Nevertheless, Appellant continued towards the heavier fog, which was hiding the WIDEAWAKE from sight, at the rate of 12 knots over the ground instead of following the requirement to proceed with caution and to slow down so that the vessel would be moving at a moderate speed when she entered the fog bank ahead of her. *The City of Alexandria (D.C.S.D.N.Y., 1887)*, 31 Fed. 427. The third specification is supported by substantial evidence.

Concerning the fifth specification, it is contended that Appellant recognized this as a crossing situation and he took action to stay out of the way of the privileged vessel by ordering hard right rudder to pass under the stern of the WIDEAWAKE; but the latter failed to carry out her obligation to answer the CONCORD's one-blast signal and to maintain course and speed.

Contrary to Appellant's contention, I have found that there was no appreciable alteration in course on the part of the WIDEAWAKE and that she did reply to the first one-blast whistle signal sounded by the CONCORD at 1539. The fact that Appellant did not hear the answering one-blast whistle does not excuse him from fault. And the CONCORD was justified in not holding her speed when immediate danger of collision was seen to exist at the moment she sighted the CONCORD bearing down on her. The rule requiring the burdened vessel to direct her course to starboard so as to cross the stern of the other vessel, also requires that if necessary to

do so, she must slacken her speed or stop or reverse. Appellant took the latter precautions too late.

When a situation exists such that the vessels do not sight each other at a distance sufficient to allow them time to maneuver in accordance with the crossing rules and both vessels are placed in *extremis* through their concurring fault, neither vessel can use the existence of the emergency as an excuse for her own erroneous action. Regardless of the actions of the WIDEAWAKE prior to 1539 when she sighted the CONCORD, Appellant was at least partially responsible for the predicament existing at 1539 because of his negligent action before then. In addition to the negligence proven with respect to the other specifications, a greater burden was placed upon Appellant to avoid danger of a collision because of the knowledge he had obtained from the radar. The fact that Appellant knew of the presence of the WIDEAWAKE sixteen minutes before the collision occurred and that the WIDEAWAKE was approaching the CONCORD in the position of a privileged vessel in a crossing situation, was ample warning to Appellant to take whatever action might be necessary in order to be certain that the CONCORD kept out of the way of the WIDEAWAKE. Appellant having failed in this duty, the fifth specification has been proved.

ORDER

The Order of the Examiner dated 4 April, 1952, is AFFIRMED.

A. C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 17th day of October, 1952.

***** END OF DECISION NO. 595 *****

