

In the Matter of License No. 177505
Issued to: JOSEPH F. GOW

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

766

JOSEPH F. GOW

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 14 July, 1953, an Examiner of the United States Coast Guard at New York, New York, suspended License No. 14425 (later renewed with License No. 177505) issued to Joseph F. Gow upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as Pilot on board the Norwegian SS INGWI under authority of the document above described, on or about 26 June, 1952, while said vessel was in the vicinity of Newark Bay Channel and Bergen Point, he wrongfully sounded confusing whistle signals (First Specification) and wrongfully replied with a "cross" signal to a signal given by the approaching MV LAKE CHARLES (Third Specification). The Second Specification under the charge of misconduct was found "not proved" by the Examiner. Appellant was also found guilty of negligence based upon one specification alleging that, while serving as above on 26 June, 1952, he failed to exercise, in timely fashion, the precautions required by the ordinary practice of seamen while approaching the MV LAKE CHARLES, with a resultant collision between the vessels and damage to the vessels.

At the hearing, Appellant as 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 both charges and each specification proffered against him.

Thereupon, the Investigating Officer made application to take the deposition of the Master of the LAKE CHARLES on 26 June, 1952. The Investigating Officer also introduced in evidence the testimony of the Master of the Norwegian vessel INGWI. After adjournment, the Investigating Officer rested his case and it was stipulated that the deposition of the Master of the LAKE CHARLES be placed in evidence.

In defense, Appellant offered in evidence the testimony which he and the Master of the LAKE CHARLES gave on 30 June, 1952, during the preliminary investigation of the casualty. Appellant also testified under oath in his own behalf.

At the conclusion of the hearing, having heard 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 charges had been proved by two misconduct specifications and the one negligence specification. The Examiner then entered the order suspending Appellant's License No. 174470 (which had been renewed as License No. 14425) and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of twelve months. This order included a six months suspension on twelve months probation which was imposed on 1 April, 1952, for grounding a vessel in a channel.

From that order, this appeal has been taken, and it is urged that:

POINT A. The Examiner clearly erred in a matter of judicial notice essential to his conclusion. The Examiner stated that he judicially noticed that the Central Railroad Bridge across the Newark Bay Channel was about three-quarters of a mile above buoy

No. 2 (Fl.R "2") which marked the junction of Newark Bay Channel at Bergen Point; and, therefore, there was no necessity for Appellant to sound a one-blast signal to a vessel which was just going through the westerly draw of the bridge three-quarters of a mile away. Contrary to this, U.S.C.& G.S. Chart No. 285 shows that the distance between the bridge and buoy No. 2 is less than 900 yards; and, consequently, all the evidence indicates that the INGWI and the vessel near the bridge were within one-quarter of a mile of each other when Appellant sounded the one-blast whistle signal.

POINT B. The Examiner erred in finding that Appellant sounded confusing whistle signals. The confusing resulted solely because the Master of the LAKE CHARLES, after exchanging two-blast signals with the INGWI, improperly assumed that the one-blast signal from the INGWI was intended for the LAKE CHARLES. It should not be assumed that a vessel is proposing a departure from the rules after a passing agreement has been reached and the two vessels are in position to pass in the manner agreed upon.

POINT C. The Examiner erred in finding that the failure to sound an alarm signal was negligence on the part of Appellant. The cause of the collision was the turning of the LAKE CHARLES across the bow of the INGWI when the ships were less than 300 feet apart. At this point, the collision was inevitable and the sounding of an alarm signal by Appellant could have done nothing to improve the situation.

POINT D. The twelve-month suspension is extremely harsh under the circumstances, and it involves substantial economic loss to Appellant.

In conclusion, it is respectfully submitted that the decision does not fairly reflect the evidence, the charges have not been established by a fair preponderance of evidence, and the order imposed should be set aside by the Commandant.

APPEARANCES: Messrs. Hagen and Eidenbach of New York City
By Henry C. Eidenbach, Esquire, of Counsel.

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

FINDINGS OF FACT

On 26 June, 1952, Appellant was serving as Pilot on board the Norwegian SS INGWI and acting under authority of his License No. 14425 while the ship was proceeding from an anchorage off Stapleton, Staten Island, to Newark, New Jersey, via the Newark Bay Channel.

On the night of 26 June, 1952, the INGWI (a 270 foot single screw steam freighter) was in a collision with the American MV LAKE CHARLES, which is a single screw diesel tanker, approximately two or three hundred yards above the southern entrance to the Newark Bay Channel. It was a dark, clear night and the visibility was good. At all times leading up to the collision, each of these two vessels showing the proper navigation lights consisting of a masthead light, a range light, red and green side lights, and a stern light. Other navigation equipment was operating properly on both ships.

The INGWI got underway from her anchorage at 2110 with Appellant at the conn and the Master on the bridge. Appellant remained at the conn until after the collision. The draft of the INGWI was 16 feet, 6 inches, as she proceeded in a northerly direction and then westerly through Kill Van Kull prior to turning to the north at Bergen Point in order to enter the Newark Bay Channel which is slightly less than 600 feet in width. The entrance to the channel was marked by a buoy (Fl.G"1") on the westerly side of the channel and a buoy (Fl.R"2") on the easterly side of the channel. Buoy No. 2 was about 900 yards south of the Central Railroad Company bridge that passed over the channel.

The INGWI was proceeding at approximately 4 knots as Appellant directed her course to starboard in order to round Bergen Point and enter the Newark Bay Channel. While thus approaching buoy No. 2, Appellant observed a down-bound tug and tow (2 scows) in Newark Bay Channel and holding to her own starboard (westerly) side of the channel. Appellant sounded a one-blast whistle signal to the tug and the latter answered with a similar blast in order to establish a port-to-port passing agreement.

As the INGWI rounded buoy No. 2 with right full rudder, the downbound LAKE CHARLES was sighted on her own port (easterly) side of the channel at a distance of approximately 1500 feet. Appellant

immediately sounded a two-blast whistle signal in order to establish a starboard-to-starboard passing agreement with the LAKE CHARLES and she replied with a two-blast signal. At this time, the two ships were showing green to green side lights. Just after this exchange of signals, the helm of the INGWI was shifted to left full rudder in accordance with Appellant's order

The LAKE CHARLES was proceeding at a speed of about 5 knots carrying a full load of 12,500 barrels of fuel oil. Her draft was 13 feet 7 inches forward and 14 feet 1 inch aft. She was attempting to overtake the tug and tow, on the westerly side of the channel, after both of them had passed through the westerly draw of the Central Railroad Company bridge. The LAKE CHARLES was approximately opposite the 2 scows at the time of the exchange of the two-blast signals. After the latter signals had established a starboard-to-starboard passing agreement between the INGWI and the LAKE CHARLES, the Master of the latter vessel maneuvered his ship to port until the LAKE CHARLES was on the extreme easterly edge of the channel. The Master of the LAKE CHARLES was steering his ship and a seaman was on the bridge as lookout. The wheelhouse of the LAKE CHARLES is on the after part of the ship.

About a minute after the INGWI had sounded the two-blast signal to the LAKE CHARLES, Appellant sighted two downbound tugs south of the railroad bridge and on the westerly side of the channel at a distance of approximately 1500 feet. Appellant sounded a one-blast whistle signal intended for the two tugs astern of the LAKE CHARLES which was then about 600 feet from the INGWI. Although the INGWI was under left full rudder, she was still swinging slightly to the right at the time of her one-blast signals to the tow tugs and her red side light was visible to the Master of the LAKE CHARLES at the time of the latter signal. Also, the range lights of the INGWI had opened to port. The Master of the LAKE CHARLES thought that the one-blast was intended for his ship. Consequently, he immediately sounded a one-blast signal in reply, gave his hip right full rudder and ordered the engines ahead full.

Appellant went to the port wing of the bridge and looked astern to see if the one-blast signal by the LAKE CHARLES was intended for a vessel following the INGWI up the channel. When he saw no other vessel and observed the LAKE CHARLES commencing to swing to her starboard and across the bow of the INGWI, Appellant

sounded a tow-blast signal and followed this with a three-blast signal as he ordered the engines full astern and the rudder shifted to right full. A collision could not be avoided and the bow of the INGWI struck the port quarter of the LAKE CHARLES about 30 feet from her stern. One man received a side injury and the total damage was estimated at \$47,000.

Appellant's prior record consist of a probationary suspension in 1946 for grounding a vessel and for being asleep while piloting; and also a six months suspension on twelve months probation for grounding a vessel in a channel. The latter order was imposed on 1 April, 1952.

OPINION

As contended by Appellant, the Examiner erred in concluding that the Central Railroad Bridge was three-quarters of a mile above buoy No. 2. But in view of the relative positions of the INGWI and the LAKE CHARLES at the time the Appellant sounded the one-blast signal for the two tugs astern of the LAKE CHARLES, the distance of the two tugs from the INGWI is not determinative as to whether Appellant was negligent in sounding this one-blast signal. There is substantial evidence in the record to support the finding of the Examiner that the red side light of the INGWI was seen from the LAKE CHARLES when Appellant sounded this one-blast signal. This statement was made by the Master of the LAKE CHARLES and it is strongly supported by Appellant's admission that the INGWI was still swinging slightly to the right at the time she gave the one-blast signal to the two tugs. Since the difference in distance between the INGWI and the LAKE CHARLES was about 900 feet less at the time of this one-blast than at the time of the two-blast exchange, the time interval between these signals was approximately one minute because the closing rate of speed between the two vessels was about 9 knots. Therefore, the INGWI was still swinging to the right for one minute after the two-blast exchange.

There is testimony by the Master of the INGWI that the red side light could not be seen from the LAKE CHARLES at the time of the one-blast by the INGWI but he was not in as good a position to observe as was the Master of the LAKE CHARLES. There is no evidence in the record as to what was observed by the seaman who

was on watch with the Master of the LAKE CHARLES. The obvious conclusion is that Appellant indulged in negligent navigation when he failed to take the precaution to steady the INGWI on her course up the channel before sounding the one-blast signal to the two tugs astern of the LAKE CHARLES.

The Master of the LAKE CHARLES should have sounded the danger signal, stopped and backed her engines since he did not understand the one blast-blast signal of the INGWI. But there was obviously good cause for confusion on the part of the Master of the LAKE CHARLES when the red side light of the INGWI came into view and she sounded a one-blast signal. If the side lights of the two ships had remained green to green, I would find no fault with Appellant's navigation. See *The General Putnam* (CCA2, 1914), 213 Fed. 613, where the vessel in the position of the LAKE CHARLES was found solely at fault. But usually the courts have held that both vessels are at fault in case involving similar misunderstandings where one vessel mistakenly thought the signal of another vessel was intended for the first vessel but, in fact, the signal was intended for a third vessel in the vicinity. *The Emperor* (D.C. Pa., 1896), 76 Fed. 879; *The Brandon* (CCA4, 1921), 273 Fed. 176. A situation very similar to the one under consideration was presented in *The Ellis - The Galicia* (CCA5, 1907), 152 Fed. 981, and the court concluded that both vessels were at fault.

CONCLUSION

In view of the fact that the two vessels were in extremis after the LAKE CHARLES commenced swinging to her starboard towards the INGWI and since the two misconduct specifications are substantially encompassed within the more general allegations contained in the negligence specifications, the two misconduct specifications are hereby dismissed and the order of suspension will be modified accordingly.

ORDER

The probationary suspension imposed by the Examiner's order of 1 April, 1952, will not be made effective as a result of this offense during the period of probation.

The order of the Examiner dated at New York, New York, on 14 July, 1953 is hereby modified to an admonition, in addition to a suspension, of all valid licenses and documents issued to Appellant, for a period of six months. The suspension ordered shall not become effective provided no charge under R.s. 4450, as amended (46 U.S.C. 239), is proved against Appellant for acts committed within twelve months of the date this order becomes effective by service upon Appellant.

As so MODIFIED, said order of 14 July, 1953, is

AFFIRMED

A.C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 21st day of September, 1954.

***** END OF DECISION NO. 766 *****

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