

In the Matter of License No. 264820
Issued to: MAURICE M. CHAPLIN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1430

MAURICE M. CHAPLIN

This appeal has been taken in accordance with Title 46 United States Code of Federal Regulations 137.30-1.

By order dated 13 August 1963, an Examiner of the United States Coast Guard at New Orleans, Louisiana suspended Appellant's license for three months outright plus three months on twelve months' probation upon finding him guilty of negligence. The gist of the specification found proved is that while serving as Master on board the United States SS DEL VALLE under authority of the license above described, on 23 June 1962, having collided with a wooden fishing trawler, Appellant failed to render adequate assistance, after a person had been seen in the water and a voice had been heard, because he departed the vicinity of the collision prior to daylight.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and specification.

The parties stipulated in evidence most of the facts, the testimony of two seamen (given at the Coast Guard casualty investigation) concerning the person or persons seen and heard in

the water, statements from a deposition of the only survivor (the Master) from the fishing vessel, the conclusions (in part) of the Coast Guard casualty investigation that personnel on the DEL VALLE were not negligent prior to the collision and that Appellant was not negligent in conducting the search while his ship remained at the scene of the casualty. After entering these stipulations, the Government rested.

Appellant testified that he did not at any time see or hear anyone in the water or receive any such report; he did not see any wreckage from the vessel or evidence of life; and after searching for two hours, Appellant thought that, for the safety of his crew and vessel, it was his duty to resume course due to the rough sea and bad weather, the possibility of danger from shifting cargo (including dynamite caps), and the set of the vessel toward the beach six miles away. Appellant stated that it was up to him to use his judgement in this matter and he did not think that any survivors would have been located if the ship had continued searching until daylight which was about six hours after the DEL VALLE departed.

APPEARANCE: Terriberry, Rault, Carroll, Yancey and Farrell of New Orleans, Louisiana by Alfred M. Farrell, Jr., Esquire, of Counsel.

FINDINGS OF FACT

On 23 June 1962, Appellant was serving as Master on board the United States SS DEL VALLE and acting under authority of his license while the ship was at sea in route to Abidjan, Republic of Ivory Coast, West Africa, on an easterly course running approximately parallel to the coast. The DEL VALLE is a freight vessel of 8258 gross tons and 441 feet long. She was loaded with cargo including dynamite caps and a deck load of poles.

At 2137 on this date, the DEL VALLE collided with the Republic of Ivory Coast wooden fishing trawler, the NOSTRADAMUS (28 gross tons and about 45 feet long) thirty miles west of Abidjan and six miles from shore. The DEL VALLE suffered no apparent damage. The NOSTRADAMUS was totally demolished and sank immediately. There was a crew of eight in addition to the Master on board the fishing vessel. The latter was the only survivor. He grabbed a life ring from his vessel and remained in the water throughout the subsequent

two-hour search directed by Appellant. The Master of the fishing vessel did not see anyone else in the water.

At the time, the sea was moderate to rough with swells six to eight feet high. The water temperature was about 80 degrees. The wind was from the southeast at 15 to 20 knots. It was overcast and there were rain squalls in the vicinity which blocked out reception on the radar. The current and wind had been setting the DEL VALLE toward the shore to the north at the rate of seventenths knots while the ship was proceeding at 15 knots. The visibility was 5 to 6 miles except in the rain squalls.

Immediately upon impact, the mate on watch on the DEL VALLE stopped the engines and sounded the general alarm. Appellant was on the bridge in a matter of seconds. Without delay, life rings with activated water lights were thrown overboard pursuant to orders given by Appellant. Searchlights were turned on and a lifeboat was manned with the Second Mate in charge. As Appellant maneuvered the ship to return to the scene of the collision before lowering the lifeboat, a lookout momentarily saw a person in the water and shouted out, but he did not report it to Appellant. About the same time, the Third Mate heard someone in the water calling, but this was not reported to Appellant. The lifeboat was lowered approximately 24 minutes after the collision occurred and searched in vain for survivors until 2255 when the Second Mate reported to Appellant that it was too rough to maneuver the lifeboat. The search was continued until 2337 without the lifeboat. Appellant did not see any evidence of life or wreckage on the water and received no report of such from anyone on the ship. The appearance of the lighted life rings on the water indicated that the search was being conducted at the place where the fishing vessel went down.

Beginning at 2300, the DEL VALLE transmitted an "all ships" message three times on 500 kilocycles reporting the casualty. The only acknowledgement of receipt was from radio Abidjan (TUS). Appellant also reported the casualty by radio to the ship's agent at Abidjan.

As a result of orders given by Appellant at 2337, the DEL VALLE was maneuvered to resume her course to Abidjan and arrived

there about 0600. Morning twilight was at 0545 and sunrise at 0608.

Port authorities boarded the ship on arrival and investigated the matter. The vessels in the fishing fleet were required to report at 0800. When the NOSTRADAMUS did not call in, it was presumed that she was lost and a plane was sent out that morning to conduct a search. The report of the search was completely negative. No provision was made for any further search.

At nightfall on 25 June, the Master of the NOSTRADAMUS was rescued from the water by the crew of the DAUPHIN about 25 miles east of, and 5 miles to the south of, the scene of the collision.

Appellant has no prior disciplinary record. In 1954, he received a citation from the President of the Republic of Liberia for the "sentiments of humanity" displayed by Appellant.

OPINION

The single issue to be considered is whether Appellant was guilty of negligence in leaving the scene of the collision after almost two hours of diligent searching for survivors rather than waiting until daylight approximately six hours later. It is conceded that Appellant conducted as thorough a search as was reasonable under the circumstances while his ship remained in the vicinity of the casualty.

The two statutes which have some application to this case are 46 U. S. Code 728 and 33 U. S. Code 367. They both state, in essence, that it is the duty of the master or person in charge of a vessel to render assistance at sea to any person in danger so far as this can be done without serious danger to his own vessel, crew, or passengers.

Appellant's obligation, in his position as Master, was to render assistance to the same extent as this would have been done by a reasonably prudent master under the same circumstances. Judging the matter from the point of view of a prudent master at the time of the emergency, I do not think there is substantial evidence to prove that Appellant was negligent.

The situation which faced Appellant was that he had carefully

conducted a search of the area for almost two hours without finding any evidence of life or wreckage from the sunken vessel which Appellant surmised and had been a small fishing vessel. The sea was too rough to risk the lives of the lifeboat crew any longer after the boat had been in the water slightly less than an hour. The ship was being set closer to the shore which was only a few miles off and could not be seen under cover of darkness. There would be danger of the cargo shifting, particularly the dynamite, if the ship remained practically stationary.

Under these circumstances it was necessary for Appellant to decide what to do by weighing the possibility of persons still being alive in the water against the possibility of danger to his ship and crew. Since the fishing vessel disappeared immediately when struck, it was improbable that there were any survivors, and the chance of this became more remote after two hours. Hence, Appellant had reason to believe that he had done everything he could to render assistance. On the other hand, the DEL VALLE and her crew might have been in serious danger by daylight if Appellant had remained in the vicinity until then.

The fact that a person or persons in the water were momentarily seen and heard is not attributable to appellant in judging his conduct since any such information should have been reported directly to Appellant who was busy maneuvering the ship and directing the lowering of the lifeboat at the time. In any event, the significance of this information is considerably reduced by the fact that these two instances occurred before the lifeboat was in the water and absolutely nothing to revive the hope of finding survivors was encountered in the next hour and a half or more. The fact that the Master of the NOSTRADAMUS almost miraculously survived, and might have been picked up by the DEL VALLE if she had remained until daylight, interjects an element of hindsight on the basis of which it would be improper to conclude that Appellant acted negligently in leaving the scene. The almost perfunctory search, which was initiated in Abidjan after daylight as a result of the radio message from the DEL VALLE and Appellant's report of the incident, points out the hopelessness of the situation as viewed by others than Appellant.

In a similar case (*CITY OF ROME* - S. 51, 1927 A.M.C. 1844), a submarine was struck by the CITY OF ROME at night and sank

within two minutes. About six persons escaped from the submarine but only three of them were saved from the water by a boat from the CITY OF ROME. The latter stood by for an hour and forty minutes before departing. (The fate of the other persons in the water is not mentioned.) It was held that the Master of the CITY OF ROME was not negligent for leaving the scene.

On the basis of the probability of there being survivors, there is greater reason to condone Appellant's conduct than that of the Master of the CITY OF ROME. The wooden fishing vessel was not as strong as a submarine, the former sank more quickly, and Appellant had no knowledge of any survivors whereas a boat from the CITY OF ROME picked up three men.

CONCLUSION

Under all the facts and circumstances of this case, it is my opinion that Appellant continued the search as long as there was a reasonable possibility of rescuing survivors. Therefore, Appellant's decision to resume course to Abidjan before daylight does not indicate a lack of judgement which constituted a failure to exercise the care demanded by the circumstances, although later developments showed that another course of action would have been preferable. Therefore, Appellant acted with reasonable prudence and he was not negligent within the meaning of 46 U.S. Code 239(g) as defined in 46 Code of Federal Regulations 137.05-20 (a)(2).

The conclusion that Appellant was guilty of negligence is set aside and the specification is dismissed.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 13 August 1963, is VACATED.

D. McG. MORRISON
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 27th day of November 1963.

***** END OF DECISION NO. 1430 *****

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