

In The Matter Of License No. 185391 And All Other Licenses
Issued to: JAN VAN DORN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1078

JAN VAN DORN

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

By order dated 21 April 1958, an Examiner of the United States Coast Guard at San Francisco, California, suspended Appellant's license upon finding him guilty of negligence. Two specifications allege that while serving as Master on board the United States SS REMSEN HEIGHTS under authority of the document above described, on or about 23 April 1957, Appellant contributed to a collision between his vessel and the SS PRESIDENT JOHNSON, during conditions of fog and low visibility, by failing to stop the engines on his ship upon hearing the fog signal of another vessel forward of the beam, the position of which vessel was not ascertained (First Specification); and by navigating his vessel at an immoderate speed (Second Specification).

At the hearing, Appellant was represented by counsel of his own choice. Counsel entered a plea of not guilty to the charge and each specification on behalf of Appellant who was not present on the first day of the hearing.

The Investigating Officer and Appellant's counsel made their

opening statements. The entire record of the Coast Guard casualty investigation and findings of fact based on this record were stipulated in evidence. Counsel stated that the findings of fact represented a fair summary of the rather long record of investigation.

Appellant appeared at a later date and testified in his behalf. Counsel also submitted two exhibits as further evidence. Appellant testified that he did not order the engines stopped when the whistle signal of the other ship was reported to him because the REMSEN HEIGHTS was in the middle of the open channel or fairway, the PRESIDENT JOHNSON was approaching " quite fast," and Appellant's ship was in the path of the other vessel.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant's counsel were heard and both parties were given an opportunity to submit proposed findings and conclusions. The Examiner then rendered the decision in which he concluded that the charge and two specifications had been proved. An order was entered suspending Appellant's license for a period of three months.

The decision was served on 23 April 1958. Appeal was timely filed on 16 May 1958.

FINDINGS OF FACT

On 23 April 1957, Appellant was serving as Master on board the United States SS REMSEN HEIGHTS and acting under authority of his License No. 185391 when his ship collided with the United States SS PRESIDENT JOHNSON at a point approximately one mile in a southwesterly direction from Toga Se Buoy, the sea buoy marking the approach to the marked channel leading into the harbor of Nagoya, Japan, to the northeast of the buoy. The collision occurred at 0415 in a heavy fog which limited the visibility to less than one-fourth of a mile in the vicinity of the casualty. The bow of the PRESIDENT JOHNSON penetrated several feet into the port side of the REMSEN HEIGHTS at an angle of ninety degrees. The cost of the repairs to both vessels was slightly more than \$100,000. There were no personnel injuries and no materiel failure was involved.

The REMSEN HEIGHTS is a Victory type cargo vessel, 439 feet in

length and 7639 gross tons. She was outbound from Nagoya with a draft of 15 feet, 6 inches forward and 23 feet, 6 inches aft. The vessel was equipped with radar which was in good working condition and in operation at all pertinent times.

The PRESIDENT JOHNSON is a C-3 type cargo vessel, 468 feet in length and 7995 gross tons. She was proceeding toward Toga Se Buoy on course 352 degrees true at full ahead maneuvering speed of 12 knots until about three minutes before the collision. Her draft was 21 feet, 3 inches forward and 29 feet, 7 inches aft at the time of the accident. She also was equipped with radar.

The REMSEN HEIGHTS departed from Nagoya at 0235 on 23 April 1957 with a pilot on board. The pilot was discharged at 0333 when the ship was near the seaward end of the marked channel and Appellant took the conn navigating largely by his personal observation of the radarscope. The Mate on watch and helmsman were also on the bridge. The ship proceeded on the course 220 degrees true, at one-half maneuvering speed of about 8 knots, toward Toga Se Buoy which was approximately 5 miles ahead. Fog signals were being sounded due to the fog.

At 0357, Appellant first observed a pip on the radarscope which represented the vessel later identified as the PRESIDENT JOHNSON. At this time, the other ship was bearing 186 degrees true at a distance of 4 miles. The radar was set on the 4 mile range scale. Neither this range and bearing nor subsequent ones observed by Appellant were plotted or recorded in any manner. Just after Appellant saw this pip on the radarscope, the Mate on watch reported that he heard a whistle of the port bow. Appellant concluded that this signal came from the ship he was observing on the radar. The engine speed was not changed from 8 knots.

At 0410, Toga Se Buoy was passed close abeam to port. Appellant ordered a course change to 230 degrees true in order to allow the approaching vessel sufficient room to pass under the stern of the REMSEN HEIGHTS and negotiate the turn to the right, toward Nogoya, at Toga Se Buoy. Appellant estimated from the radarscope that the PRESIDENT JOHNSON was bearing 175 degrees true at a distance of 1.2 miles. Ordinarily, Appellant would have changed course to 170 degrees true at Toga Se Buoy in order to proceed seaward.

When the radar indicated to Appellant that the other ship was 4 points on the port bow at a distance of less than a mile, he changed course to 240 degrees true at 0413 but the engine speed was still not altered. At 0414, course was changed 10 degrees to the right, for the third time, to 250 degrees true. Appellant ordered the speed reduced to slow ahead of 4 knots. A few seconds later, the masthead lights of the PRESIDENT JOHNSON were sighted 600 feet away, one point forward of the port beam. Appellant ordered hard right rudder and immediately countermanded this with hard left rudder. He ordered the engines full speed ahead. Before these orders had any appreciable effect, the bow of the PRESIDENT JOHNSON penetrated the port side of the REMSEN HEIGHTS at 0415 and remained there until the extent of the damage was investigated.

As indicated above, the PRESIDENT JOHNSON was on course 352 degrees true making 12 knots. At 0400, the fog signal of the REMSEN HEIGHTS was heard on the starboard bow and reported to the Master of the PRESIDENT JOHNSON. It was reported again at 0412. Speed was then reduced to one-half maneuvering speed of 8 knots. The Second Mate was manning the radar at 0412 and he reported to the Master that the REMSEN HEIGHTS was bearing 012 degrees true at a distance of 2 miles. (Apparently this range was erroneous in that it was greater than the actual distance.) The lights of the latter vessel were sighted at a distance of less than 2 ship lengths from the PRESIDENT JOHNSON whose Master ordered hard right rudder and full speed astern less than a minute before the two vessels came together. Both vessels returned to Nagoya for repairs.

Appellant has no prior record

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that:

POINT I. Appellant was not required to order the engines stopped when the other ship's fog signal was first heard. The "position" of the PRESIDENT JOHNSON was "ascertained" within the meaning of Rule 16, as to course and speed, at least as accurately by radar observation as these factors could have been ascertained

by visual observation. Appellant knew that the other vessel was in the fairway of the same channel and proceeding in the opposite direction in a narrow channel. Therefore, her position was ascertained.

POINT II. The speed of Appellant's ship was not immoderate considering the circumstances known to him at the time. Appellant took the action most likely to avoid collision by turning to the right to get out of the fairway of the narrow channel and the apparent path of the PRESIDENT JOHNSON. The alternative solution of slowing his ship was not practicable since avoiding action was necessary with a vessel approaching at a speed of 12 knots in a heavy fog. Factually, the record shows that the two vessels were brought closer to each other, than the courses steered indicate, because the clockwise tidal swirl around Toga Se Buoy set Appellant's ship to the east and the PRESIDENT JOHNSON to the west.

POINT III. The three month's suspension of Appellant's license is excessive. The Master and Mate of the other ship received suspension for the same length of time although their ship was much more at fault than the REMSEN HEIGHTS. [Appeal No. 989](#) recognizes that it is pertinent in imposing suspension orders to consider the relative degree of fault of two ships in a collision.

APPEARANCES: Graham, James and Rolph of San Francisco, California, by Francis L. Tetreault, Esquire, of Counsel.

OPINION

Appellant's argument cannot prevail with regard to either of the specifications. Navigation in fog on the high seas is governed by Rule 16 of the International Rules of the Road (33 U.S.C. 145n) which is very strictly enforced by the courts. The slightest revised wording of the rule which became effective on 1 January 1954 reads as follows:

"(a) Every vessel, or seaplane when taxi-ing on the water, shall, in fog, mist, falling snow, heavy rainstorms or any other condition similarly restricting visibility, go at a moderate speed, having careful regard to the existing circumstances and conditions.

(b) A power-driven 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."

POINT I.

It has been stated repeatedly that the command to stop the vessel's engines is imperative when the conditions described in the above Rule 16 (b) confront the navigator. See *Commandant's Appeal Decisions* [Nos. 728](#) and [989](#) citing *Lie v. San Francisco and Portland SS Co.* (1917), 243 U.S. 291; *Rules of the Nautical Road* by Farwell, rev. ed. by Prunski (1954), page 315, 316; *Rules of the Road at Sea* (1920) by LaBoyteaux, page 88 to 103; *Griffin on Collision* (1949) , page 313 to 323. In the Supreme Court case cited above, the SELJA heard the other vessels's fog signal 16 minutes before the collision occurred but her engines were not stopped until 10 later. The SELJA was held mutually liable with the other vessel, the court stated that ". . . the case is not one for the application of refinements as to what would have been good seamanship without the rule . . . "

Thus, Appellant was guilty of this statutory violation unless the position of the PRESIDENT JOHNSON was "ascertained" by radar observations and other known factors when the fog signal was reported to Appellant at 0357, or unless the "circumstances" were such that the REMSEN HEIGHTS would have been placed in immediate danger by stopping the engines at this time. the latter possibility is eliminated by Appellant's admission, in his testimony at the hearing, that there would have been no danger, independent of the other vessel, in stopping the engines of his ship. Considering the fact that there was at least a six-mile width of open sea in which either vessel could navigate, it cannot be seriously claimed that the temporary stopping of the engines would have placed Appellant's vessel in danger due to the presence of the other vessel. The imperative command of Rule 16(b) is to immediately stop the vessel's engines when a fog signal is heard and then navigate with caution. It is not required that the engines remain stopped indefinitely or even until the other vessel is sighted.

Furthermore, I do not agree with Appellant's contention that by means of his radar observations and his knowledge as to the courses the other vessel would take in the narrow channel, he had "ascertained" the position of the PRESIDENT JOHNSON. First of all, as indicated above, the ships clearly were not navigating in a narrow channel. Appellant might properly assume that the other vessel was heading for Nagoya but since the area of navigation was far from being restricted to the limits of a narrow channel, he could not determine what courses this ship would follow in reaching her destination.

Limited to the radar information, it is apparent that Appellant could not have known the course of the PRESIDENT JOHNSON when he received the first report of her fog signal because this report was made just after Appellant initially observed, at 0357, the pip on the radarscope representing the other ship. In cases prior to where the use of radar was involved, the courts have held that the position of another vessel is not "ascertained" unless her course, or change of position, as well as her momentary location is known. *The El Monte* (D.C.N.Y., 1902), 114 fED. 796; *The Providence* (D.C.R.I., 1922), 282 fED. 658. Appellant did not comply with these standards. A momentary, clear visual sighting of the ship would have disclosed her approximate course to Appellant, but one radar observation will not do so.

As stated in *Commandant's Appeal Decision [No. 989](#)* of 22 November 1957, there has not been brought to my attention any judicial authority which states that the position of a vessel has been "ascertained" by seeing on a radarscope an image which represents the vessel; it is not the function of the Coast Guard to make such an independent determination with respect to a statutory rule of navigation which has been so stringently enforced by the courts. Consequently, Appellant was bound by the rule requiring the engines of his ship to be stopped when a fog signal was heard coming forward of her beam.

It seems that the result, as to this issue, undoubtedly would have been the same in England. Appellant has cited *The Prins Alexander* (House of Lords, 1955), 2 Lloyd's Rep. 1, as support for the proposition that the use of radar is an accepted means of

"ascertaining " the position of a vessel without the necessity of stopping the engines on hearing a fog signal. This case pertains to a collision, on 10 July 1952, in the North Sea between two vessels proceeding on opposite courses in foggy weather. Counsel for the N.O. ROGENAES contended that the position of the PRINS ALEXANDER had been "ascertained" by a series of unrecorded radar observations before her of signal was heard and, therefore, it was not necessary to stop the engines of the ROGENAES. The court first referred to Lord Macmillan's observations, in *The Toyooka Maru-Kiangsu* (1935) A.C. 177, that the position of the TOYOOKA MARU was inferred, not ascertained, and the inference turned out to be wrong; the only data available were that the fog signals were heard on the KIANGSU's port bow, that the outward bound ships keep to the south side of the channel and that it was improbable that a vessel would be crossing the fairway in a fog; an inference based on these data was not an ascertainment within the meaning of Rule 16 although, in some cases, the data on which an inference is founded may be so conclusive as to raise the inference to the level of a certainty or ascertainment. The court, in the PRINS ALEXANDER, then continued by stating:

"There are obviously possibilities of error in the use of the PPI (Plan position indicator in a radar set). There should be, we are advised, in the circumstances such as the present, continuous observation by one man and plotting of bearing if reliable inferences are to be drawn. Art, 16 [Rule 16] stands, and it is to be noted that the new Rule which has now replaced it is in substantially the same terms. It may be that proper observations on a PPI can 'ascertain' the position of a vessel in the sense explained by Lord Macmillan. They clearly did not do so in this case so far as the N.O. ROGENAES is concerned."

This seems to be contrary to the proposition for which Appellant cites this English case as authority. It is also noted that the court does not positively state that there are any circumstances under which the position of a vessel can be "ascertained" by radar observations. The use of the word "may" indicates that the court felt there is only a possibility that such observations might, in any case, be considered adequate to meet the requirements of the rule.

POINT II

It is also my opinion that Appellant violated Rule 16 (a) by continuing at a speed of 8 knots, until one minute before the collision, in a dense fog when he knew that a ship was approaching at a high rate of speed on a converging course. A quick mental calculation by Appellant, when he became aware of the presence of the PRESIDENT JOHNSON at 0357, should have made it apparent that both ships would be in the vicinity of Toga Se Buoy in about 15 minutes. Since Appellant did not know at what point the other vessel intended to turn to her right toward Nagoya, it was incumbent on him to navigate with extreme caution. This could have been accomplished best by slowing his ship immediately until the intention of the other vessel could be determined. Only then would he have maneuvered his ship with assurance of avoiding a collision. Such action would have been consistent with the statement that "where the danger is great, the greater should be the precaution." *The Clarita* (1874) 90 U.S. 1.

Even though continuing at 8 knots, Appellant did not plot the radar ranges and bearings of the other vessel in order to obtain an estimate of her course and speed. The failure to do this held to constitute poor seamanship. *The marine Leopard* (D.C.Calif. 1957) 152 F. Supp 197, 1957 A.M.C. 2477. Such information would have indicated to Appellant that the two ships would approach close to each other to the west of Toga Se Buoy if the PRESIDENT JOHNSON did not change her course to pass the buoy abeam to port. The Mate on watch was available to plot these ranges and bearings on a separate plotting board and convert them from relative movement to the true course and speed of the other vessel.

Another factor to consider is that the REMSEN HEIGHTS probably could not meet the mechanical tests set forth in some court decisions to determine whether the speed of a ship was "moderate." *Commandant's Appeal Decision No. 955* cites decisions referring to the tests of stopping dead in the water within one-half the distance of visibility and being able to stop before colliding with an approaching vessel which is obeying the rule to proceed at a moderate speed.

For these reasons, there appears to have been no justification for Appellant's action in navigating his ship at a speed of 8 knots

past Toga Se Buoy and then turning to the right on the assumption that this would allow the approaching vessel ample room to pass astern of the REMSEN HEIGHTS. Rule 16 was intended to do away with just such speculation as to what the other vessel intends to do in heavy fog which prevents ships from seeing each other. Appellant's guess in this case was incorrect although the record indicates that the PRESIDENT JOHNSON went beyond the point where ships usually turned to the right to approach the harbor of Nagoya. The possibility that the ships were set closer together by a tidal swirl around Toga Se Buoy does not alter the fact that Appellant was navigating at an immoderate speed under the "existing circumstances and conditions." Rule 16(a).

CONCLUSIONS

It is my conclusion that, in both of these respects, Appellant was not only guilty of negligence but that his negligence contributed to the collision. The International Conference for the Safety of Life at Sea, London, 1948, recommended that Masters be informed that the possession of radar would not, in any way, relieve them from their obligations strictly to observe the International Rules for preventing collisions at sea, and in particular, the obligations contained in Rule 16. Nevertheless, due to the apparently greater fault on the part of the PRESIDENT JOHNSON and the three months' suspension imposed against her Master and Mate, the order herein will be modified.

ORDER

The order of suspension is modified to provide for a period of two months' suspension, rather than three months.

As so MODIFIED, the order of the Examiner dated San Francisco, California, on 21 April 1958, is AFFIRMED.

J. A. Hirshfield
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 19th day of November, 1958.

***** END OF DECISION NO. 1078 *****

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