In the Matter of License No. 148298 and all other Licenses and Documents

Issued to: CHARLES S. COLLINS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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CHARLES S. COLLINS

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 10 November 1955, an Examiner of the United States Coast Guard at Boston, Massachusetts, suspended License No. 148298 issued to Charles S. Collins upon finding him guilty of negligence based upon two specifications alleging in substance that while serving as operator on board the American MV STARDUST under authority of the license above described, on or about 19 July 1955, while said vessel was in the port of Boothbay Harbor, Maine, he overtook and passed the yacht ISTAR without sounding the signal prescribed in 33 CFR 80.6 and that during this maneuver he established a risk of collision by crossing the bow of the ISTAR, while still an overtaking vessel, in violation of 33 U.S.C. 209.

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 counsel of his own choice. He entered a plea of "not guilty" to the charge and each specification preferred against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of the Master of the yacht ISTAR, the testimony of William Danforth, who had been on board the motorboat BASHFULL II, and several sketches prepared by these witnesses.

In defense, Appellant offered in evidence his sworn testimony, that of Richard D. Alley, an eyewitness from ashore, that of Ross E. Dixon, operator of the NELLIE G II and that of Charles E. Wade, President of the Passenger Boat Association of Boothbay.

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 conclusion, the Examiner announced his decision and concluded that the charge and specifications had been proved. He then entered the order suspending Appellant's License No. 148298 and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority for a period of two months on a probationary period of twelve months.

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

FINDINGS OF FACT

On 19 July 1955, Appellant was serving as operator on board the American MV STARDUST and acting under authority of his License No. 148298.

About noon on that date, the Boothbay Harbor, Maine, at a speed of approximately two knots, bound for a fuel dock. The STARDUST, returning from a passenger-carrying trip and making about five knots, overhauled the yacht from astern without sounding any signal. Passing about fifty feet to the right of the ISTAR, the STARDUST then came hard left, to get to its berth, and crossed the bow of the yacht, forcing the ISTAR to stop and reverse in order to avoid collision.

BASES OF APPEAL

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

I that his right to a fair hearing was prejudiced because:

a) the Appellant resided with the Portland, Maine Marine Inspection Zone, and the events in question took place there, but a Coast Guard officer from the Boston Zone acted as Investigating Officer;

b) the time and place of hearing were inconvenient and unreasonable;

c) there was a refusal to call the owner of the ISTAR, who was the complainant, as a witness;

II that the Findings of the Examiner are contrary to the facts established, are inconsistent, and are based upon prejudiced testimony;

III that the penalty prescribed for violation of Rules of the Road in 33 U.S.C. 158 is exclusive and no action may properly be taken to suspend Appellant's license;

IV that the Examiner erred in holding the rules for overtaking applicable to the situation, the case actually being one of "Special Circumstances."

APPEARANCE: Woodman, Skelton, Thompson and Chapman
83 Exchange Street
Portland 3, Maine

by Benjamin Thompson.

OPINION

Prior to the amendment of R.S. 4450 in 1936, Appellant's

reasoning with respect to the use of an Investigating Officer from the Boston, Massachusetts, Marine Inspection zone, in connection with proceedings involving persons and activities within another such zone, might have been a valid technical objection to the proceedings. However, Section 4 of the Act of May 27, 1936, 49 Stat. 1381, removed any reference to "local inspectors" and left no limitation as to venue in proceedings of marine casualty investigation boards. Nothing in Reorganization Plan No. 3 of 1946 imposed such a limitation, nor did any regulation adopted pursuant to R.S. 4450 as amended. The authority of an Investigating Officer appointed pursuant to 46 CFR 137.05-1 is not limited in its activity to the Marine Inspection Zone in which he happens to be stationed.

With respect to the choice of Bath, Maine, as the place of hearing, it is noted that all witnesses who testified, as well as Appellant himself, lived in the Bath-Boothbay area. Nothing in the record indicates that Bath was less convenient than Portland. At no point did Appellant or his counsel express any desire to hold the hearing at any other time or place. No request was made for continuance. No inconvenience appeared and none was demonstrated. It cannot be claimed now.

As to the alleged prejudice arising from the failure to have the owner of the yacht ISTAR available for cross-examination, the only reference in the record to the possibility that Atkinson's absence had any significance occurred when the Examiner precluded Appellant from testifying about an alleged conversation, some days after 19 July, with Atkinson (R. 36). The grounds for refusal to hear the testimony were that Atkinson was not a witness before the Examiner and was not a "complainant" in the proceeding. Appellant's counsel stated, "* * * it seems pretty strange to me that he doesn't show up to testify under oath to what he has complained of." The Examiner replied, "You can argue that if you want * * *." (R. 37).

It is technically correct that Atkinson was not a "complainant" in the proceeding. Whatever may be the source of the complaint received by Coast Guard officials, the charges are preferred by a Coast Guard Investigating Officer and the proceedings are brought in the name of the United States. Proceedings under Part 137, Title 46, Code of Federal Regulations,

are not between private parties. The parties to the proceeding are the United States Coast Guard, as the agency charged with carrying out the provisions of R.S. 4450, as amended, and the person charged.

Atkinson, in this case, must be viewed as a potential witness. At no time did Appellant make request or indicate a wish to take the testimony of Atkinson by any of the means that were available to him. In fact, the argument which the Examiner afforded Appellant the opportunity to make was not made. In the absence of any offer of proof at the time Appellant's testimony was precluded, of any request to have Atkinson appear, and of any argument that the nonappearance of a potential witness should have given rise to an unfavorable inference, it will not be said that the failure of the Investigating Officer to secure testimony which on the face of the record would be merely cumulative is in itself prejudicial.

There is nothing in this record to support an assertion, made only on appeal, that Appellant was denied a fair hearing.

Appellant's second contention is that the Examiner's Findings are contrary to the facts and are inconsistent. There may be possibilities of differing from the Examiner's precise findings as to distances and speeds, but the pattern of events which the Examiner found to constitute negligence is well dawn in the record. The Examiner, having before him the persons testifying and being in a position to evaluate the possible distortions introduced by prejudice or interest, specifically rejected the version of events given by Appellant and Appellant's sole testifying eyewitness. The evidence which the Examiner accepted substantially supports the ultimate findings.

In argument that the penalty prescribed by 33 U.S.C. 158 is exclusive, Appellant has cited *Bulger v. Benson* (C.C.A. 9, 1920) 262 Fed. 929. It is believed that whatever may have been the situation prior to 1936, the amendments to R.S. 4450 in that year eliminated the applicability of that case to the proceedings under that statute. While Appellant's acts may have exposed him to the monetary penalty prescribed, the acts also constitute negligence in the remedial proceedings under R.S. 4450, as amended.

Finally, the Examiner's application of the rules for

overtaking is appropriate. Appellant cannot avoid the duties imposed upon the overtaking vessel by claiming that his intention to proceed to his usual berth rendered it necessary for him to cross sharply ahead of the vessel he was overtaking. On the facts found, he was coming up from astern of the yacht and, if he insisted on passing, his duties remained fixed until such time as he could have maneuvered ahead of the overtaken boat without embarrassing it. Both his failure to signal and his failure to keep well clear were faults.

ORDER

The order of the Examiner dated at Boston, Massachusetts, on 10 November 1955, is AFFIRMED.

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

Dated at Washington, D. C., this 17th day of May, 1956.

***** END OF DECISION NO. 891 *****

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