

In the Matter of License No. 185822 and all other Licenses
Issued to: TYLER B. CASTLE

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

929

TYLER B. CASTLE

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 11 January 1956, an Examiner of the United States Coast Guard at San Francisco, California, suspended License No. 185822 issued to Tyler B. Castle upon finding him guilty of negligence based upon a specification alleging in substance that while serving as Master on board the American SS JOSE MARTI under authority of the license above described, on or about 23 February 1955, while conning said vessel, he wrongfully grounded the vessel in the vicinity of Paeg Am Light upon approaching the port of Inchon, Korea.

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 and he entered a plea of "not guilty" to the charge and specification under consideration.

Thereupon, the Investigating Officer made his opening statement. He introduced in evidence the testimony of five members

of the crew and several exhibits including the chart in use when the vessel ran aground (U. S. Hydrographic Office Chart No. 1383).

In defense, Appellant offered in evidence his sworn testimony.

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 decision and concluded that the charge and specification had been proved. He then entered the order suspending Appellant's License No. 185822, and all other licenses issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of three months on probation for a period of twelve months.

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

FINDINGS OF FACTS

On 23 February 1955, Appellant was serving as Master on board the American SS JOSE MARTI and acting under authority of his License No. 185822 when the ship ran aground in the vicinity of Paeg Am Light, at 0957, while approaching Inchon, Korea.

The JOSE MARTI is a Liberty-type cargo vessel of 7228 gross tons. At the time of this incident, she was carrying a cargo of 9722 tons of coal. Her draft was 25 feet, 5 inches forward and 30 feet, 6 inches aft. The weather was clear, visibility excellent, the sea moderate and there was a southwesterly breeze which had no appreciable effect on the ship. These conditions remained fairly constant from the time the JOSE MARTI commenced to negotiate the eastern entrance channel to Inchon until after the grounding occurred.

Appellant was conning the ship and the Third Mate was on watch as the vessel followed the recommended courses printed on the U. S. Hydrographic Office Chart No. 1383 (Anchorage Chart KB) by a broken line. there was a swept channel extending 300 yards from each side of the recommended course line until the channel narrowed in the

vicinity of Paeg Am Light. The recommended course is 037 degrees true for a distance of approximately 4 miles approaching Paeg Am Light. The chart recommends a course change to 356 degrees true at a point about .7 of a mile southeast of Paeg Am Light in order to pass a "possible wreck" and "obstructions" to port and a 4 fathom shoal to starboard. The locations of these obstacles were shown on the chart in use but none of them were physically marked with buoys or otherwise. The "obstruction" to the left of the course line was plotted about 300 yards from the broken course line and the "possible wreck" was indicated to the westward of the "obstruction." The 4 fathom shoal commences approximately 100 yards to the right of the course line printed on the chart.

Appellant ordered a change of course to 038 degrees true at 0922. While on that portion of the channel indicated by the course line of 037 degrees true on the chart, the Third Mate obtained three-point fixes by bearings on various objects at 0924, 0933 and 0941. These fixes showed that the ship was to the right of the course line. Appellant continued on course 038 degrees true although the tide was ebbing and the chart shows a 3 knot current setting in a direction of 196 degrees true in the area of Paeg Am Light at ebb tide. When Paeg Am Light was bearing 326 degrees true at 0952, Appellant ordered a change of course to 355 degrees true. The dead reckoning position was more than 300 yards to the right of the course line.

The ship was making good a speed of only 7.8 knots over the ground due to the adverse current. The engine revolutions indicated a speed of 10 knots. After the vessel steadied on her new course, a fix showed that she was 400 yards to the right of the course line. Appellant ordered a course change to 000 degrees true in an attempt to leave the 4 fathom shoal to port but the ship's bottom struck submerged rocks at the edge of the shoal at 0957. This occurred about .6 of a mile from Paeg Am Light on a bearing of 094 true from the light. The engines were stopped until the ship passed clear of the shoal at 0958. Appellant ordered full speed ahead and continued on to Inchon. There were no injuries to personnel and the cargo was not damaged. The bottom damage amounted to approximately \$100,000.

Appellant's prior record consists of an admonition in 1953 for inattention to duty.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the Examiner's finding of negligence is based solely on Appellant's decision to pass to the east of the 4 fathom shoal; this was a difficult channel to navigate; there was no pilot on board because none was available; Appellant had been unable to obtain the tide and current tables for this area despite many efforts; without the latter knowledge, Appellant underestimated the force of the strong and tricky tidal currents which swung the vessel wide of its intended course and placed her in dangerous proximity to the 4 fathom shoal.

Under these circumstances, Appellant's decision to pass to the east of the 4 fathom shoal, rather than to attempt to stop the vessel, was not a choice which was so unreasonable as to constitute negligence. The law does not require the same degree of judgement in sudden emergencies as when there is ample time to determine the best course of action.

In conclusion, it is respectfully requested that the Examiner's decision be reversed.

APPEARANCES AT HEARING: Messrs. Lillick, Geary, Olson, Adams
and Charles of San Francisco,
California, by Edward D. Ransom,
Esquire, of Counsel.
Robert L. Smith, Esquire, of San
Leandro, California, of Counsel.

APPEARANCE ON APPEAL: Messrs. Lillick, Geary, Wheat,
Adams and Charles of San
Francisco, California, by
Willard G. Gilson, Esquire, of
Counsel.

OPINION

Appellant's contentions are not persuasive particularly because his most serious error was that he did not make allowance

for the advance of the ship in the direction of course 038 degrees true when he ordered the change of course from 038 to 355 true with Paeg Am Light bearing 326 degrees true. A southerly extension of the recommended course of 356 degrees true, which is indicated on the chart by a broken line, shows that Appellant did not commence the course change to 356 until the ship had reached the point where she should have been steadying on the new course in order to pass between the "obstruction" to port and the 4 fathom shoal to starboard. The distance between the two obstacles was approximately 400 yards. Since the three fixes showed that the ship was to the right of the 037 recommended course line, it was apparent that the course change should have been ordered before the light was bearing 326 true. This turning bearing would have been safe if the ship had been on the recommended course line since the ship would then have been about 200 yards farther to the west. The fact that the turn was made too late was the primary reason why the vessel was in such a position after the turn was completed that grounding was almost inevitable by the time another fix was obtained and plotted. Hence, the later difficulties were due mainly to Appellant's negligent failure to commence the northerly course change sooner.

The effect of the current was that the ship had been set slightly farther to the right of the course line after the completion of the turn. Appellant did not make any allowance for this although he knew the tide was ebbing and the chart indicates that the current would be broad on the port bow when the ship began the change of course from 038 to 355. It was also negligence to ignore this factor even though it was not the primary reason for the grounding.

Contrary to Appellant's contentions, the Examiner, in his opinion, specifically commented on the above two aspects of Appellant's negligence: that he did not make allowance for the advance of the ship while turning and he did not anticipate the effect of the tidal current.

Although it may not have been a contributory cause of the grounding, it is noted that fixes were too infrequently obtained while approaching the turning point. Fixes could and should have been plotted continuously. While approaching a dangerous passage, a Master is bound to utilize every means available to determine the

position of his ship at all times.

The Examiner considered the mitigating factors that this was a difficult channel to navigate, there was no pilot, tide and current tables were not available, and there were other difficulties of navigation involved. As a result, the Examiner imposed only a probationary suspension. I agree with the Examiner that these factors did not exonerate Appellant from fault. A careful study of the chart in use and the proper application of the information contained thereon would have prevented this casualty. The visibility was very good and Appellant knew there was danger ahead. consequently, he was required to exercise more care in order to be acting in a reasonable, rather than a negligent, manner. "Where the danger is great, the greater should be the precaution, as prudent men in great emergencies employ their best exertions to ward off the danger." *The Clarita* (1874), 90 U.S. 1, 15.

As stated above, the conclusion that Appellant was negligent is based upon his conduct prior to the time when he was forced to make a choice after it was discovered that the ship was dangerously close to the 4 fathom shoal. Therefore, it is not necessary to discuss the propriety of Appellant's decision to pass to the east of the shoal. Appellant had ample time and information available to avoid causing the ship to be placed in this precarious position. This sudden emergency was brought about through Appellant's own fault.

ORDER

The order of the Examiner dated at San Francisco, California, on 11 January, 1956 is AFFIRMED.

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

Dated at Washington, D. C., this 5th day of November, 1956.

***** END OF DECISION NO. 929 *****

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