In the Matter of License No. A-69580 and all other Licenses and Documents

Issued to: JACK CLEMENT MILSTED

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

943

JACK CLEMENT MILSTED

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 24 August 1956, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended appellant's licenses and documents upon finding him guilty of negligence. Two specifications alleged in substance that while serving as operator of the American M/B SIROCCO under authority of the license above described, he contributed to a collision of his vessel with the F/V CAPTAIN ALFRED by failing to keep a proper lookout and by failing to keep his vessel, as the burdened vessel, clear of the fishing vessel.

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. Although advised of his right to be represented by counsel of his own choice, Appellant voluntarily elected to waive that right. He entered a plea of "guilty" to the charge and each specification proffered against him.

It was stipulated that the Examiner would consider statements made by Appellant, the operator of the CAPTAIN ALFRED and a crew member on the latter vessel.

The Examiner concluded that the charge and two specifications had been proved by plea. He then entered the order suspending Appellant's License No. A-59580, and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of three months.

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

FINDINGS OF FACT

On 10 August 1956, Appellant was serving as operator on board the American M/B SIROCCO and acting under authority of his License No. A-69580 when his vessel collided with the F/V CAPTAIN ALFRED at about 1000.

The SIROCCO was on a southeasterly course proceeding at a speed of about 15 miles per hour. Appellant did not observe the approaching fishing vessel, on his starboard side, until it was too late to take avoiding action to prevent a collision. the passenger on the SIROCCO was asleep at the time of the collision and he was injured slightly. The record does not indicate that Appellant was injured.

The operator of the F/V CAPTAIN ALFRED saw the SIROCCO at a distance of about one mile but did not pay much attention to her. He permitted his vessel to be steered by automatic pilot, at a speed of about 10 miles per hour, until the SIROCCO was approximately 50 feet away. The SIROCCO struck the port side of the fishing vessel before the operator of the latter vessel could turn his vessel to starboard. The two members of the crew were not injured. The operator of the fishing vessel suffered a broken collarbone and minor injuries.

Appellant has had no prior record during a period of 13 years.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant states that he did not seek legal representation or call witnesses because he was misled as to the probable severity of the order; the admitted negligence of the operator of the F/V CAPTAIN ALFRED was not taken into consideration; this order is too severe; and the order should not be effective against his Chief Mate's license since he was not acting in the capacity of Chief Mate.

OPINION

Appellant was informed of his rights, to be represented by counsel and to call witnesses, by both the Examiner and the Investigating Officer. Appellant was also told by the Examiner that the purpose of this proceeding was to determine whether Appellant would be permitted to go to sea in the American Merchant Marine and that one of the possible results of the hearing was an order of revocation. Hence, Appellant was fully apprised of his rights to legal representation and witnesses, the fact that the order would extend to any service on vessels where a license or document would be required, and the possible severity of the order. Appellant cannot now complain that he did not take advantage of his rights because he was misled by outside sources as to the probable extent of the order.

The record does not conclusively establish that negligence on the part of the operator of the CAPTAIN ALFRED contributed to the collision. He was bound to maintain his course and speed, as the privileged vessel in a crossing situation, until action by the burdened vessel alone could not be expected to prevent a collision. Hence, he would have been required to continue as he did even if he had kept the SIROCCO under close observation and discontinued steering by automatic pilot when he first saw the SIROCCO.

On the other hand, Appellant was clearly negligent as alleged in the two specifications. It was his duty under the Rules of the Road to keep out of the way of the fishing vessel because the SIROCCO was the burdened vessel. Hence, there do not appear to be any mitigating circumstances which would justify modifying the order of three months outright suspension.

Appellant's negligence was of such a nature that it reflects upon his service on any type or size vessel since the same rules apply in a crossing situation. Therefore, the order extends to his Chief Mate's license even though he was not serving under it at the time of this incident. This is consistent with the remedial purpose of these proceedings. Appellant's concern might be alleviated if it is noted that, with respect to any future reference to Appellant's service as a Chief Mate or other capacities under that license, the Coast Guard records will show that this act negligence occurred while Appellant was operating under his motorboat license.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 24 August 1956, is AFFIRMED.

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

Dated at Washington, D. C., this 20th day of December, 1956.

***** END OF DECISION NO. 943 *****

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