

In the Matter of License No. 211145
Issued to: OSCAR E. BERGGREN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

987

OSCAR E. BERGGREN

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 5 February 1957, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended Appellant's seaman documents upon finding him guilty of negligence. The specification alleges that while serving as Master on board the American SS WARRIOR under authority of the document above described, on or about 23 January 1957, Appellant contributed to the grounding of his vessel by failing to utilize all means at his command to establish her position.

At the beginning of 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 elected to waive that right and act as his own counsel. He entered a plea of not guilty to the charge and specifications.

The Investigating Officer made his opening statement and

introduced in evidence the testimony of Second Mate Steiner, two charts showing the location of the collision and certified copies of entries in the rough logbook and bell book of the WARRIOR.

In defense, Appellant offered in evidence his sworn testimony. Appellant stated that he was on the bridge keeping a lookout for traffic prior to the grounding while the Second Mate took bearings and plotted them on the chart; Appellant looked at the plotted positions but he did not attempt to verify their accuracy or to personally check the characteristics of the lights whose bearings the Second Mate was plotting. Appellant admitted that he had relied too much on the Second Mate due to his extensive experience.

At the conclusion of the hearing, the oral arguments of the Investigating Officer and Appellant were heard and both parties were given an opportunity to submit proposed findings and conclusions. The Examiner then announced the decision in which he concluded that the charge and specification had been proved. An order was entered suspending all documents, issued to Appellant, for a period of one month outright and two months on twelve months' probation.

The decision was served on 5 February 1957. Appeal was timely filed on 14 February 1957 and no additional matter has been received in support of this appeal.

FINDINGS OF FACT

On 23 January 1957, Appellant was serving as Master on board the American SS WARRIOR and acting under authority of his License No. 211145 when the ship ran aground in the shoals of Dry Tortugas at 0643 while enroute from Habana, Cuba to Tampa, Florida, via the Straits of Florida and the Gulf of Mexico.

The WARRIOR, a modified C-2 type vessel, got under way from Habana on 23 January with a draft of 23 feet, 3 inches forward and 24 feet aft. At 0042, she took her departure on course 345 degrees per gyro compass with Morro Castle Light abeam. There was a negligible gyro error. Speed was set at 15.5 knots and remained unchanged until the ship was aground. Appellant expected to make good a course of 348 degrees true allowing 3 degrees for the easterly set of the Gulf Stream. This course would carry the ship

along a track passing 6 miles west of Rebecca Shoal Light and through the approximately 10 mile wide passage between Rebecca Shoal and Dry Tortugas. The distance from Habana to this passage is about 87 miles.

Shortly after departure at 0042, Appellant left the bridge with orders for the watch officer to call Appellant when Dry Tortugas Light (visibility listed on Chart No. 1113:18 miles) or other lights were sighted. There was no radar on board. The ship was equipped with a radio direction finder and fathometer in good working condition but neither was used prior to the casualty.

The Second Mate had the 0400 to 0800 watch. AT 0530, he sighted a light bearing 020 degrees true which he identified as Cosgrove Shoal Light (Fl. ev. 5 sec.) but was actually Rebecca Shoal Light (Gp. Fl. (3) ev. 15 sec.). Cosgrove Shoal Light is about 20 miles east of Rebecca Shoal Light. Approximately equidistant between these two lights and farther south is Twenty-Eight Foot Shoal Lighted Bell Buoy (1 Qk. Fl.). The Second Mate called Appellant at 0530 and reported that a bearing had been obtained on Cosgrove Shoal Light. Appellant asked the Second Mate if he had checked the characteristics of the light and received an affirmative answer. Appellant then agreed with the Second Mate's recommendation to change course to the left. At approximately 0535, course was changed to 295 degrees gyro just before Appellant arrived on the bridge.

At 0538, Appellant was on the bridge when the Second Mate reported that the light sighted at 0530 was Twenty-Eight Foot Shoal Lighted Bell Buoy rather than Cosgrove Shoal Light. Based on this information, Appellant ordered a change of course to 345 degrees gyro. Course was then temporarily altered to 360 to pass a tanker.

Appellant remained in the pilothouse while the Second Mate obtained bearings from the flying bridge and plotted them on the chart. It was cloudy and the horizon was hazy. At 0558, the Second Mate plotted cross-bearings taken on the light thought to be Twenty-Eight Foot Shoal Buoy (actually Rebecca Shoal Light) and Dry Tortugas Light. The latter was visible and correctly identified by the Second Mate; but the assumed position of the ship, determined from the cross-bearings, was 28 miles from Dry Tortugas which is

listed on Chart No. 1113 as having a visibility of 18 miles. Appellant ordered a course change to 335 degrees after looking at the 0558 plotted position and another change to 330 degrees after the Second Mate plotted bearings on the same two lights at 0610. Appellant did not, at any time prior to the grounding, personally check the characteristics of the lights whose bearings were being plotted by the Second Mate.

Subsequent at 0610, no additional bearings were plotted before the grounding which occurred at 0643 on a sand bottom at Dry Tortugas about 7 miles west of the intended course line. It was only then that Appellant and the Second Mate realized that Rebecca Shoal Light had been successively identified as two other lights. The ship was backed free under her own power about 7 hours later and proceeded to Tampa. The damage was slight and there were no injuries to personnel.

Appellant has been going to sea since 1910 with no prior record. He obtained his first license in 1919. Both Appellant and the Second Mate had considerable experience in these waters.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant contends that the finding of negligence is not supported by the evidence; the only fault attributable to Appellant was his reliance upon a Second Mate with a Master's license; even assuming Appellant was negligent, the order is excessive and should be modified to an admonition in view of Appellant's unblemished record for 38 years.

OPINION

The evidence conclusively proves that Appellant was guilty of negligence as a result of having placed complete confidence in the navigation of the Second Mate. Regardless of the extent of the experience of those under his command, the Master is ultimately responsible for the safety of his ship and crew. Hence, a Master is guilty of negligence if he does not take all reasonable precautions to avoid dangers in navigation. Since vessels under careful navigators do not run aground in the ordinary course of events and no outside force materially affected the movement of the

WARRIOR, it is my opinion that Appellant was at fault for failing to utilize the available means to determine the position of his vessel prior to the grounding.

Appellant's primary fault was in standing a lookout watch while relying solely on the ability of the Second Mate to establish the ship's position by plotting the bearings of lights in the vicinity. This blind trust by Appellant extended even to the time after which the Second Mate admitted that he had mistakenly identified the light sighted at 0530 as Cosgrove Shoal Light. The Second Mate revised his original report to conclude, at 0538, that the light was Twenty-Eight Foot Shoal Buoy; but it was eventually identified as Rebecca Shoal Light. The characteristics of these three lights are so different that this second error would have been discovered in ample time to avoid the grounding if Appellant had visually checked the light characteristics after the initial error of the Second Mate was made known to Appellant.

Later on, Appellant merely glanced at the charted positions plotted by the Second Mate at 0558 and 0610. These cross-bearings indicated that the ship was 28 and 26 miles, at the respective times, away from Dry Tortugas Light. At either of these times, a brief examination of the chart alone would have cast considerable doubt upon the accuracy of the position because the visibility of Dry Tortugas Light is shown as 18 miles. In the prevailing haze, this light would probably not have been sighted at distances of 28 and 26 miles.

It is further noted that no bearings were plotted after 0610 - more than a half hour before the grounding. Such information would also have helped to alert Appellant to the dangerous situation.

In addition to the above, Appellant negligently failed to make use of the fathometer. This would have shown him that the ship was well within the 100-fathom curve at the time of the 0558 plot rather than approaching the 100-fathom curve as he was led to believe by the 0558 assumed position.

Still another factor to consider is the failure to make use of a larger scale chart while approaching Dry Tortugas. Such a chart was on board and its use would not only have decreased the

possibility of errors by the Second Mate but also would have increased the chances of Appellant discovering the Second Mate's mistake before it was too late.

Appellant's failure to take these reasonable precautions, during the more than an hour he was on the bridge before the casualty, constituted negligence. In *The Thingvalla* (C.C.A. 2, 1891), 48 Fed. 764, it was held that whether a navigator is negligent must be judged by the knowledge he had, or ought to have had, at the time. According to this criterion, Appellant was bound to have taken advantage of the above means of knowing that his ship was heading into danger.

Concerning Appellant's contention that the order is excessive in view of his prior clear record, the Examiner specifically commented on the latter fact before imposing the order of suspension. Since the order is not considered to be unduly harsh under the circumstances, it will not be modified.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 5 February 1957, is AFFIRMED.

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

Dated at Washington, D. C., this 1st day of November, 1957.

***** END OF DECISION NO. 987 *****

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