In the Matter of License No. 172036 and all other Licenses
Issued to: PAUL B. HYATT

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1140

PAUL B. HYATT

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 29 August 1958, an Examiner of the United States Coast Guard at San Francisco, California, suspended License No. 172036 and all other valid licenses issued to Paul B. Hyatt upon finding him guilty of negligence. The specifications alleged in substance that while serving as Master on board the United States SS F.E. WEYERHAEUSER under authority of the license above described, on or about 8 September 1955, while appellant was conning said vessel outbound from Coos Bay, Oregon in a fog, he contributed to a collision between the SS F. E. WEYERHAEUSER and the U. S. Army Dredge PACIFIC by:

(1) Failing to stop the engines of his vessel and determine the position of the other vessel upon hearing her fog signal in an unascertained position forward of the beam of the F. E. WEYERHAEUSER.

(2) Negligently failing to keep a proper lookout on board the F. E. WEYERHAEUSER.

(3) Negligently failing to obtain, properly evaluated, and use information available from the radar of the F. E. WEYERHAEUSER as to the position, course, speed and movements of the approaching Dredge PACIFIC.

At the beginning of the hearing on 9 November 1956, Appellant's counsel moved for dismissal of the proceedings upon

grounds of laches. The motion was denied without prejudice. At the second session 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. Appellant was represented by counsel of his own choice throughout the entire course of the proceedings. He entered a plea of "not guilty" to the charge and all specifications.

The Investigating Officer made an opening statement and then from the period of 5 December 1956 through 19 February 1957, in a series of sessions, presented the Government's case. This consisted of testimony from the helmsman, Boatswain, Second Assistant Engineer, First Assistant Engineer, Chief Engineer, and Chief Mate of the WEYERHAEUSER at the time of the collision, and the Master of the PACIFIC. Testimony of other members of the crew of the PACIFIC was stipulated in evidence as being the same as contained in the record of the preliminary investigation of the incident. The Investigating Officer then rested.

At the close of the Government's case the Appellant moved for dismissal of the charge and specifications. Upon denial of this motion, Appellant called as a witness and presented testimony of the Chief Mate of the F. E. WEYERHAEUSER at the time of collision. Appellant then took the stand, was sworn, and testified in his own behalf.

On 11 December 1957, the Examiner heard arguments in behalf of the Government and the Appellant. On 29 August 1958, the Examiner announced his decision. He concluded that the first and second specifications were proved and that the charge was proved but that the third specification was not proved. An order was entered suspending License No. 172036 and all other valid licenses issued to Appellant, for a period of three months. The suspension, however,was not to be effective unless further charges of negligence under Title 46 U. S. Code 239 should be proved for acts committed by Appellant within twelve months of the date of service of the Examiner's Decision.

Appeal was timely filed on 26 September 1958, and a supporting brief was submitted in February 1959.

FINDINGS OF FACT

On 8 September 1955, Appellant was serving as Master on board the United States SS F. E. WEYERHAEUSER and acting under authority of his License No. 172036 when his ship collided with the U. S. Army Dredge PACIFIC at a point approximately 2 1/4 miles south west of the "sea buoy" at the entrance to Coos Bay, Oregon. The collision occurred between 1727 and 1730 local time in a heavy fog which limited the visibility to between fifteen and sixty yards in

the vicinity of the collision. The bow of the PACIFIC penetrated the starboard side of the WEYERHAEUSER at an angle of approximately ninety degrees and cut a gash in the hull of the WEYERHAEUSER in the vicinity of number four hatch and above the water line. There were no personal injuries and no material failure was involved.

The WEYERHAEUSER is a Liberty-type vessel, 423 feet in length and 7218 gross tons. She was outward bound from Coos Bay, Oregon with a cargo of lumber, drawing 26 feet, 6 inches froward and 27 feet, 6 inches aft. The vessel was equipped with radar which was in good working condition and in operation at all pertinent times.

The PACIFIC is a hopper dredge operated by the U. S. Army Corps of Engineers. She is 180 feet long and was equipped with radar in good condition and in operation. She was bound from Bandon, Oregon to Coos Bay.

The WEYERHAEUSER departed from Coos Bay, Oregon on the afternoon of 8 September 1955 with a pilot on board. In the lower bay, fog was encountered. The vessel turned westward to head out the channel and cross the bar. There was a moderate sea over the bar, and the lookout on the bow was called to take his station on the flying bridge. After the bar was passed the sea conditions were smooth and there was a light breeze. The local pilot, Master, Chief Mate, and helmsman were on the navigating bridge. As the outer sea buoy was approached the vessel was slowed in order to drop the pilot.

At 1705 local time the engine was stopped; at 1707 the pilot was away and the Master ordered full speed ahead. At 1710 the sea buoy was close aboard and the helmsman was ordered to come left to a course of 226° true and per gyro compass.

At this time the Chief Mate was guarding the radar which was set on the six mile scale, and the Master was periodically observing the PPI scope. At 1712 a pip, which later proved to be the PACIFIC, was observed bearing dead ahead (226° T.) at a range of 2.8 miles. This reported to the Master who ordered the engine stopped. The target remained almost dead ahead between 1712 and 1717 and the range closed to 2.0 miles.

At 1717, the Master ordered ahead full and changed course to 215° T. and per gyro compass. At 1720, he rang "standby" on the engine order telegraph and at 1722, he ordered ahead half speed. At 1723, the Master heard the fog signal of another vessel and reduced speed to ahead slow. Shortly thereafter the Chief Mate reported the pip had disappeared from the radar due to close range, the range at this time being less than one-half mile. The Master was standing on the starboard wing of the bridge.

At 1728, the Master, upon hearing the sound of engines and propeller wash ordered the engine stopped and immediately followed this order with a back full bell. Approximately one minute later the Master observed the PACIFIC looming out of the fog about fifteen yards off the starboard beam of the WEYERHAEUSER.

The danger signal was sounded by the Master on the whistle and stop and ahead full rung on the engine order telegraph. Left full and then right full rudder were ordered. Less than on minute after the PACIFIC was seen, she struck the starboard side of the WEYERHAEUSER in the vicinity of the latter vessel's number four hold. The PACIFIC immediately backed away after the collision, but her stem had cut a gash above the water line in the side of the WEYERHAEUSER.

During the entire period between 1712 when the PACIFIC was first observed on the radar of the WEYERHAEUSER and the time of collision, no graphical plot nor maneuvering board evaluation of the situation was made on board the WEYERHAEUSER.

Throughout this same period the lookout of the WEYERHAEUSER was posted on the flying bridge of said vessel and the visibility remained between fifteen and sixty yards. Following the collision both vessels proceeded into Coos Bay, Oregon.

The Master of the SS WEYERHAEUSER, who is Appellant in this proceeding, has no prior record.

BASES FOR APPEAL

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

POINT I. The position of the dredge PACIFIC had been "ascertained" within the purview of Rule 16(b), International Rules of the Road, 33 U.S.C. 145n at the time fog signal of the PACIFIC was heard forward of the beam of the WEYERHAEUSER.

POINT II. A legally proper lookout was kept on board the WEYERHAEUSER at all times pertinent to the collision situation under question in this proceeding.

POINT III. There was no negligence in the navigation of the WEYERHAEUSER.

POINT IV. It was improper and manifestly unfair for the Coast Guard to take action against the license of Captain Paul B. Hyatt when because of a sheer legal technicality no action was taken with

reference to the license of the officers in charge of the navigation of the PACIFIC.

POINT V. An excessively long time elapsed from the time of the casualty (8 September 1955) until the commencement of the action on the license (12 October 1956) and until the rendering of the opinion of the Examiner (3 September 1958), all of which was prejudicial.

POINT VI. Under the circumstances, the order of a three months' suspension, on a year probation, was excessive.

APPEARANCES: Graham, James and Rolph of San Francisco, California, by Henry R. Rolph, Esquire, of Counsel.

OPINION

My findings of fact are based mainly on Appellant's testimony and the testimony of the Chief Mate and the lookout (Boatswaine) of the WEYERHAEUSER. The Examiner's findings have been modified to the extent of finding that the distance of visibility in the vicinity of the collision was fifteen to sixty yards. This modification is in conformance with the testimony of Appellant on 26 June 1957 (Q. 106, 116) and the testimony of the Boatswain Stenroos on 7 December 1956 (R. 57, 62).

POINT I.

Rule 16(b), International Rules of the Road reads as follows:

"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."

Appellant contends that the position of the PACIFIC had been ascertained at the time when the fog signal of the PACIFIC was first heard forward of the beam of the WEYERHAEUSER and that therefore he had no need to stop his engine at that time to

meet the requirement of Rule 16(b). He further contend that since he stopped his engine when the pip representing the PACIFIC first appeared upon the WEYERAEUSER'S radarscope the had more than met the minimum requirements of Rule 16(b). The basis of Appellant's argument is that the position of a vessel is "ascertained" within the meaning of the word as used in Rule 16(b) when a radar range and bearing of its pip had been taken. I do not understand this to be the law. Appellant cites only *United New York Sandy Hook Pilot's Asan. v. Den Norske Amerikalinje A/S*, 121 F.2d 304, in support of the proposition that the position of a vessel invisible to the eye can he ascertained within the meaning of Rule 16 (b).

This case was considered carefully in Appeal No. 989 and was found to be an isolated holding involving an unusual situation at not at all in line with the weight of authority to the effect that the position of another vessel is not "ascertained" unless her course, or change of position, as we as her momentary location is known. Since this authority was thoroughly discussed inAppeals No. 989 and 1078, no useful purpose would be accomplished by further purposes would be accomplished by further discussion at this time. It suffices to say that Appellant did not meet the above standard for he stated he was "surprised" when the PACIFIC appeared out of the fog close aboard and on a collisions heading.

The fact that Appellant stopped the engine of the WEYERHAEUSER when the pip representing the PACIFIC first appeared on his radarscope is irrelevant as regards a violation of Rule 16(b). To

be sure, the stopping on engines at this time may sometimes be prudent seamanship and a safe practice. However, there is no specific requirement in law for its being done. In some cases it may actually be detrimental to do so. For instance, it is well known that a constant rate of speed or a dead stop during the period of a radar plot facilitates an accurate solution of course, speed, closest point of approach, course to maneuver for safe passing, etc., whereas an acceleration, deceleration, or turn during the obtaining of data for solution may induce errors.

As stated in the *EL MONTE*, 114 Fed. 796 (1902):

> The object of this section of the article [16(b)], providing an additional precaution against collision, was obviously to prevent vessels from approaching each other too closely in a fog,--not, perhaps, requiring vessels to stop when so far away from each other that no danger actually existed, or could exist, until the situation changed, but in all doubtful cases requiring an immediate stoppage of the vessel for the purpose of a better hearing, to get the vessel's headway fully under command, and to cause all on board to be on the alert to provide for contingencies.

This is as true today in the case of radar-equipped vessels as it was on the day it was written.

POINT II.

Appellant strongly argues that the specification respecting neglect to keep a proper lookout aboard the WEYERHAEUSER should be dismissed because the Coast Guard officer initially investigating the collision wrote in the portion of his report titled "Findings of Fact" that, "Proper lookouts were stationed aboard both vessels." In effect, Appellant is arguing that the initial investigating officer's findings are res judicata as to future disciplinary proceedings. This is not true. The initial

investigation of a marine casualty is conducted under provisions of 46 Code of Federal Regulations, part 136, and is for the purpose of taking appropriate measures for promoting safety of life and property at sea. The "Findings of Fact" under this type of investigation were only the one investigating officer's opinion as to what he believed the facts to be. The investigation conducted under 46 C.F.R., part 137 may be, and was in this case, separate from that conducted under 46 C.F.R., part 136. In the present case, the officer who conducted the part 136 investigation felt that disciplinary action was warranted against Appellant's license, and so recommended in his report. The matter was then referred to an entirely separate investigating officer who upon an independent investigation, which included a review of the record of the part 136 investigation, determined exactly what charges and specifications against Appellant's license were warranted by the possible evidence and exactly how these charges and specifications should be worded. Since the part 137 investigation was a completely separate proceeding from the investigation above referred to by Appellant, the charges arising from the later investigation and tried at the hearing were most assuredly not limited by the "Findings of Fact" in the first investigation.

Secondly, as to the specification respecting improper lookout, Appellant contends that because he had an alert lookout on the flying bridge that was sufficient under the circumstances. In support of this contention he correctly notes that no specific location is required by law in the posting of lookouts. He then cites two cases in which it was held not improper to have the lookout on the bridge and not on the bow. These cases are *Oliver J. Olson & Co. v. The Marine Leopard*, 152, F. Supp. 197 in which the visibility was approximately 20 miles and the vessel collided with was sightd when it was approximately 16 miles away, and *Purtich v. United States* in which the visibility was "very good" and the vessel collided with was sighted when it was 5 to 6 miles away. Needless to say, these cases are unconvincing in this case where there was a fog so dense that the lookout stated that he could just barely make out the bow of his own vessel and the vessels collided with was first seen when it was approximately fifteen yards away.

Appellant argues further that it would have been dangerous to have the lookout in the bow because in event of heavy sea encountered while crossing the bar at the entrance to Coos Bay, Oregon the man might have been washed overboard. Conceding that in event of heavy seas the bow of the WEYERHAEUSER might have been a dangerous location for a lookout, Appellant is not excused in this case. The bar was passed, the sea was smooth, and Appellant neglected to re-position the lookout on the bow where he was most needed.

Although the statutory law is indefinite and discretionary on the question of lookouts,--(Under International Rules of the Road, lookouts are dealt with by the "good seamanship rule") the case law is very strict and well established. The following two decisions sum up the law with respect to proper lookouts in a situation such as was present on 8 September 1955. In *The Manchioneal*, 243 Fed. 801 where it was argued that the vessel's turtle-backed forecastle was too dangerous for a lookout to stand because of slick decks and the possibility of going overboard, the court said:

> [By] the overwhelming weight of authority it is settled that the proper place for a lookout is, under ordinary circumstances--on the bow. The Vedamone, 137 F. Fed. 884, 70 CCA 342; St. John v. Paine 10 How. at 858, 73 L. Ed. 537. See, also, The Arthur M. Palmer (D.C.) 115 Fed 417; The George W. Rogy, 111 Fed. 601, 49 CCA 481; The Michigan, 63 Fed. 280, 11 CCA 187; The George M Dallas, Fed. Cas. No. 5338. Nor can it be accepted, as an excuse for not maintaining a lookout in what is usually the best place, that a vessel is so constructed as to render that position uncomfortable.

In *The Campania*, 21 F.2d 233, where the lookout, as in the case of the WEYERHAEUSER, was posted on the flying bridge the court held:

> [The Mombassa] was at fault in failing to place a lookout as low and as far forward as possible. Her failure to do so is aggravated by the fact that she was proceeding in a thick general fog or mist, with occasional rain, where and when it was impossible to see beyond perhaps less than 100 feet in any direction. Under such condition, the placing of a lookout approximately 150 feet back of the bow constituted gross negligence. The authorities see to coincide in the opinion that where the range of visibility is diminished by inclement weather, as by fog, rain, or mists, or dashing spray, where the ship is in motion, or during dark or cloudy nights, the proper place for the lookout is at the bow, at the extreme forward end of the ship or as it is generally expresses "in the eyes of the ship." The Ottawa, 3 Wall, 268, 18 L. Ed. 167, and cases therein cited.

Accordingly, I find that the second specification of the charge against Appellant cannot be dismissed.

POINT III.

Appellant here contends that there was no negligence in the navigation of the WEYERHAEUSER. This contention has been disposed of by my discussion and conclusions on Points I. and II. Appellant correctly notes that an argument on the fault of the dredge PACIFIC

would be irrelevant to the present proceeding.

POINT IV.

No action was instituted against the licenses of the officers on the PACIFIC which is a public vessel. Although it is arguable that this may bring about unfair situations, such argument is not relevant to the present proceedings. The hearing held under R.S. 4450 in Appellant's case and this subsequent appeal are concerned solely with the proof or failure thereof of the charge and specifications lodged against Appellant. Various factors, not present in Appellant's case, must be considered in determining whether the Coast guard may, or should, take disciplinary action in cases of personnel serving on public vessels.

POINT V.

The collision between the WEYERHAEUSER and the PACIFIC occurred on 8 September 1955. A 46 CFR part 136 investigation was convened on 10 September 1955 by the Coast Guard. At that time both vessels were in Coos Bay, Oregon and the testimony of a great many witnesses was taken. The investigating officer after digesting the mass of testimony adduced, on 27 March 1956, submitted his report recommending, inter alia, that disciplinary proceedings be taken against Appellant's license. Thereafter, correspondence with the WEYERHAEUSER Steamship Company and Graham, James and Rolph, attorneys for Appellant, disclosed that Appellant would not be present within the confines of the 13th Coast Guard District until a considerable time in the future. Furthermore, it was learned that Appellant's attorney desired a change of venue to San Francisco, California for the hearing of any charges arising out of the initial investigating officer's report. Accordingly, the entire proceedings were transferred to the office of the Commander, 12th Coast Guard District, San Francisco, California where a new investigating officer was appointed to investigate the incident and draw up warranted charges in accordance with 46 CFR part 137.

When thus viewed in the light of all the evidence it may be seen that the delay between the collision, the filing of the investigating officer's report, and the bringing of charges was not excessive. Furthermore, it is apparent that at least part of the delay is attributable to the Coast Guard's efforts to comply with the desires of Appellant as expressed by his attorneys.

The letter granting relief from monetary penalties for violation of certain navigation laws and regulations attached to Appellant's brief is clearly in reply to the charge of failure to have a pilot's license.

POINT VI.

Appellant urges that the order of probationary suspension against his license is harsh and unfair. He bases this contention on his belief that the PACIFIC was at fault and Appellant's prior clear record. It is apparent from the Examiner's comments, in his opinion, on Captain Hyatt's prior record and long period of sea service that he considered these factors in determining this order. The order is not considered to be excessive regardless of the possibility of any fault on the part of the PACIFIC.

CONCLUSION

In *Polarus Steamship Co. v. The T/S Sandefjord*, 236 F2d 270, the court at p. 271 stated:

> [W]hat happened here demonstrates how radar may, when not properly used, increase the chances of collision. Had successive observation been plotted to determine the course and speed of the Polarusiol, which was plainly visible on the radar screen when about seven miles away, the ships would probably have passed one another in safety. But the master of the Sandefjord made no such calculations; he merely guessed that the Polarusoil was steering a course parallel to the coastline and moving to the left of the Sandefjord. While a matter of conjecture, it seems not unlikely that the Sandefjord would have proceeded more cautiously had she not been equipped with radar, which, under the circumstances, gave a false sense of security.

I find that the words of that court are fully applicable to this case. In addition, it is my conclusion that the charge of negligence has been proved by substantial and probative evidence. I do not find that the factors urged by appellant in Points IV. V. and VI., not specifically bearing upon the charge and specifications, require reversal of the Examiner's decision.

ORDER

The order of the Examiner dated at San Francisco, California on 29 August 1958, is hereby AFFIRMED.

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

Dated at Washington, D. C., this 11th day of February, 1960.

***** END OF DECISION NO. 1140 *****

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