

In the Matter of License No. 140187 and all other Licenses
Issued to: FELIX W. ZINKIEWICZ

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1213

FELIX W. ZINKIEWICZ

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 8 September 1958, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's License No. 140187 upon finding him guilty of negligence. The two specifications found proved allege that while serving as Second Officer on board the United States SS HOWARD OLSON under authority of the license above described, Appellant negligently conned his vessel into a position of danger or risk of collision with the approaching SS MARINE LEOPARD (first specification), and he negligently failed to take proper action to avoid the SS MARINE LEOPARD (second specification), in both respects contributing to a collision between the two vessels off Point Sur, California, on the night of 14 May 1956.

At the hearing, fourteen sessions in number between 13 August 1956 and 4 March 1957, Appellant was represented by counsel of his own choice. A plea of not guilty was entered to the charge and both specifications.

The Investigating Officer and counsel for Appellant stipulated to the admissibility in evidence of the record of the Coast Guard Marine Board of Investigation that inquired into the collision. Other evidence was presented in defense.

At the end of the hearing, the Examiner concluded that the charge and two specifications had been proved. The Examiner then entered an order suspending Appellant's license for a period of four months.

FINDINGS OF FACT

On 14 May 1956, Appellant was serving as Second Officer on board the United States SS HOWARD OLSON and acting under authority of his license when his ship and the United States SS MARINE LEOPARD collided in the Pacific Ocean about four miles off Point Sur, California.

The SS HOWARD OLSON had departed San Pedro, California on 12 May for Coos Bay, Oregon. The vessel, a 2, 477 gross ton lumber schooner, was in ballast and drawing 6' 9" forward, 17" 4" aft. Proceeding up the coast line, on a course of 320 degrees true, she was steaming at full speed of about 8 knots toward a position abeam Point Sur Light. at about 0140 the OLSON first observed the masthead lights of the MARINE LEOPARD and another vessel, the SS JOHN B. WATERMAN, approaching at a range of about 17 miles. The OLSON'S night orders specified a course change when abeam Point Sur Light.

The SS MARINE LEOPARD, a 10,662 ton C-4 freighter departed Oakland, California on 13 May for San Pedro, California. This southbound vessel carried general cargo of 11,876 tons and was trimmed 30' 6" forward, 32' 10" aft. At 2250, the SS MARINE LEOPARD came to course 156 degrees true and anticipated a subsequent course change when abeam Point Sur Light. She was proceeding at a speed of about 17 knots. At 0140 radar and visual sighting of the OLSON from the LEOPARD was made at a range of 17 Miles.

The SS JOHN B. WATERMAN, a 6,165 gross ton freighter of 6,000 horsepower, was southbound ahead of the faster LEOPARD and on the

same course of 156 degrees true.

By 0155 the LEOPARD had overtaken the WATERMAN and was abeam to starboard at a distance of about six-tenths of a mile. The WATERMAN had radar and visual contact with both the paralleling LEOPARD and the approaching OLSON by about 0140.

Appellant had relieved the watch on the OLSON at midnight. He did not energize the radar set aboard his vessel because of the excellent visibility. At 0148, the Appellant took a bow bearing on Point Sur Light intending to complete a running fix when abeam and set a new course for Point Reyes. Upon relieving the watch, appellant was informed that Cape San Martin had been 3 miles abeam to starboard at 1000. At no time during Appellant's watch did he attempt to fix the OLSON's position.

Appellant maintained close observation of the LEOPARD from the time of sighting her at 0140 on his ship's starboard bow until collision at 0219. Intermittently, he took sightings with a Hanson Board, observing a slight opening of the bearing and some constant bearings. The OLSON did not deviate from her course of 320 degrees true until the range closed to less than a mile. Appellant estimated that the LEOPARD stayed approximately a point on his starboard bow and that the WATERMAN's bearing rapidly opened to starboard.

The WATERMAN changed course from 156 degrees true to 153 degrees at 0200, giving both the LEOPARD and the OLSON more sea room. This course change had been planned without regard to the presence of the other two vessels.

At 0200, in order to pass closer abeam to Point Sur Light the LEOPARD came left to course 150 degrees true. By 0210, the range between the LEOPARD and the OLSON had closed to less than four miles. With the OLSON nearly dead ahead, the LEOPARD made an unsignaled course change to 152 degrees true. Shortly thereafter, both side running lights of the OLSON momentarily came into view. Successive course changes by the LEOPARD brought her farther to starboard, on courses of 154 degrees true and 156 degrees true at 0212 and 0214. Neither of these changes was signaled.

Appellant decided, at 0216, to bring the OLSON left ten degrees, to course 310 degrees true. At this time the LEOPARD was

less than a mile away, bearing down on the slower OLSON at a speed of seventeen knots. The OLSON's course change was signaled by two blasts on the ship's whistle.

The Captain of the LEOPARD observed this course change and decided that the only chance of avoiding collision was to cut across the OLSON's bow. Accordingly, the LEOPARD came sharply right at 0216. Again, the course change was un signaled.

Appellant, upon seeing the rapid course change of the LEOPARD as indicated by the swiftly changing relative positions of the masthead and range lights, plus the appearance of the red running light, instructed his helmsman to keep coming left. At 0218 the Appellant ordered the engines full astern.

At 0219, with both vessels turning, the LEOPARD and the OLSON collided. The LEOPARD had not reduced speed, the OLSON had her engines backing full. The right turn commenced at 0216 brought the LEOPARD around approximately 60 degrees before her stem pierced the starboard side of the OLSON between the number two and three hatches at an angle of about 80 degrees. The LEOPARD went full astern and the vessels parted.

The Master of the OLSON was sleeping in his quarters until awakened by the two-blast whistle signaling the OLSON's course change from 320 degrees true. The Master arrived on the bridge at the time of the collision.

As the bow of the LEOPARD was withdrawn from the side of the OLSON, the latter rapidly gained a starboard list. Appellant sounded the general alarm. Before all the boats could be launched, the bow section broke free and sank. The after section of the OLSON was listing badly. Numerous crew members and the Master jumped over the side and swam away from the ship. Four of the crew were lost.

The collision occurred in a position bearing approximately 226 degrees and at a distance of about four miles from Point Sur Light. The OLSON and its cargo were a total loss. The LEOPARD reported the casualty. Subsequently, the survivors received medical attention ashore.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order of four months' suspension against Appellant's license. Appellant contends that the Examiner's findings that the LEOPARD and the OLSON were approaching each other in a meeting situation, as defined by Article 18 of the International Rules of the Road (33 U.S.C. 146b), is erroneous. In support of this contention, the Appellant argues that:

a. Using the Examiners facts it is impossible that each vessel saw both sidelights of the other.

b. Plotting courses and speeds from "known" 0204 positions of the vessels requires a finding that the approach was "green to green".

c. If vessels approach each other "green to green" there is no risk of collision.

Appellant itemizes several errors which I have corrected in my findings of fact.

APPEARANCE: Brobeck, Phleger & Harrison of San Francisco, California, by J. Stewart Harrison, Esquire, of Counsel.

OPINION

A reconstructed plot of the vessels movements from 0204 until collision at 0219, was prepared by Appellant's counsel and entered in evidence at the hearing. If this chart is a true reflection of the vessels' movements, it proves that the OLSON's red sidelight was hidden from the LEOPARD during their entire approach. But we do not know exactly where the OLSON was positioned between 0204 and the time of the collision. As stated, Appellant had not fixed the OLSON's position during his watch. Faced with a course change once abeam Point Sur, he was eager to complete his running fix commenced

at 0148 with a bow bearing on Point Sur Light. It was necessary to hold his course and speed in order to determine the distance off Point Sur when abeam. The radar, which could have given him an approximate distance when abeam, was not energized. The reproduction of vessel positions and speeds was derived from information obtained from the WATERMAN. The latter used her radar to plot one position of the OLSON and to estimate the WATERMAN's distance abeam Point Sur. It is the reconstructed plot, based on two positions, which Appellant relies on to argue that the approach was "green to green". This is contradicted by other evidence in the record.

Aside from the inherent lack of precision in counsel's plotted information because it is based on only two radar observations from a third ship, there is a more fundamental error in this argument. The OLSON, with a drag of nearly eleven feet, and her forefoot frequently out of the water, could not run down a plotted course line of 320 degrees as if she was a locomotive on railroad tracks. Instead she slogged ahead, yawing in the seaway on fluctuating headings to north and west of 320 degrees true. It does not seem impossible, but rather would have been surprising if, at various times during the convergence of these two vessels, both sidelights of each vessel were not visible to the other. Therefore, I accept the Examiner's finding that the OLSON did show her port side-light to the LEOPARD at times during the approach.

It is highly improbable that the Captain of the LEOPARD changed the course of his vessel six degrees to the right without reason to believe that he should pass the approaching OLSON port to port. At 0200, the LEOPARD had changed course from 156 to 150 in order to pass Point Sur closer abeam. The Master's reluctance later to bring his vessel farther to seaward is shown by the fact that the change back to 156 was made in increments of two degrees. There is no reason why he would have changed course from 150 if he had not believed that the situation called for a port to port passing with the OLSON.

Regardless of whether the positions were such that a plot reconstructed after the collision would reveal that the OLSON probably did not often show her red light to the LEOPARD, it is my belief that is sufficient evidence to support the conclusion that the situation was one involving a risk of collision, within the

meaning of Article 18. Since The Rules of the Road are designed to enable the mariner to pilot his vessel from port to port, they demand strict observance to accomplish the objective of preventing the loss of life and property.

For these reasons, it seems clear that Appellant did not navigate with the caution required in this situation. In a direct head to head approach, there would have been far less danger of collision than occurred in the instant case, with one vessel believing a meeting situation under Article 18 existed while the other did not. Marginal situations, as this one, call for the utmost caution lest conflicting interpretations send the vessels into collision. The constant and slightly varying bearings of the lights of the LEOPARD for more than a half hour before the collision were a definite warning to appellant that some action was required in order to avoid reaching a position where there was danger of risk of collision. 33 U.S.C. 146. The Rules of the Road are intended not merely for the purpose of preventing a collision, but for the purpose of preventing even a risk of collision; the phrase "to involve risk of collision" (Article 18, etc.) indicates that there is a period during which there is a probability that there will be a risk of collision if precautions are not taken. *Griffin on Collision* (1949), section 17. In *Ocean S.S. Co. of Savannah v. United States* (C.C.A.2, 1930), 38 F. 2d. 782, Judge Learned Hand stated:

A constant bearing is a sure sign of danger, made so by the rules at their very outset; a danger signal which should put every mariner on guard. To be sure, it may not call for an immediate change course of speed, but it must always be remembered that it is the risk of collision, not the collision itself, that masters must avoid.

Under the circumstances, Appellant should have taken earlier and more positive action to avoid the risk of collision. On the contrary he did not take any action until the LEOPARD was less than a mile away and collision itself was imminent. This was too late. Before such proximity developed, Appellant should have stopped his ship or ordered a radical change of course in order to get out of the way of the LEOPARD as well as to indicate definitely his intention, to the other ship, to go either port or starboard. Such timely and positive action is required by 33 U.S.C. 146 in obeying

the Rules. I am convinced that Appellant was not adhering to the Rules, either in letter or spirit, when he failed to alter course or speed while steaming into the jaws of collision. This was negligence on his part.

Whether it was also improper to turn to the left instead of to the right is somewhat problematical in view of the presence of the WATERMAN. Hence, Appellant's failure to turn to the right will not be attributed to him as negligence. Consequently, the second specification is dismissed since it apparently was intended to bear on this point.

CONCLUSION

The findings of fact are supported by the evidence and they justify the conclusion that Appellant negligently navigated his ship into danger and collision. It is my opinion that his conduct contributed to the collision regardless of whether the sharp swing of the LEOPARD to her right was a contributing factor. The latter matter is not a subject to be considered in this proceeding against Appellant's license.

Nevertheless, because of the dismissal of one of the two specifications, the order of four months' suspension will be modified.

ORDER

The order of the Examiner dated at San Francisco, California, on 8 September 1958, is modified to provide for a suspension of two months.

As so MODIFIED, the order is AFFIRMED.

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

Signed at Washington, D. C., this 2nd day of February 1961.

***** END OF DECISION NO. 1213 *****

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