

In the Matter of License No. 245035 and all other Seaman Documents
Issued to: Jack Burdfield

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1256

Jack Burdfield

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 24 March 1960, an Examiner of the United States Coast Guard at Toledo, Ohio suspended Appellant's seaman documents for three months upon finding him guilty of negligence. The specification found proved alleges that while serving as Master and Pilot on board the United States SS WYANDOTTE under authority of the license above described, on or about 6 September 1959, Appellant failed to navigate his vessel with caution while approaching and entering Tobermory Harbor, Ontario, Canada, thereby contributing to the stranding of the WYANDOTTE on the shoal off North Point.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of the First and Second Mates, the testimony of the helmsman, Canadian Chart No. 2296, and pertinent portions of the ship's deck

log.

In defense, Appellant offered in evidence his testimony.

At the end of the hearing, the Examiner rendered the decision in which he imposed the three months' suspension after concluding that the charge and specification had been proved.

FINDINGS OF FACT

On 9 September 1959, Appellant was serving as Master and Pilot on board the United States SS WYANDOTTE and acting under authority of his license when the ship struck a rocky shoal approximately 200 feet off North Point while entering Tobermory Harbor, Ontario, Canada, which is between Lake Huron and Georgian Bay.

The WYANDOTTE is a Great Lakes freighter about 350 feet long with a beam of 47 feet. She was carrying a cargo of coal from Toledo. Her draft was 12 feet, 7 inches forward and 14 feet, 10 inches aft. The ship had a crew of 34 and no passengers.

The Second Mate had the 1200 to 1600 watch on 9 September. He navigated the ship on course 137 degrees true and gyro between North Otter and Echo Islands and changed course to 170 true to approach Tobermory Harbor at full speed of 12 knots. This was at 1510 and the harbor entrance was 2 1/4 miles dead ahead when on course 170. At this time, the Mate could see the harbor and the prominent trees on North Point, to the left of the entrance, since the weather was clear and the visibility was good. Also, the water was calm and there was a light south-southeast breeze. These conditions did not change prior to arrival.

Canadian Chart No. 2296, with an inset of Tobermory Harbor, was in use on the ship. This chart shows that the entrance to Tobermory Harbor lies between North Point on the east and Light-house Point on the west where there is a 30 and 40 foot light structure, respectively. There are approximately 2200 feet of navigable water between these two points. The water is 14 to 15 fathoms deep except just inside the tip of North Point where rocky shoals of three fathoms or less extend about 200 feet from the shore and for an additional 300 feet the depth is not over five fathoms. The marking on the chart closest to where the WYANDOTTE struck indicates a depth of about 8 feet. There were no other

obstructions to the navigation of the ship into the harbor. The Great Lakes Pilot states that there are no dangers in the approach to this harbor. A course made good of 170 degrees true would have resulted in the WYANDOTTE passing through the harbor entrance at approximately its center.

About 1515, the Master relieved the Second Mate and he left the pilot-house. Only the helmsman remained with the Master. The ship was still proceeding at full speed of 12 knots when Appellant began to reduce speed at 1520 when about 1/4 mile from the entrance. Either just before or after reducing engine speed to dead slow, Appellant ordered a course change to 167 degrees true and gyro. He did not take any instrument bearings after relieving the Second Mate. Appellant had entered this harbor on prior occasions without difficulty but after approaching on westerly courses.

A few minutes after reducing speed, Appellant noticed that they were passing abeam the tip of North Point at a distance of about 150 feet. He did not realize until then that the current had been setting the ship more and more to her left as speed was reduced. Appellant knew the ship was in trouble and that there were rocky shoals off North Point. At this time, approximately a minute before the ship struck bottom, Appellant ordered an increase of speed to one-half ahead in an attempt to lessen the effect of the current. He did not change course to the right because he thought it would cause the stern to swing into the rocks. Appellant hoped to skirt the danger area by only increasing speed.

The ship struck the submerged rocks on her port side and sheered to starboard. Appellant ordered hard left rudder and full speed. When the ship was clear of the shoals, speed was reduced to slow ahead and she proceeded to the dock.

There is no evidence of injuries as a result of this accident or of mechanical defects which might have caused it. The bottom damage amounted to about \$33,000.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the charge of negligence and several important findings are not supported by the evidence. The fact that the ship struck bottom is not proof of negligent navigation by Appellant. The only reason the vessel went aground was due to the fact that when its speed was reduced near North Point, the current caught the ship and carried it broadside into the shoal waters in a few minutes. The ship was abreast of North Point and in imminent danger when Appellant recognized the danger and did the best thing he could by increasing speed to one-half ahead. The Examiner's erroneous interpretation of the evidence seems to be that at this point when Appellant realized the ship was in danger, there was still enough time to change course in order to avoid hitting the rocks.

It is respectfully submitted that the charge and specification should be dismissed. Alternatively, Appellant's license and document should be reinstated immediately since he has suffered heavy financial losses as a result of this grounding.

APPEARANCE: Foster, Meadows and Ballard of Detroit, Michigan by Charles D. Meadows, Esquire, of Counsel.

OPINION

The Examiner's findings of fact have been modified to meet Appellant's objections, particularly the contention that the Examiner's findings imply that Appellant saw the rocks in time to avoid hitting them.

My above findings also state that the reduction of the vessel's speed started about 1/4 mile from the harbor entrance. This is based on the testimony that the ship's speed was 12 knots and the information in the log that the ship was on course 170 degrees true between 1510 and 1520 before commencing to check speed at the latter time. The chart indicates that the distance to the entrance at 1510 was 2 1/4 miles.

Reference is made in the findings to Appellant's testimony in which he admits that he did not realize the ship was in trouble until it was too late.

The criterion as to negligence in this case is whether a prudent navigator of the same station as Appellant could reasonably be expected to have exercised a higher degree of caution to avoid dangers in navigation under the same circumstances. It is my opinion that such a prudent navigator would not have struck the rocks, especially since Appellant was not only serving in the capacity of Master but also as a First Class Pilot in these waters. A pilot is presumed to have superior knowledge concerning local conditions of navigation and he must act accordingly.

Accepting Appellant's version that the effect of the current was gradual (R. 51) and then "more noticeable" (R. 46) as the ship approached closer to North Point while reducing speed, it is clear that Appellant had several opportunities to take corrective action by changing course before the ship was too close to the shoal area. The weather conditions were very good, the trees on North Point were clearly visible, and there was an elevated light structure on each side of the entrance which could have been used to take bearings in order to check the position of the ship. This was not done at any time although it would have shown that the current was steadily carrying the vessel to the left of her course. There was ample sea room to the right to have altered course toward Light-house Point.

The most important element, relative to the contentions on appeal, is that counsel completely ignores the lack of action by Appellant during the critical gap of time, a "few minutes" (appeal, p. 4), between when the set and drift of the current became "more noticeable" (R. 46) and when the ship was "in trouble" (R. 54) 150 feet off North Point. At the beginning of this critical period, it probably would not have been too late to avoid the rocks. By the time Appellant acted at the end of the few minutes, it was too late. This definitely constituted negligence since, according to Appellant's testimony and appeal, he did not recognize the danger as soon as he reasonably should have.

Under these circumstances, I do not think the order of three months' suspension should be modified regardless of other effects which this accident has had on Appellant's livelihood.

ORDER

The order of the Examiner dated at Toledo, Ohio, on 24 March 1960, is AFFIRMED.

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

Signed at Washington, D. C., this 4th day of August 1961.

***** END OF DECISION NO. 1256 *****

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