

In the Matter of Merchant Mariner's Document BK.087469 and all
other Seaman Documents

Issued to HARRY W. CLEVELAND

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1260

HARRY W. CLEVELAND

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 26 August 1960 and Examiner of the United States Coast Guard at Boston, Massachusetts suspended, on probation, Appellant's seaman documents upon finding him guilty of misconduct. The two specifications found proved allege that while serving as the Pilot on board the United States SS NANTUCKET under authority of the license above described, on or about 11 July, 1960, while transiting the Cape Cod Canal, Appellant overtook and attempted to pass the SS FRANK HASKELL without an assenting signal in reply to his two-blast signal; Appellant proceeded in excess of the maximum speed permitted by the Cape Cod Canal regulations.

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

The Investigating Officer introduced in evidence several documentary exhibits and the testimony of the pilot of the FRANK HASKELL, the Master of the NANTUCKET, and the helmsman of the NANTUCKET.

In his defense, Appellant testified substantially in accord with the testimony of the other witnesses. Appellant also stated that he expected an assenting two-blast signal from the FRANK HASKELL and he considered it unsafe, with a fair tide, to slow down so as not to pass the other ship when she sounded the danger signal so long after the NANTUCKET'S two-blast signal that she was overlapping the FRANK HASKELL by the time the danger signal was given.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of one month and six month's probation.

FINDINGS OF FACT

On 11 July 1960, Appellant was serving as the Pilot on board the United States SS NANTUCKET and acting under authority of his license while the ship was transiting the Cape Cod Canal, Massachusetts, en route from New Bedford, Massachusetts to East Boston for emergency repairs.

The NANTUCKET is twin screw freight and passenger vessel, about 220 feet in length, beam of 60 feet, 2,650 gross tons. She was light with a draft of 10.3 feet.

The FRANK HASKELL is a T-2 tanker of 10,652 gross tons, 504 feet in length, and beam of 68 feet. She was loaded with a cargo of gasoline. Her draft was 30.5 feet.

On the morning of 11 July 1960, both vessels were proceeding in a northeasterly direction through the Cape Cod Canal. The overtaking occurred on the 3 1/2 mile straight stretch of the Hog Island Channel portion of the Canal. Hog Island Channel (total distance 4.7 miles) is a well-marked, dredged channel in open water, it has a bottom width of 500 feet and the depth is 32 feet at mean low water. The weather was clear, visibility good, a light wind, smooth seas and flood tide to the northeast with a force of about two knots.

About 0900, the FRANK HASKELL was abeam Hog Island Channel entrance buoy No. 1 at Wings Neck, Station 661. A pilot was at the conn. Thereafter, this ship proceeded at a speed of about 10 knots over the ground on a steady course up the right-hand side of the channel. The HASKELL had just passed Hog Island Channel Buoy No. 6 when the NANTUCKET, about 500 feet astern, sounded a two-blast signal to pass the HASKELL on her port side. There were no other vessels in the area to interfere with this maneuver. The pilot of the Haskell walked from the pilothouse to look at the ship astern. About the time the pilot saw the NANTUCKET and at least 20 seconds after the two-blast signal, the Master of the HASKELL sounded the five-blast danger signal without any order having been given by the pilot. The NANTUCKET continued on and passed on the port side of the HASKELL at a distance of about 150 feet without incident. At the upper end of Hog Island Channel, the HASKELL started to sheer once but was brought under control very quickly by the Pilot. A notation in the Tide Tables publication for the Cape Cod Canal warns navigation to be on the alert for possible "sheer action from bank suction and bank cushion."

Appellant was at the conn when the NANTUCKET was abeam Wings Neck, Station 661, at 0905 proceeding at approximately 14 Knots over the ground. When ship had come within approximately 500 feet of the HASKELL, Appellant sounded the two-blast signal, maneuvered the NANTUCKET to the left side of the channel and continued to approach the Haskell when no signal was heard from her. The bow of the NANTUCKET had just begun to overlap the stern of the Haskell when her danger signal was sounded. Appellant increased the speed of his vessel, while passing the HASKELL, in order to complete the passing in the straight part of Hog Island Channel. The NANTUCKET drew ahead of the HASKELL in the vicinity of Buoy No. 8. At 0950, the NANTUCKET was at the eastern entrance to the Cape Cod Canal, Station 35.

The Canal is under the supervision of the U.S. Army Corps of Engineers, New England Division, Boston. Their regulations prescribe that the minimum running time with a fair tide, as was the present situation, shall be 53 minutes between Station 661 and Station 35. This portion of the Canal was navigated by the NANTUCKET in 45 minutes. The speed regulations apply to all types of vessels in order to prevent damage to the Canal from wave wash

and suction.

Appellant has no prior record. He has been a licensed Cape Cod Canal pilot since 1931 and has made between two and three thousand trips through the Canal as a pilot.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is conceded that the two specifications were proved. However, it is contended that the revocation of Appellant's license unjust since both offenses were minor and technical in nature.

The evidence indicates that it was perfectly safe to pass the Haskell and the navigation of the vessel was not impaired in any way. Article 18, Rule VIII (46 U.S.C. 203) states that the vessel ahead shall "immediately" reply with the danger signal if the attempted passing is not considered to be safe. The delay of at least 20 seconds before sounding the danger signal was a violation of the Rule which misled Appellant since often overtaken vessels do not answer signals under routine circumstances.

Concerning the vessel's excessive speed, it was necessary to repair the NANTUCKET as expeditiously as possible in order to use her during the tourist season. The vessel's speed did not violate the reason for the speed regulations because there was no evidence of damage to the Canal.

In view of these factors and Appellant's perfect prior record as a pilot for almost 30 years, it is respectfully submitted that the order should be modified to an admonition.

APPEARANCE: Maguire, Roche and Leen of Boston, Massachusetts by
Vincent F. Leahy, Esquire, of Counsel.

OPINION

Appellant admits the two offenses alleged but request modification of the order which he erroneously refers to as a "revocation" of his license. The probationary suspension imposed by the Examiner has not deprived Appellant of the use of his

license for any period of time. Its effect on the use of his license is no more than an admonition if there is no subsequent offense committed during the time of probation which results in the revocation of the probation and making the suspension effective.

Appellant correctly states that part of Article 18, Rule VIII (46 U.S.C. 203) of the Inland Rules of the Road requires the vessel ahead to reply "immediately" with danger signal if such a signal is considered appropriate. Rule VIII also provides, in part, as to overtaking vessels that:

"* * * under no circumstances shall the vessel astern attempt to pass the vessel ahead until such time as they have reached a point where it can be safely done, when said vessel ahead shall signify her willingness by blowing the proper signals."

In this case, the proper assenting signal would have been a two-blast answer. The courts have interpreted this statutory wording to mean that the overtaking vessel must not attempt to pass, without an assent from the vessel ahead, "in a place of doubtful safety" or unless in a "clearly safe place for passing." *The Mesaba* (D. C. N. Y. 1901), 111 Fed. 215. The failure of the vessel ahead to answer with an assenting or danger signal is not an assent to the passing and does not excuse the overtaking vessel for proceeding. *Jett v. Texas Co.* (D. C. Dela., 1947), 13 Supp. 699; *Sinclair Refining Co. v. The Morania Dolphin* (D. C. N. Y., 1959), 170 F. Supp. 586. It follows that a delay in signaling by the overtaken vessel is no excuse for the vessel astern to overtake the vessel ahead.

Any fault on the part of the HASKELL for not sounding the danger signal "immediately" cannot excuse Appellant's conduct relative to the offense with which he was charged and found guilty. He was found guilty of overtaking and attempting to pass the HASKELL without her assent, and not of continuing the maneuver after the HASKELL sounded the danger signal. The basic offense alleged in the specification occurred before the danger signal was sounded.

The HASKELL was heavily loaded so that her draft was not much less than the depth of the dredged channel. This, coupled with the warning in the Tide Tables for navigators to be alert for sheering,

convinces me that this was not a clearly safe place for passing a large ship even though actually the navigation of neither ship was affected by the maneuver. In fact, the HASKELL later on did sheer to some extent. My conclusion is that Appellant initially acted improperly when he allowed the NANTUCKET to approach the HASKELL until his ship's bow overlapped the stern of the HASKELL prior to the time that the latter gave any signal. The Examiner agreed with Appellant's testimony that once his ship had reached this position it was probably less dangerous to continue on past the HASKELL. But Appellant's testimony is not relevant to the issue because his improper conduct consisted of navigating his ship into this position without the assent of the other vessel under circumstances which were not, as contended by Appellant, perfectly safe.

The violation of rules enacted for the purpose of protecting life and property constitutes misconduct whether or not such violations are considered to be technical offenses when no damage results. The fact that there are many successful overtaking maneuvers executed daily without an exchange of signals does not nullify the fact that such signals are required in the interests of safe navigation despite customs to the contrary. See *Commandant's Appeal Decision* No. [724](#), p. 7.

With respect to the speed of the NANTUCKET, there is no doubt that she passed over a stretch of the Cape Cod Canal in 8 minutes less than the minimum time set by the Canal regulations. The urgency to repair the vessel does not mitigate this offense. The absence of apparent damage to the Canal is not material since the regulations specifically state that the "speed regulations must be observed by vessels of all types, including pleasure craft."

Considering all the circumstances of this case, particularly Appellant's previously unblemished record as pilot for approximately thirty years, the order will be modified to an admonition as requested on appeal.

ORDER

The order of the Examiner dated at Boston, Massachusetts, on 26 August 1960, is modified to an admonition. Appellant is hereby advised that this admonition will be made a matter of official record.

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

Signed at Washington, D. C., this 9th day of October 1961.

***** END OF DECISION NO. 1260 *****

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