UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S LICENSE No. 46590 and DOCUMENT No. 121 7281
Issued to: Thomas J. PURSER

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2390

Thomas J. PURSER

This appeal has been taken in accordance with 46 U.S.C. 7702 and 46 CFR 5.30-1.

By order dated 17 August 1984, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana, suspended Appellant's license and document for three months on twelve months' probation upon finding him guilty of negligence. The specifications found proved allege that while navigating the M/V SATOCO under authority of the license above captioned, on or about 18 March 1984, Appellant negligently: (1) failed to navigate said vessel at a safe speed adapted to the prevailing circumstances and conditions of fog and restricted visibility, when from radio transmissions, he was aware of the approach of another vessel; and (2) failed to maintain a proper lookout on the M/V SATOCO; both of which contributed to the collision of the M/V INTREPID and the T/B CHROMALLOY I being pushed by the M/V SATOCO.

The hearing was held at Mobile, Alabama, on 13 April, 3 May, and 8 June 3 1984.

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

specification.

The Investigating Officer introduced in evidence five exhibits and the testimony to ten witnesses.

In defense, Appellant testified in his own behalf.

After the hearing, the Administrative Law Judge took the matter under advisement and ultimately rendered a written Decision and Order on 17 August 1984. He concluded that the charge and specification had been proved and suspended all licenses and documents issued to Appellant for a period of three months on 12 months' probation.

The Decision and Order was served on 18 August 1984. Appeal was timely filed on 17 September 1984 and perfected on 4 February 1985.

FINDINGS OF FACT

Appellant was navigating the M/V SATOCO in the vicinity of lighted Buoy No. 9 in the Mobile Ship Channel at about 1355 on 18 March 1984. The M/V SATOCO is a 138 foot tug, 38.5 feet in breadth, with a draft of 20 feet and with 7200 horsepower. It was pushing the T/B CHROMALLOY I, a 520-foot steel tank barge with a breadth of 81.5 feet. The T/B CHROMALLOY I was carrying approximately 2300,000 barrels of gasoline and turbine fuel. The M/V INTRPID is an offshore supply vessel 165 feet in length and of 262 gross tons.

At approximately 0945 on 18 March 1984, Mobile Bar Pilot, Charles E. Johnson boarded the M/V SATOCO for the transit through the Mobile Harbor and Mobile Bay to the sea buoy in the Gulf of Mexico. The M/V SATOCO with her tow departed the Louisiana Land and Exploration Company Dock at approximately 0950 bound for Tampa, Florida. At that time the visibility was about five miles.

The M/V SATOCO and her tow proceeded down the river and into the Mobile Bay at almost full speed, 7 to 10 knots, 760 rpm. When the flotilla reached the vicinity of buoys 30 to 28, fog began to set in. At about buoy 22 to 20 Pilot Johnson and Appellant changed

places. Appellant took over the steering and navigation of the vessel and Pilot Johnson observed the radar looking for buoys. At buoy 15 the visibility was further reduced to about one-half mile. At about buoy 11, the harbor tug M/V Mobile Bay advised Pilot Johnson that two vessels had entered the Mobile Ship Channel from the west at buoys 3 and 5 or 5 and 7. Pilot Johnson made several attempts on the M/V SATOCO's radio to contact the upcoming vessels; however, no reply was received. One of these vessels was later identified as the M/V INTREPID with which the T/B CHROMALLOY I eventually collided.

The M/V INTREPID eventually made a radio call which was heard by Pilot Johnson and radio contact was then established. Pilot Johnson suggested that the M/V INTREPID remain outside the channel to allow the M/V SATOCO with the T/B CHROMALLOY I to pass. The M/V INTREPID did not consent to this arrangement. Ultimately they agreed to a "one whistle" passing. Pilot Johnson never located the M/V INTREPID on radar.

The Captain of the Pilot Boar, who saw the M/V SATOCO and her tow in the vicinity of buoy 13, estimated the speed of the M/V SATOCO as 8 knots.

The T/B CHROMALLOY I, under the tow of the M/V SATOCO, ultimately collided with the M/V INTREPID at buoy 9 at approximately 1355.

The M/V SATOCO covered the distance of approximately 32.8 miles from the Louisiana Land and Exploration Company Dock to the point of collision in four hours and ten minutes. This gives an average speed of approximately eight knots.

When the M/C SATOCO was at buoy 11, Appellant directed Andrew, who was the lookout, to go below and ease the tension on the lines holding the barge in preparation for entering the Gulf of Mexico. At that time, visibility was limited to a few feet ahead of the T/B CHROMALLOY I. Mr. Andrew, who was not relieved by anyone else, carried out Appellant's order. At that time, Pilot Johnson was busy monitoring the radar and Appellant was busy steering the vessel and keeping it on course in the channel. The collision occurred while Mr. Andrew was below.

No injuries and no pollution resulted from the collision.

Both vessels received minor damage.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. Appellant contends that the Administrative Law Judge erred in finding that:

1. The M/V SATOCO and its tow were proceeding at an excessive rate of speed;

2. Appellant failed to maintain a proper lookout.

APPEARANCE: James C. Arnold, of Ross, Griggs & Harrison, 2600 Four Allen Center, Houston, Texas 77002.

OPINION

I

Appellant contends that the Administrative Law Judge erred in finding that the M/V SATOCO and its tow were proceeding at an excessive rate of speed. I do not agree.

In support of this contention, Appellant complains that the Administrative Law Judge chose to base his findings on the events as described by witnesses other than Appellant and Pilot Johnson who were on the bridge of THE M/V SATOCO. Appellant does not assert that the speed of anywhere from 7 to 11 knots, at which various other witnesses estimated the M/V SATOCO and hew tow to be traveling at about the time of the collision, was a safe speed under the circumstances. Rather, he asserts that the Administrative Law Judge should have found that Appellant and Pilot Johnson slowed the vessel prior to the collision.

In his brief, Appellant asserts that the vessel and tow were making a speed of only 4 to 5 knots. He also states that the minimum safe speed for the M/C SATOCO to maintain steerageway was 4.5 knots and that this was the only safe speed under the circumstances. In addition, Appellant does not challenge the findings of the Administrative Law Judge that "Visibility at the

time was limited to just a few feet ahead of the T/B CHROMALLOY I" or that Appellant and Pilot Johnson were aware of the existence of another vessel ahead in the channel which had not yet been located on radar.

I have consistently refused to reweigh conflicted evidence if the findings of the Administrative Law Judge can reasonably be supported.

> When...an Administrative Law Judge must determine what events occurred from the conflicting testimony of several witnesses, that determination will not be disturbed unless it is inherently incredible

Appeal Decision 2356 (FOSTER), 2344 (KOHAJDA), 2340 (JAFFE), 2333 (AYALA), and 2302 (FRAPPIER).

> It is well established that the opportunity of the Administrative Law Judge to observe the demeanor of the witnesses affords him a significant advantage when it becomes necessary to choose between conflicting versions of an event.

Appeal Decision 2353 (EDGELL). See also Appeal Decision 2159 (MILICI).

The Administrative Law Judge's finding that "the speed of the M/V SATOCO was either not reduced at all, or not reduced sufficiently under the circumstances" has ample support in the evidence. Pilot Johnson admitted that the tow's average speed was approximately 8 to 8-1/2 knots in the 32.8 miles traveled from Mobile to the point of collision. The Master of the pilot boat, who was assisting in the navigation of the M/V SATOCO, estimated the speed of the M/V SATOCO to be 8 knots when it was at buoy 13. The Operators of both the M/V INTREPID and M/V SEA DEFIANT, which was assisting in the navigation of the M/V INTREPID, testified that at or near the time of the collision the M/V SATOCO was making anywhere from to 8 to 11 knots. In addition, the Engineer aboard the M/V SATOCO testified that at about the time of collision the M/V SATOCO's engines were turning at 760 rpm which was estimated to produce a speed between 7 and 10 knots. Thus, the finding of the Administrative Law Judge that the speed of the M/V SATOCO was not reduced or not reduced sufficiently, is ample support in the

evidence.

II

Appellant next asserts that the Administrative Law Judge erred in finding that he failed to maintain a proper lookout. I do not agree.

In support of his argument Appellant asserts: first, that there was in fact a proper lookout because Appellant and Pilot Johnson were on the bridge of the M/V SATOCO at the time of the collision; second, that absence of a third an on the bridge, who had been designated as the lookout, was excused because the circumstances, required him to perform other duties; and, third, that Appellant should not be found at fault for not having a lookout because the absence of the lookout did not contribute to the collision. Appellant does not dispute the finding of the Administrative Law Judge that visibility at the time was limited to just a few feet ahead of the T/B CHROMALLOY I, a 520-foot barge the M/V SATOCO was pushing, or that Pilot Johnson was busy monitoring the radar and Appellant was busy steering the vessel and keeping it on course in the channel.

Rule 5 of the 72 COLREGS provides.

> Every vessel shall at all times maintain a proper look-out by sight and hearing as well as by all available means and appropriate in the prevailing circumstances and conditions so as to make a full appraisal of the situation and of the risk of collision.

I have previously held that:

> The adequacy of a lookout on board a vessel underway is a question of fact to be resolved under all existing facts and circumstances. The facts and circumstances of this case were presented to the Administrative Law Judge. He was in the best position to determine whether the circumstances of the case permitted the helmsman to serve as a proper lookout.

Appeal Decision 2319 (PAVELEC). See also Appeal

Decision 2046 (HARDEN).

Where, as here, a flotilla is preceding at anywhere form 7 to 10 knots with visibility such tat those in the pilot house can see only a few feet ahead of the flotilla, the only persons acting as lookout are occupied with other duties, and there are other vessels now to the ahead in the area but unlocated on radar, I cannot say that the Administrative Law Judge's determination that the lookout was inadequate, was not reasonable. Indeed, the Administrative Law Judge might well have found that the lookout was inadequate even if Andrew had remained on duty as lookout in the wheelhouse because of the poor visibility and distance between the wheelhouse and head of the flotilla. Therefore, the Administrative Law Judge's determination that the lookout was inadequate will not be disturbed.

Appellant's addition contentions that the requirement for the lookout was excused by the need for Andrew to perform other duties and that he should not be held at fault for lack of the lookout because the lookout could not have prevented the collision are also without merit. The duties that Andrew was sent to perform were not of an emergency nature but rather were routine tasks that had to be performed at this point in the voyage. There were others aboard the vessel, although not on watch. With a minimum of planning, arrangements could have been made for someone else to perform the duties for which Andrew was sent from his station as lookout. "The excuse that the lookout was permitted to do something else for the convenience of...the ship's routine means merely that Appellant elected to take the risk of not having a proper lookout at the wrong time." Appeal Decision 2229 ((KELLEY).

Whether or not the lack of a lookout actually was a cause of the collision is not an element of negligence. It is not the function of suspension and revocation actions to determine liability. "[O]ur inquiry is limited to whether the respondent acted negligently." Appeal Decision 2277 (BANASHAK). See also Appeal Decision 2358 NBUISSET), 2261 (SAVOIE), and 2174 (TINGLEY).

Although not an element of negligence, the fact that the violation of the 72 COLREGS contributed to the collision is an

aggravating circumstance which may be pleaded and proved. When a vessel collides with another following a violation of the statutory Navigation Rules, the causal connection is presumed without further proof. *The Pennsylvania*, 86 U.S. 125 (1873); Appeal Decision 2358 NBUISSET) and 866 (MAPP). The presumption may of course, be rebutted, However, I find nothing in Appellant's brief and the citations contained in it to establish that the lack of a proper lookout could not have been a contributing cause of the collision. Therefore, the Administrative Law Judge's finding that this portion of the specification is proved will not be disturbed.

CONCLUSION

The findings of the Administrative Law Judge are supported by substantial evidence of a reliable and probative nature. The hearing was conducted in accordance with the requirements of applicable regulations.

ORDER

The order of the Administrative Law Judge dated at New Orleans, Louisiana on 17 August 1984 is AFFIRMED.

B.L. STABILE
Vice Admiral, U.S. Coast Guard
VICE COMMANDANT

Signed at Washington, D.C. this *6th* day of *May*, 1985.

***** END OF DECISION NO. 2390 *****

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