

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S LICENSE NO. 409987
Issued to: Jackie L. WALKER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2027

Jackie L. WALKER

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1, now 5.30-1.

By order dated 13 November 1974, an Administrative Law Judge of the United States Coast Guard at New Orleans, Louisiana, suspended Appellant's seaman documents for three months outright upon finding him guilty of negligence. The specification found proved alleges that while serving as operator on board the M/V GLENDA S under authority of the license above described, on or about 13 August 1974, Appellant did wrongfully fail to navigate with due caution thus contributing to the collision between said vessel and tow and the Borden Chemical Docks at Geismar, Louisiana, Mile 184.8, Lower Mississippi River.

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 certain documents and the testimony of one witness.

In defense, Appellant offered in evidence his own sworn testimony.

The Judge rendered a written decision in which he concluded that the charge and specification had been proved. He entered an order suspending all documents, issued to Appellant, for a period of three months outright.

The entire decision and order was served on 15 November 1974. Appeal was timely filed on 25 November 1974 and perfected on 25 April 1975.

FINDINGS OF FACT

On 13 August 1974, Appellant was serving as operator on board the M/V GLENDA S and acting under the authority of his license while the ship was underway on the Lower Mississippi River.

The M/V GLENDA S was equipped with a single radar set, a swing-o-meter and no compass. On 13 August 1974, she was proceeding upriver pushing a tow consisting of four barges strung forward and two starboard of the four. The length of the tow was approximately 860 feet.

Appellant commenced his watch at 0600 at which time the visibility was about 25 percent restricted, the radar was operating and the estimated speed of the vessel through the water was 8 m.p.h. at full ahead. There was very little current at the time in question. At approximately 0610, Appellant secured the radar due to its noise level and his opinion that it was unnecessary to the safe navigation of the vessel in light of the prevailing visibility conditions.

Shortly after 0700, the M/V GLENDA S approached the dredge LANGFITT, which was underway and dredging at the upper reach of the Philadelphia crossing below Mile 184. At the request of the latter, Appellant deviated from his intended route along the west bank, passed port to port and proceeded along the east bank about 600 to 700 feet off the bank. Shortly thereafter he spotted a smog bank ahead. He, therefore, cut the engines to one-third ahead, made a radio check for traffic and switched on the radar, which required five to eight minutes to warm up. Appellant was unable to

estimate the speed of the vessel subsequent to the shift from full to one-third ahead.

About ten minutes later, Appellant sighted the Borden Chemical Dock 500 to 600 feet beyond the head of his tow. He maintained speed and altered course to port, but not timely enough to avoid a collision resulting in serious damage to the dock. At the time of the collision, the lead barge was 15 to 20 feet off the east bank of the river.

Appellant failed to reduce the speed of the vessel to a moderate rate upon entering the smog, and there was no appreciable danger that a further reduction in speed would have endangered the vessel and her tow. The current was slight and the only other known traffic in the vicinity at the time was the LANGFITT, which was some 2600 yards downstream.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Judge. It is contended that

- (1) the Judge erred in finding that Appellant proceeded at a greater than moderate speed,
- (2) the Judge erred in concluding that Appellant failed to make reasonable use of his radar,
- (3) the Judge erred in concluding that Appellant's use of the helm was not reasonable and prudent, and
- (4) the order of three months' suspension is excessive.

Appellant lists numerous specific exceptions to the Judge's decision and order which are either comprehended by the above or not discussed or supported in his brief on appeal, and therefore, not separately set forth above.

APPEARANCE: McClendon, Greenland, & Denkman, Metairie, La.

OPINION

I

Appellant asserts that the speed of the M/V GLENDA S was at all times "moderate" as that term is used in Rule 16 of the Western Rivers Rules of Navigation (33 U.S.C. 341). He testified that he approached the smog bank at full speed and that he reduced it to one-third ahead when he realized that his visibility would be greatly reduced. The Judge's decision is based primarily upon the conclusion that this reduction in speed was insufficient under the circumstances.

At the outset, it is noted that Appellant complains of the Judge's failure to accept Appellant's proposed conclusion of law that the speed of the vessel prior to encountering the smog was proper. Suffice it so say that this tacit rejection amounts, not to a finding of fault with regard to said speed, but to a recognition that under the circumstances said speed was not such as to affect the outcome. This is, however, not true as respects the speed of the M/V GLENDA S after the presence of the smog was observed. It is manifest that at some time prior to becoming surrounded by the worst of the smog, Appellant realized that his vision would be substantially obstructed. It was apparently at this point that he elected to slow to one-third and switch on the radar. That he at this point failed to reduce to a speed allowing stoppage of the vessel prior to striking a newly sighted obstruction to his forward progress is clear from Appellant's own testimony that he sighted the dock at a distance not permitting such a stoppage. He also testified that the collision occurred approximately 10 minutes subsequent to the onset of zero visibility.

Under these circumstances, Appellant can by no means excuse his failure to further reduce speed by pointing to the alleged unforeseeability of the severity of the visibility reduction. Suffice it to say that Rule 16 requires a slackening of speed prior to entry of smog sufficient to permit immediate compliance with the moderate speed standard. *Villain & Fassio E. Compagnia v. Tank Steamer E. W. Sinclair*, 207 F. Supp. 700, 707 (S.D. N.Y. 1962). If after ten minutes Appellant took no action beyond ordering one-third ahead, he cannot claim surprise. Appellant cites *Cities Service Oil Co. v. M/V Melvin H. Baker*, 260 F. Supp. 244 (E.D. Pa. 1966) as justifying his action or lack thereof. That

case involved a vessel proceeding in dense fog at "Dead-Slow-Ahead" which stopped engines upon hearing another ship's fog signal. These facts are in no way comparable to the instant situation in which Appellant slowed to a speed which he could not estimate and never stopped engines despite his knowledge that there were docks some where close ahead.

Appellant complains of what he calls the mechanical application of the rule of sight without due regard to the circumstances. He urges further that the rule applies only to the maintenance of an improper speed with knowledge of another ship's presence. These contentions are, however, manifestly without merit in light of the fact that Appellant's reduction of speed over a period of some ten minutes was insufficient to prevent colliding with a dock sighted some 500 to 600 feet ahead of the lead barge. During this period the visibility was zero at times and Appellant knew that he was navigating in the vicinity of the dock. The cases distinguished by Appellant, such as *The Umbria*, 166 U.S. 404 (1897), involved essentially open waters where other vessels were known to be present. The instant case involving the Lower Mississippi River in the vicinity of obstructions, the presence of which was known to Appellant, is certainly analogous.

Appellant contends that the bare steerageway rule justified his failure to further reduce speed or stop engines. Note, however, that the opinion in *The Sagamore*, 247 F. 743 (1st Cir. 1917), which is cited in Appellant's brief, quotes with approval from *The Umbria*, 166 U.S. at 417, to the effect that two vessels might be required to stop dead while ascertaining each other's courses. The court also quotes from *The Counsellor*, L.R. Prob. Div. 1913, pp. 70, 72, 73, wherein it was held that if the speed required by the rule of sight is insufficient for the maintenance of steerageway, "then you should manage by alternately stopping and putting the engines ahead." The court stated further that the rule of *The Umbria* is in agreement with the latter quotation. If steerageway speed is too great to avoid collision, there is a duty to lay to. *The Pennsylvania*, 19 Wall. 125.

As Appellant notes, there are indeed exceptions to this rule where adherence thereto would lead to even greater danger. Appellant cites *Hess Shipping Corp v. S S Charles Lykes*, 417 F.

2d 346 (5th Cir. 1969). That case is, however, clearly distinguishable from the instant situation. *Hess Shipbuilding* involved a tanker the length of which was twice the width of the channel in which she was navigating. The current was one and one-half knots and the winds were 8-12 m.p.h. The ship's radar was in use and operating properly and there were radio communications between her and the vessel with which she collided. Responsibility for the collision was clearly assignable to the latter and not to the tanker. Stoppage of the tanker's engines would have caused a crossways drift and blockage of the channel increasing the risk of collision. The instant case involves a stationary object and very little current. The only vessel Appellant allegedly feared striking was over one-half mile downstream. Such circumstances do not justify a departure from Rule 16.

The other cases cited by Appellant are similarly distinguishable, *Haney v. Baltimore Steam Packet Co.*, 23 How. (64 U.S.) 287 (1860) involved a schooner's maneuver *in extremis* to avoid the effects of the negligent operation of a steamer. *Erie & W.T. Co. v. Chicago*, 178 F. 42 (7th Cir. 1910) involved collision with an unchartered obstruction the presence of which was unknown to the master of the vessel and which did not have the required fog signals operating.

II-III

The Judge concluded that Appellant was negligent in failing to make proper use of the radar and the helm. While the decision does not fully explain these conclusions, they are supported by evidence of a reliable and probative nature. Prior to the sighting of the smog bank, the visibility conditions were not necessarily such as to require the use of radar. However, visibility was at that time restricted some 25 percent and prudence would dictate that a vessel such as the M/V GLENDA S, which was not equipped with a compass, be operated with working radar in all conditions of reduced visibility. This is especially so in light of the prolonged warm-up time required by the particular radar set involved. There is nothing in the record to justify a finding that the noise level of the radar would have interfered with safe navigation.

The ultimate facts of this case show that, while operating in the smog, Appellant was steering a course not only for the Borden

Chemical Dock, but also for the bank of the river. After the collision, the lead barge was found to be only 15 to 20 feet off the bank. Furthermore, Appellant's failure to proceed at moderate speed and to make proper use of the radar ultimately placed the vessel in the situation wherein he judged it necessary to attempt to steer clear of the dock when he knew it would be futile.

IV

The Judge in framing his order took due consideration of Appellant's prior clear record, his level of experience and the circumstances surrounding the collision. In the absence of a clear abuse of discretion, a Judge's order will not be modified on appeal. There is nothing in the record of this case to justify a finding that the order is unreasonable or excessive.

ORDER

The order of the Administrative Law Judge dated at New Orleans, Louisiana, on 13 November 1974, is AFFIRMED.

O. W. SILER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 26th day of June 1975.

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