

IN THE MATTER OF LICENSE NO. 198947
Issued to: James T. ABBOTT BK-284423

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1925

James T. ABBOTT

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.

By order dated January 1971, an Administrative Law Judge of the United States Coast guard at New York, New York, suspended Appellant's license for three months outright upon finding him guilty of two charges of negligence. the first charge of negligence found proved is supported by two specifications, the first of which alleges that the Appellant, while serving as Master aboard the SS PONCE DE LEON on 8 March 1969, while enroute Pier 13, Staten Island, New York, from sea in the Verrazano Narrows Bridge wrongfully did fail to navigate with due caution as the burdened vessel by failing to keep out of the way of the SS HONG KONG MERCHANT in a crossing situation in violation of Rules 19 and 22 of the Inland Rules of the Road. The second specification under the first charge alleges that Appellant on that same date, in that same location, failed to navigate on the starboard side of the channel until the channel was clear for a safe crossing, and therefore contributed to a collision between his vessel and the SS HONG KONG MERCHANT.

The second charge of negligence is supported by a single specification which alleges that the Appellant on 24 March 1969 while Master of the SS PONCE DE LEON when that vessel was departing San Juan Harbor failed to determine the ship's position before making a left turn into the Graving Dock Channel thereby grounding his vessel in the vicinity of Puerto Nuevo Channel Light 3 (LL-1305).

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the first and second specification under the first charge and nolo contendere to the second charge and specification.

The Investigating Officer introduced in evidence Coast and Geodetic Survey chart No. 541, transcripts of testimony of members of the crew of the HONG KONG MERCHANT, and the testimony of the pilot of the HONG KONG MERCHANT.

In defense, Appellant offered in evidence his own testimony and that of two other witnesses, several Coast and Geodetic survey charts, photographs of the two vessels, and copies of various documents.

At the end of the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the first charge and both specifications had been proved and accepted the plea to the second charge and specification. The Administrative Law Judge then entered an order suspending Appellant's license for a period of three months outright.

The entire decision was served on 1 February 1971. Appeal was timely filed on 1 February 1971. A brief in support of appeal was filed on 18 July 1971.

FINDINGS OF FACT

On 8 March 1969, Appellant was serving as Master on board the United States SS PONCE DE LEON under authority of the captioned documents while the vessel was inbound to Pier 13, Staten Island, New York. On that same date the SS HONG KONG MERCHANT was outbound from Pier 1, Brooklyn, New York, to sea. The SS HONG KONG MERCHANT is an American Victory type vessel and the SS PONCE DE LEON is a

super-trailership. Hereinafter the vessels will be referred to as the MERCHANT and PONCE respectively.

The MERCHANT left Pier 1, Brooklyn, at about 1955 on the evening of 8 March 1969. On board, in addition to her crew, was Sandy Hook Pilot Joseph Licata who was in control of the vessel up to and including the time of collision. The vessel proceeded down the East River between the Battery and Governors Island at full ahead (harbor maneuvering speed of approximately 11 knots). The Merchant rounded Buoy 24, about 1/10 of a mile off and came to course 168 degrees which was later, off Pier 24, Staten Island, adjusted to 170 degrees heading for the Narrows and open sea.

The PONCE with the Appellant at the conn, arrived Ambrose Light at 2018 on the same evening. Her speed was then reduced from sea speed of 23 knots to maneuvering speed of 15 knots which was maintained until just prior to the collision. Approaching Graven Shoal Buoy (19A), the vessel was on course 244 degrees. After speaking by phone to the tugs off Pier 13 and told there was no movement inside Staten Island Anchorage, Appellant altered course to 310 degrees which was maintained until the time of collision. The weather was clear with good visibility and westerly winds of 10-15 knots. The tide was flooding.

As the MERCHANT rounded Buoy 24, the sandy Hook Pilot observed the red and green lights of the PONCE below the Verrazano Bridge. After rounding the buoy and while moving down the channel on course 168, the pilot had the red side light of the PONCE on his own port bow. At 2048, as the MERCHANT was abreast of Pier 24, Staten Island, and had altered course slightly to 170, the pilot observed the range lights on the PONCE begin to open indicating she was turning left. At this time the port side light closed out and the green starboard light became visible. when the pilot of the MERCHANT observed the range lights opening, he blew one blast to the inbound vessel. Receiving no reply to his one-blast signal, the pilot blew a four-blast signal, followed by a one-blast signal and put the engines on stop. The same series of a danger signal and one-blast was repeated twice more by the pilot without reply from the PONCE. Following the Last one-blast, the pilot thought he heard a one-blast reply, so he ordered full ahead on the engines. This occurred at 2050, followed almost immediately by a two-blast signal from the PONCE. In rapid succession the pilot put the

engines at stop, then full astern.

At approximately 2050, after Appellant had begun altering his course to 310 degrees, he sighted the MERCHANT. At this time his speed was reduced to half-ahead. A few second later he blew a two-blast signal followed by a danger signal and then put the engines on stop. No reply was heard to his signals, so another danger signal was blown, and the engines were put at full astern.

Both vessels were under astern bells after 2051 and up until the collision. At 2052 the bow of the MERCHANT came into contact with the starboard side of the PONCE about 500 feet from the staten Island shores north of the Verrazano Bridge. Both vessels sustained damage, but there were no injuries.

Because of the disposition to be made as to charge two, no findings of fact regarding that incident are made.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. In addition to numerous exceptions to the findings, conclusions, and opinion of the Administrative Law, Judge, the Appellant raises the following specific points:

(1) "The Hearing Examiner's conclusion that the change of course of PONCE DE LEON to her left in the vicinity of Craven Shoal Buoy was not `legitimately' made and therefore considered a separate and distinct act of negligence was clearly erroneous, in fact and in law."

(2) "The action of the Hearing Examiner in faulting the Appellant for a violation of Articles 19 and 22 of the Inland Rules of the Road was clearly erroneous and should be reversed."

APPEARANCE: Cichanowicz & Callan of New York, N.Y. by Joseph Brush, Esq.

OPINION

I

Before taking up the exceptions and contentions raised by Appellant to charge one, some discussion of the plea entered to the second charge of misconduct is required. The administrative Law Judge allowed Appellant to enter a plea of nolo contendere to the second charge and specification stating that for the purposes of the hearing it was the equivalent of a guilty plea. While it is true that for some purposes such a plea does have the effect of a guilty plea, it has no place in these proceedings. The purpose for the plea in criminal proceedings is to allow the accused to accept the punishment without admitting guilt for the offense. Since the sole purpose of this proceeding is to determine whether the person charged was negligent such a plea serves no useful purpose here.

46 CFR 137.20-75(a) provides that the Judge is to obtain from the person charged a "definite plea" to each charge and specification and where the person does not make a "definite plea" the Judge is to enter a plea of not guilty. The plea of nolo contendere is not a "definite plea" within the meaning of this regulations: therefore, the Administrative Law Judge should have entered for Appellant a plea of not guilty. entrance of such a plea at this time would require sending the case back to receive evidence as to charge two; however, because of the lapse of time since the original hearing and because of the disposition of charge one, it is not deemed necessary to remand for further findings. therefore, charge two is hereby dismissed.

II

I find it unnecessary, in the consideration of this appeal, to address myself to each of the numerous exceptions put forward by the Appellant in his brief on appeal. In the main, the exceptions concern disagreements between the findings of the Administrative Law Judge and those which the Appellant would have made. The exceptions to the conclusions reached are likewise based on disagreements with the evidentiary findings. The Administrative Law Judge's findings and conclusions were derived from an analysis and evaluation of all the testimony adduced during the hearing, It is his function to evaluate the credibility of witnesses in determining whose version of the events under considerations is

correct. As I have stated repeatedly in past decisions, the question of weight to be accorded the evidence is for the Judge to determine and, unless it can be shown that the evidence upon which he relied was inherently incredible, his findings cannot be against the weight of the evidence and will not be set aside on appeal. The test is whether a reasonable man could have made the same findings as reached by the Judge, not whether he would have agreed with those findings. See Decision on [Appeal No. 1753](#).

I find that there is substantial evidence of a reliable and probative character to support the findings of the Administrative Law Judge. It is my opinion that the facts set forth above clearly establish a crossing situation where it was the duty of Appellant as master of the PONCE, the burdened vessel, to keep out of the way of the vessel on his starboard side (33 USCA 204). I also find that Appellant failed to continue navigating his vessel on the starboard side of the channel until the channel was clear for a safe crossing (33 USCA 210).

III

Appellant's first point on appeal challenges the finding that the change in course to 310 degrees in the vicinity of Craven Shoal Buoy (19A) was not legitimately made. He does not contest that the Narrows is a narrow channel within the meaning of Article 25 of the Inland Rules of the Road, but argues that this "technical" violation did not amount to a separate act of negligence.

In urging this argument, Appellant bears the burden of proving that the violation could not reasonably be held to have been a proximate cause of the collision. *States Steamship Co. v. Permanent Steamship Corp.*, 231 F. 2d 82 (9th Cir. 1956). The facts do not support Appellant's burden. His turn from the starboard side over to the Staten Island side was commenced at 2048; the collision occurred at 2052 on Appellant's port side of the channel. This short period of only four minutes indicates that the channel was obviously not sufficiently clear of traffic to exonerate Appellant's departure from his statutory obligations. The cases cited by Appellant are not persuasive. Regardless of the action taken by the MERCHANT, Appellant was at fault for being on the wrong side of the channel. Had he not maneuvered into the situation, there would have been no collision. See *Artic*

Shipping Corp. v. Gulfcoast Transit Co., 333 F. 2d 605 (5th Cir. 1964).

Appellant further insists that the pilot of the MERCHANT was not charged by the coast Guard because of an agreement between it and the Sandy Hook Pilots Association and implies that he was prejudiced thereby. It may be that the pilot Licata did not follow proper procedure himself, but the fault of any other vessel or person involved in this collision is immaterial. This is not a case against the MERCHANT or its pilot, nor is it a case against the PONCE, it is a case involving Appellant's documents and his privilege to operate thereunder. It should also be noted by Appellant that the Coast Guard is not prevented from taking action against the licenses of pilots and has done so in a proper case where the pilot was serving under his Federal license. See decision on appeal No. [1670](#).

IV

Appellant's second point is that the Administrative Law Judge erred in faulting Appellant for violation of Articles 19 and 22 of the Inland Rules. He argues that the facts do not make out a crossing situation because the courses of the vessels were not intersecting. The evidence is otherwise. The testimony of the pilot, Joseph Licata, supported by the testimony of members of the crew of the MERCHANT, clearly shows that the MERCHANT was proceeding southbound for Ambrose channel on a definite course while the Appellant, after altering his course off Craven Shoal Buoy, was proceeding on a course bound for the PONCE's berth at Staten Island. The witnesses agree that as the vessels approached one another the PONCE was showing open range lights with her green light visible a few points off the MERCHANT's port bow. In such a situation, the vessels were on intersecting courses.

In order to establish a crossing situation within Rule 16, it must be shown that (1) the holding-on vessel was established on a definite course; (2) the anticipated course of the vessels involves a risk of collision; and (3) the vessels encountered one another with sufficient time and space to allow them to maneuver.

Griffin on Collision, p. 106. Appellant's own witness, Mr. Pigott, testified that, had the whistle signals been heard, the PONCE could have turned to starboard and avoided the MERCHANT (R. 154); therefore, there must have been sufficient time to maneuver. It is equally obvious that there was a risk of collision from the anticipated courses of the vessels. To establish a risk of collision it is "...not necessary for a collision to be imminent or even probable..." *Ocean Marine Ltd. v. U.S. Lines Co.*, 300 F. 2nd 496, 499 (2nd Cir. 1962).

Once the obligations of a rule of navigation become applicable to vessels, they continue to be applicable so long as the opportunity to avoid the collision remains the same. *N.Y. & Liverpool Co. v. Rundall*, 21 How. 372 (1859). Therefore, the Appellant as the master of the burdened vessel was obliged to keep out of the way of the MERCHANT. This he failed to do and must, therefore, be held accountable.

Finally, Appellant attempts to make out a case of special circumstances which if accepted would require a departure from the ordinarily applicable rules. Appellant claims that the configuration of the PONCE makes it so distinguishable that it was readily identifiable as the PONCE DE LEON when first sighted and that since she had been on the same run from Puerto Rico to New York for a considerable period of time, everyone knew that her destination was Pier 13, Staten Island. Even if this were true, it would not make out a case of special circumstances. See *The District of Columbia*, 74 F. 2nd 977 (4th cir 1935). The cases are uniform in holding that:

"Exceptions to the general rules of navigation are admitted with reluctance on the part of the courts, and only when an adherence to such rules must necessarily result in a collision..." *The Albert Dumois*, 177 U.S. 240, 249 (1900).

Here adherence to the applicable rules, Articles 19, 22, and 25, would not have resulted in a collision, but would have allowed the vessels to pass one another safely.

CONCLUSION

The findings of the Administrative Law Judge, supported by substantial evidence, establish a crossing situation in which it was the duty of Appellant as Master of the burdened vessel to stay clear of the other. Appellant was at fault in failing to adhere to the precepts of the crossing rule. The evidence also established that Appellant's failure to abide by the narrow channel rule contributed to the collision.

Although my findings in regard to the second charge of negligence require dismissal of that charge, I consider the seriousness of the two specifications found proved, together with Appellant's prior record, sufficient to affirm the order entered by the Administrative Law Judge.

ORDER

The order of the Administrative Law Judge dated at New York, New York, on 13 January 1971, is AFFIRMED.

C.R. BENDER
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D.C. this 17th day of May 1973.

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