In the Matter of Merchant Mariner's License No. A-2008
Issued to: ROBERT M. MAGNUSON

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

344

ROBERT M. MAGNUSON

This appeal comes before me by virtue of Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

On 14 February, 1949, an Examiner of the United States Coast Guard at Detroit, Michigan, entered an order suspending License No. A-2008 for a period of three months upon finding Appellant guilty of the charge of "negligence" while he was serving as Master on board the American SS HARRY W. CROFT under authority of his duly issued license. The charge is based on a specification alleging that Appellant failed to navigate the SS HARRY W. CROFT at a moderate speed during a period of low visibility, on or about 30 October, 1948, while on a voyage from Toledo, Ohio, to Indiana Harbor, Indiana, carrying approximately nine thousand tons of coal. This is a violation of Rule 15 of the laws relating to the navigation of vessels, Title 33, United States Code 272.

At the hearing, the regulatory requirements with respect to Appellant's rights were complied with and Appellant was represented by counsel of his own choice. Appellant pleaded "not guilty" to the specification but at the conclusion of the hearing, the Examiner found the specification and charge "proved." After his

license had been suspended, the Appellant was issued a temporary license pending determination of this appeal.

Eleven errors have been assigned to the Examiner's order and his disposition of incidents occurring during the hearing. They are substantially as follows: The Examiner erred

1. In finding the charge and specification proved;
2. In finding that the steamer CROFT was proceeding at more than moderate speed during a period of low visibility when the only testimony adduced was that of Ralph L. Morrison, First Assistant Engineer of the steamer CROFT (appearing as the Investigating Officer's own witness), and that of Second Mate Robert F. Connelly (similarly appearing). Mr. Morrison testified that the CROFT had reserve backing power on her main engine in excess of 16 RPM, i.e. from 84 RPM at full speed ahead to over 100 RPM at full speed astern;

3. In imposing a sentence of three months' suspension of license upon the Master of the steamer HARRY W. CROFT, when the Master of the steamer DIAMOND ALKALI under a similar charge and specification received only a two months' suspension;
4. In admitting some evidence and excluding other evidence; in questioning witnesses over objection of counsel;
5. In making findings in the absence of a showing that any acts or omissions on the part of Robert M. Magnuson under the charge and specification proximately resulted in damage to property or injury to person. The charge and specification should have been dismissed, as not proven by substantial evidence;
6. In not finding that at the time when Robert M. Magnuson was in charge of the navigation of the steamer HARRY W. CROFT, the CROFT could have been stopped in 1250 feet, which was less than one-half of the distance of visibility;
7. In holding that the steamer HARRY W. CROFT was going at more than moderate speed under conditions prevailing at the time Robert M. Magnuson was in charge of her navigation;
8. In using a copy of the pilothouse log of the steamer

HARRY W. CROFT as evidence against Robert M. Magnuson when it was not shown that such log was in his handwriting. Further vessels' logs are not required by law on the Great Lakes, and are, therefore, no more binding than any other hearsay evidence;

9. In holding that a record of grounding in the Soo River before the aids to navigation had been put in place by the U. S. Coast Guard in the Spring of 1948 was a reasonably sufficient basis for denying probation to Robert M. Magnuson.

FINDINGS OF FACT

On 30 October, 1948, Appellant was serving, under authority of his duly issued license, as Master of the American SS HARRY W. CROFT, which was carrying approximately 9,000 tons of coal and was steaming up the Straits of Mackinac destined to Indiana Harbor, Indiana, at full speed (approximately 11.6 miles per hour) navigating in a fog of varying density. The Second Officer was on watch from 10:00 A.M. until 2:18 P.M. except for the time during which the Third Officer had relieved him for dinner. The Second Officer noticed a patchy fog at some indefinite time before dinner; started blowing the fog whistle and notified the Appellant who then entered the pilothouse and relieved the Second Officer of the responsibility of navigating the ship for the duration of the latter's watch.

At 2:04 P.M., Poe's Reef Light was sighted abeam to starboard at an estimated distance of .6 of a mile. At that time, according to the log entry, fog conditions prevailed, but the record does not satisfactorily show either its density or its continuity. Appellant was still navigating the ship and the speed had not been checked.

There is testimony from the First Assistant Engineer that the ship could have been stopped in less than half the distance of estimated visibility when Poe's Reef Light was passed. A collision with the SS DIAMOND ALKALI occurred on that day, but the record has been limited to conditions at 2:04 P.M. and earlier. There is no evidence or testimony relating to conditions or incidents after that hour.

OPINION

The facts set out above (being limited at the hearing to conditions at 2:04 P.M. and earlier) do not prove the allegation that Appellant failed to navigate the SS HARRY W. CROFT at a moderate speed during a period of low visibility. The substantial evidence rule is a general principle of law which requires that a conclusion be supported by such relevant evidence as a reasonable mind would accept as adequate. Hence, the findings must be based on evidence having rational probative force if the order is to stand.

The specific negligence alleged against Appellant is that he

> "failed to navigate the SS HARRY W. CROFT at moderate speed during a period of low visibility."

The Investigating Officer elected to limit his proof to conditions prevailing as the CROFT was passing Poe's Reef Light when visibility was estimated at six-tenths of a mile, and when, according to the testimony, the vessel's speed permitted her to come to a full stop within one-half the distance another vessel, on a collision course, could have been sighted. Nothing unusual occurred at 2:04 P.M. or before, and I find nothing in the record as it was prepared to indicate negligence at the time and place selected by the Investigating Officer as the basis for complaint.

My appreciation of the record leads to the following

CONCLUSIONS

The Examiner erred in finding the charge and specification (which was restricted to navigation at and before 2:04 P.M. on 30 October, 1948) proved in this case. The evidence is confusing and unsatisfactory, but insofar as it relates to this charge and specification, is insufficient.

As these conclusions sustain Appellant's Errors 1, 2, 7 and 9, as stated hereinabove, it is unnecessary to discuss the other Errors assigned.

ORDER

The order of the Examiner dated Detroit, Michigan, on 14 February, 1949, is REVERSED and SET ASIDE; and the case is REMANDED for further proceedings not inconsistent herewith.

J. F. FARLEY
Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 8th day of July, 1949.

***** END OF DECISION NO. 344 *****

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