

the day. In my opinion, the libelant substantially complied with his agreement in tendering his services on the day named in the articles signed by him, and the master was not justified in refusing to allow him to go to work. The fact that the master, after the articles were signed, directed him to be on board the steamer in the morning in time to cook breakfast, cannot be allowed to change the legal effect of the articles; that is to say, the articles cannot be read as if such direction of the master were written therein. The libelant was to receive \$50 per month as wages, and under section 4527 of the United States Revised Statutes he is entitled to recover in this action a sum equal to the amount agreed to be paid him as wages for one month, and costs of suit. So ordered.

---

THE DEFIANCE and THE EDWIN DAYTON.

(District Court, S. D. New York. March 15, 1899.)

COLLISION—TUG AND TOW—RIGHT OF WAY—FAILURE TO OBSERVE SIGNALS.

The steam tug Defiance, with two canal boats lashed to her side, on approaching the gap leading into the Atlantic Basin, Brooklyn, while some distance away, gave the usual long whistle to indicate that she was going in, and again, when near the entrance, twice signaled by two whistles. The tug Dayton, with a tow, was approaching the gap from the inside, and when the second signal was given by the Defiance was from 100 to 200 feet from the entrance. She did not stop, and there was a collision between the tows in passing in the gap, without fault in navigation on the part of the Defiance. *Held*, that the Defiance was the privileged vessel, entitled to the right of way, and the Dayton was alone in fault for the collision, in failing to observe the signals, and to keep inside until the Defiance had passed through the gap.<sup>1</sup>

This is a libel by Edgar Van Buren against the steam tug Defiance and the steam lighter Edwin Dayton, for collision.

Cowen, Wing, Putnam & Burlingham, for libelant.

Davies, Stone & Auerbach and Herbert Barry, for the Dayton.

James J. Macklin, for the Defiance.

BROWN, District Judge. At about 11 o'clock in the forenoon of September 15, 1898, as the steam tug Defiance was passing through the gap at the entrance of the Atlantic Basin, Brooklyn, with two canal boats lashed to her starboard side, the starboard boat came in contact with a scow on the starboard side of the tug Edward Dayton, which was then coming out of the gap. The libel was filed to recover the damages thereby sustained by the libelant. The wind at the time was high from the N. W. and the ebb tide strong, which swept down directly in front of the gap. These circumstances, made it impossible for the Defiance to go upon a straight line through the gap. More or less of swinging was unavoidable, and the line of her entrance was necessarily more or less uncertain. Some little time before

<sup>1</sup> As to signals of meeting vessels, see note to The New York, 30 C. C. A. 630.

reaching the outside of the gap, the Defiance had given the usual long whistle to indicate that she was coming in, and when near and at the entrance she twice gave a signal of two whistles. The evidence leaves no doubt that when the long whistle was given the Dayton was inside the basin and 500 or 600 feet distant from the gap, and that at the first signal of two whistles she was 100 or 200 feet back of the gap. In this situation, there is no doubt that the Defiance was the privileged vessel and had the right of way. It was the duty of the Dayton and her tow to keep within the basin and not enter the passage of the gap. As the Dayton in her answer denies knowledge of the long whistle given by the Defiance, it is probable that it was not heard by the Dayton; but it was heard by other vessels in the immediate vicinity, and if not heard by the Dayton, it was through negligence and inattention. It is plain also that the Dayton did not reverse as soon as the two whistles of the Defiance were heard, and that this was before she had entered the gap.

As respects the navigation of the Defiance in entering the gap, I am satisfied, not only from her own witnesses, but by the testimony of the mate of the Dayton, that her navigation was such as was usual and proper under such circumstances.

I find, therefore, that the collision arose from the fault of the Dayton in not giving proper attention to the signals of the Defiance, and in not keeping out of the gap until the Defiance had passed through, and that it was without fault of the Defiance.

Decree for the libelant against the Dayton with costs, and dismissing the libel as to the Defiance with costs.

---

THE WILLIAM J. LIPSETT.

THE JOHN R. PENROSE.

(Circuit Court of Appeals, Third Circuit. January 17, 1899.)

No. 26.

**COLLISION—NEGLIGENT NAVIGATION.**

The schooner P. weighed anchor to the west of the channel of the Delaware river, and started to turn around, and proceed down stream with the tide, before a strong wind. The schooner L. was sailing in full view down the east side of the channel, with a space of half a mile in width in a straight line between P. and the line on which L. was sailing. P. made a wide circle in turning, and, though L. bore off further to the eastward, the vessels collided. When the collision was imminent, nothing was done by the navigators of P. to avert it, though, if her main peak had been dropped, the collision would probably have been averted. Experienced navigators testified that P. should have been turned in the space of less than a quarter of a mile. *Held*, that the collision was the result of the bad navigation and negligence of the P., and that she could not recover for injuries sustained.

Appeal from the District Court of the United States for the Eastern District of Pennsylvania.