

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. 033-6903
Issued to: JAMES E. KONTOS

DECISION OF THE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2317

JAMES E. KONTOS

This appeal had been taken in accordance with Title 46 U.S.C.239(g) and 46 CFR 5.30-1.

By order dated 25 January 1982, an Administrative Law Judge of the United States Coast Guard at Boston, Massachusetts revoked the seaman's document of Appellant, upon finding him guilty of misconduct. The specifications found proved allege that while serving as an ordinary seaman aboard S/S LNG TAURUS under authority of his document above captioned, Appellant did on 20 November 1981 while S/S LNG TAURUS was in the port of Arun, Indonesia: (1) wrongfully fail to perform his duties by reason of intoxication; (2) assault and batter by beating with his fists a member of the crew, the Third Mate, Scott L. Ervin; (3) Assault and batter by biting on the lower leg a member of the crew, the Cargo Control Officer, William G. LANGELY; and (4) wrongfully damage the seawater temperature gauge and a light fixture with a chair in the Cargo Control Room.

On 25 November 1981 the charges were served and the hearing was set for 13 January 1982. On 2 December 1981 Appellant telephoned the Administrative Law Judge requesting an earlier hearing sometime before Christmas. The Administrative Law Judge

denied the request because the principal witnesses, were to be at sea between Indonesia and Japan until January 1982. Appellant was duly notified of this denial and the reasons for it by the Administrative Law Judge.

The hearing was held *in absentia* at Boston, Massachusetts on 13 January 1982.

The Investigating Officer offered in evidence an Affidavit of Service of the Charge sheet, copies of the official log of the S/S LNG TAURUS and the testimony of four witnesses.

Subsequent to the hearing, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specifications against Appellant were proved.

The entire decision was served on 25 January 1982. Appeal was timely filed on 9 February 1982.

FINDINGS OF FACT

On 20 November 1981, Appellant was serving as an ordinary seaman aboard the S/S LNG TAURUS and acting under authority of his document. He had been on shore earlier that day but had returned to the vessel and was standing the catwalk watch at about 2100 when he commenced making unusual and unessential transmissions on his walkie-talkie. The S/S LNG TAURUS was loading liquified natural gas at that time. As the catwalk watchstander Appellant's duties were to monitor valve positions and tank pressure, and to observe generally for cargo leaks during loading. Only radio transmissions regarding cargo operations are permitted.

After the unusual transmissions had continued for several minutes, the Master ordered the Third Mate to investigate the catwalk watch. When he arrived at the catwalk, the Third Mate smelled beer on Appellant's breath and observed Appellant wearing a thong on one foot and a hotel slipper on the other instead of the required safety shoes. The Third Mate questioned Appellant about the radio transmissions; however, Appellant could not remember

making them or even determine on which of four possible channels his radio was operating. Appellant was relieved of his duties as soon as a replacement could be found and ordered to report to the Master's cabin where he was logged for reporting to his watch while under the influence of intoxicants and for being dressed in an unsafe manner.

At about 2230 Appellant returned to the catwalk against the Master's orders and reported a false LNG leak. When the Third Mate arrived to investigate, he found Appellant with a can of beer in his hand. Appellant stated he had reported the leak and began using threatening language. He chased the Third Mate and eventually caught up with him when he tripped and fell. Appellant pushed the Third Mate when he stood up and threw a punch at him that went over his head. All of this took place on the catwalk which is about 80 feet above the deck. Appellant is in his mid-twenties, muscular and about 40 pounds heavier than the third Mate. The Third Mate managed to get to the Cargo Control Room (CCR), but Appellant followed. There, Appellant kicked the Third Mate in the groin and hit him in the chest causing him to fall to the deck and then retreat behind a console. Appellant picked up three chairs and threw them at the console smashing an overhead fluorescent light and the seawater temperature gauge.

Meanwhile the Master was informed about the incident. He got his handcuffs, gathered the First Engineer and the Bosun, and proceeded to the CCR. As the group hurried along the main deck, they were joined by the Cargo Control Officer and AB Bell. Eventually, they confronted Appellant. The Master told him to hit the deck so he could be handcuffed. Appellant replied, "No way." So, pursuant to the Master's orders, the Cargo Control Officer, Third Mate and AB Bell grabbed Appellant and wrestled him to the deck face down. After the Master handcuffed Appellant, the Cargo Control Officer loosened his grip on Appellant slightly, whereupon Appellant bit the Cargo Control Officer on the calf of his left leg, drawing blood.

Appellant was escorted handcuffed to his room where he was placed face down on his bed with a crewman on guard at the door. Because the Master did not consider it safe to carry Appellant back to Japan, he was escorted off the vessel in Singapore on 22 November 1981 at about 1000.

BASES OF APPEAL

This appeal has been taken from the order of the Administrative Law Judge. In his notice of appeal, Appellant contends that the decision and order should be reversed or remanded due to:

1. Exceptions of law and fact, and apparent errors of record manifested in the decision;

2. The serious jurisdictional question resulting from the fact that the proceeding was held *in absentia* after Appellant's request for an early hearing was denied without good cause;

3. The Coast Guard's failure to notify Appellant of the seriousness of the charge against him; and

4. The Master's failure to protect Appellant from his own misconduct by ordering him to his room without first ensuring that he had no more intoxicating beverages.

Appellant has not filed a brief or memorandum further supporting or explaining his contentions.

APPEARANCE: Myron Bobuch, Esquire.

OPINION

I

Appellant first contends that the case should be reversed or remanded due to exceptions of law and fact, and apparent errors of record in the decision. Appellant does not explain his contention or state specifically what the errors are. Examination of the record does not reveal any harmful errors. Relied, therefore, will not be granted on this basis.

II

Next, Appellant contends that there were jurisdictional questions apparent in the proceeding held *in absentia* stemming from Appellant's request for an early hearing that was denied without good cause. I do not agree. On 2 December 1981, Appellant requested an earlier hearing sometime before Christmas. The Administrative Law Judge denied the request because the principal witnesses were to be at sea between Indonesia and Japan until January 1982. It is not error to refuse a request for a new hearing date where the witnesses are known to be unavailable on the requested date. Though the convenience of the Appellant should be considered in connection with a motion for a new hearing date, it is not the only consideration. The Administrative Law Judge denied Appellant's request for good cause.

III

Appellant complains that the Coast Guard failed to notify him of the seriousness of the charge against him. Appellant's contention is without foundation.

The Investigating Officer personally Charged Appellant on 25 November 1982. Further, the record shows that Appellant was informed that the charge of misconduct against him could cause his seaman's document to be revoked. Accordingly, Appellant was informed of the serious nature of the charge and specifications. I find no error here.

IV

Appellant also contends that the Master failed to protect Appellant from his own misconduct because he did not ensure that Appellant had no more alcohol in his room. Appellant will not be allowed to escape responsibility for his misconduct by claiming someone else could have prevented it.

CONCLUSION

There was substantial evidence of a reliable and probative nature to support the findings of the Administrative Law Judge. The hearing was fair and conducted in accordance with the requirements of applicable regulations.

ORDER

The order of the Administrative Law Judge dated at Boston, Massachusetts on 13 January 1982 revoking Appellant's document is AFFIRMED.

J.S. GRACEY
Admiral, U.S. Coast Guard
COMMANDANT

Signed at Washington, D.C., this 31st day of August 1983.

***** END OF DECISION NO. 2317 *****

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