

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. 714 745
Issued to: Stephen J. MINTZ

DECISION OF THE VICE COMMANDANT ON APPEAL
UNITED STATES COAST GUARD

2320

Stephen J. MINTZ

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

By order dated 30 September 1980, an Administrative Law Judge of the United States Coast Guard at Long Beach, California suspended Appellant's seaman's document for three months on twelve months' probation, upon finding him guilty of misconduct. The specifications found proved allege that, while serving as Steward Utility on board the SS PRESIDENT POLK under authority of the above captioned document Appellant: (1) on or about 2 December 1979 failed to obey the order of the Chief Steward to mop and buff passenger deck passageways and to clean the passenger lounge and card room; (2) on or about 2 December 1979 created a disturbance in the Purser's foyer by using loud exclamations and profanity to the Chief Steward; (3) on 7 December 1979 failed to obey the order of the Chief Steward to clean the garbage room; and (4) on 8 December 1979 failed to obey the order of the Chief Steward to clean the garbage room.

The hearing was held at Long Beach, California on 5 February, 14 and 17 April, 20 May, 10 and 12 June and 17 September.

At the hearing, Appellant was represented by non-professional counsel and entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the testimony of three witnesses and four exhibits.

In defense, Appellant offered in evidence the testimony of one witness and nine exhibits and testified in his own behalf.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and four specifications had been proved. He then served a written order on Appellant suspending all documents issued to Appellant for a period of three months on twelve months' probation.

The entire decision was served and notice of appeal was timely filed on 17 October 1980. Although no brief in support of the appeal was filed, the grounds were sufficiently raised in the notice of appeal.

FINDINGS OF FACT

On 2, 7, and 8 December 1979, Appellant was serving as Steward Utility on board the SS PRESIDENT POLK and acting under authority of his document while the vessel was in the port of Subic Bay, R.P. and Manila, R.P.

The SS PRESIDENT POLK had been on a foreign voyage which commenced on 1 November 1979 at San Francisco and ended on 21 January 1980 at San Pedro, California. Early in the voyage, Appellant had discussed with the Master his attitudes on time off, stating that he was of the opinion that the Chief Steward would not allow him the time off to which he was entitled. Appellant had declined to discuss this with the Steward's Delegate since he did not get along well with him. On 1 December 1979, the Passenger's Bedroom Steward(BR) signed off the vessel and returned home because her mother was seriously ill. As a result, the Steward's

department was shorthanded. The following morning, 2 December, while the SS PRESIDENT POLK was in the port of Manila, R.P., the Chief Steward discussed the situation with the Steward's Delegate and it was agreed that the absent Passenger's BR's duties would split between Appellant and the Officer's Bedroom Steward (BR). The Chief Steward had previously discussed the matter with the Master since passengers would be embarking later the morning of 2 December. The Master was concerned about the work being done in a timely manner, but was advised by the Chief Steward that the duties had been split. The Chief Steward notified the Officer's BR of the split and told him that his portion of the Passenger's BR duties would be the rooms and that the Appellant would mop and buff the passenger deck passageways and clean the passenger lounge and card room. The Officer's BR performed his portion of the duties.

At about 0900 the Chief Steward approached Appellant in the vicinity of the passenger's foyer and told him that he would be required to do the other half of the absent Passenger's BR's work. In the course of the conversation, he first told Appellant to mop and buff the passenger deck passageway and to clean the passenger lounge and card room because passengers would be embarking at 1000. Appellant replied to the steward in a loud voice, "You black son of a bitch, I don't have to take orders from you. I don't want to do the work." An argument developed during which Appellant was loud and abusive in his language to the Chief Steward. The Chief Purser came out of his office and told Appellant to get off the deck because he did not want a disturbance going on while passengers were boarding. Appellant continued to refuse to perform the duties although he had been ordered by the Chief Steward to do them.

The Chief Steward reported the matter to the Master in writing. The Master was not in his office but returned at approximately 1015 and proceeded to the purser's foyer. After locating the Appellant at about 1020 the Master gave him a direct order to clean the passenger areas as ordered by the Chief Steward. At 1030 the Appellant proceeded to comply with the order.

The union agreement that the Marine Cooks and Stewards, a union affiliate of the Seafarers International Union of North America (SIU), entered into with American President Lines, the owners of the SS PRESIDENT POLK, requires members of the Union to comply with all lawful orders of superior officers and with all

company rules not inconsistent with the agreement. It further requires a crewman who believes a direct order of a superior officer is inconsistent with the agreement to nevertheless comply with the order. It allows the member to request the department head to give written confirmation of the order and cause the matter to be entered into the official log book.

On 3 December 1979 while the vessel was at sea on the way to Hong Kong, the Master entered the matter into the official log book and provided Appellant with an opportunity to reply. In this reply, Appellant stated that the waiter had previously been assigned to do this work and Appellant had advised the Chief Steward that he did not wish to do the work if other crewmembers wanted the work or local labor was willing to do the work. He admitted that the Chief Steward gave him a direct order to do the work and stated that he requested written confirmation. He went on to indicate that the log book as written was false.

On 7 December 1979 the vessel was moored at the port of Subic Bay, R.P. One of Appellant's regular duties was cleaning the garbage room. At about 1300 the Chief Steward told Appellant to clean the garbage room after dumping the garbage. Appellant told the Chief Steward that he considered the work to be overtime because it required soogeeing. The Chief Steward then advised the Appellant that he was not ordering the garbage room soogeed, but just cleaned out which was part of Appellant's regular duties and not overtime. Appellant stated that he would not do it unless he was paid overtime and subsequently did not perform the duties. On 8 December, Appellant again refused an order to turn to and clean the garbage room.

BASES OF APPEAL

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

- I. improperly coerced Appellant in his calling of witnesses and presentation of evidence;
- II. improperly refused to issue subpoenas for
 - a. certain witnesses, and

b. documents in support of Appellant's case in mitigation;

III. improperly denied a continuance

a. when Appellant's lay counsel was unavailable and
b. to allow Appellant to complete or compile additional data;

IV. improperly refused to provide a transcript for Appellant to review prior to final argument;

V. improperly refused to allow Appellant to cross examine a key witness

VI. conspired with the Court reporter and the Investigating Officer to fraudulently prepare the hearing transcript and

VII unlawfully abridged and infringed the constitutional rights of merchant seaman including his own.

APPEARANCE: Appeal pro se

OPINION

Appellant's contentions are without merit. This entire matter is a dispute between Appellant and the Chief Steward over Appellant's interpretation of the collective bargaining agreement entered into by his union with American President Lines. I have previously held that the cloak of a labor dispute does not cover conduct which is violative of a seaman's obligations under the law while in the service of a vessel under the authority of his seaman's document. A seaman is legally bound by the articles of agreement and many fail or refuse to obey lawful orders during the existence of the obligation. Decision on Appeal 2150 (THOMAS).

Appellant contends that he was improperly coerced by the Administrative Law Judge in the presentation of his case. The Administrative Law Judge made a full explanation of Appellant's rights to obtain and present evidence and witnesses and Appellant exercised these rights fully. He called witnesses, introduced evidence and made arguments. Although the Administrative Law Judge refused to allow irrelevant and unduly repetitious evidence to be presented, I find no indication of any coercion. Appellant cites none. His coercion contention is without merit.

II(a)

Appellant contends that the Administrative Law Judge refused to subpoena and accept relevant material for inclusion in the record. During the course of the hearing, Appellant raised and tried to put on the record much evidence of questionable relevance and materiality. The Judge tried to assist Appellant in obtaining witnesses and relevant documents to assist him in his defense.

The Judge is charged with managing the record and insofar as possible excluding irrelevant and immaterial facts. 46 CFR 5.20-1(a). The Judge often explained Appellant's rights to him and his lay representative and granted numerous continuances for the preparation of the defense. The Investigating Officer cooperated in obtaining documents. Appellant was not denied an opportunity to defend himself. The testimony of many of the witnesses, especially the passengers who were requested by Appellant, simply was not relevant to any issue before the Judge. They were not witnesses to the incident outside the Purser's office or any of the other matters which resulted in these charges. The Judge was correct in his management of the record. Insofar as he refused subpoenas and excluded evidence he neither erred nor unfairly prejudiced Appellant.

II(b)

Appellant contends that it was improper for the Administrative Law Judge to refuse to subpoena documents purporting to establish the chronic drunkenness of the Chief Steward. The sobriety of the Chief Steward was not at issue in these proceedings and it was quite proper to deny the request. I note, however, that the question of the Chief Steward's sobriety was actually developed

very well. This included questions of whether or not the Chief Steward testified truthfully concerning his own loggings and his actual habits in regard to sobriety. The Captain, the Chief Steward himself, Appellant and all other witnesses were asked about this aspect of the case. The documents requested by Appellant also would have been unduly repetitious on the question and were properly excluded by the Administrative Law Judge. See 46 CFR 5.20-95(a).

III

Appellant contends that he was improperly denied a continuance when his lay counsel was unavailable. He also contends he was improperly denied a continuance to complete or compile additional data, but does not identify specific instances.

On 10 June 1980, Appellant was granted a continuance until 30 July 1980 to submit a final brief. This continuance was granted in part because his lay counsel would be unavailable for several weeks. Subsequently he was granted two further continuances until 17 September 1980 to reopen his case and submit additional evidence. The record thus indicates that the Administrative Law Judge was liberal in granting continuances to Appellant. On 17 September 1980, at the final session of the hearing, Appellant submitted many documents which he compiled and some evidence based on documents acquired for him by the Investigating Officer. Appellant was not improperly denied continuances but granted them liberally and had adequate time to prepare and submit additional evidence. His contentions to the contrary are without merit.

IV

Appellant contends that it was improper for the Administrative Law Judge to deny him a transcript of the hearing prior to final argument. I do not agree. The regulations do not require transcripts to be issued unless an appeal is taken from the final order of an Administrative Law Judge and notice thereof is filed. See 46 CFR 5.30-1(c). See also 33 CFR 1.25-30(b)(4). The discussion in the record indicates that Appellant made his request early in the hearing and requested a copy of the recorder's tape recordings in the alternative. The Administrative Law Judge also denied the request for a copy of the tapes but suggested that

Appellant tape the proceedings himself. Neither the notice of appeal submitted by Appellant nor the transcript convince me that the Administrative Law Judge abused his discretion or that Appellant received other than a fair hearing.

V

Appellant contends that he was refused the opportunity to cross examine the Master of the vessel, Captain Jennings. Appellant called Captain Jennings as his own witness. The Administrative Law Judge declared him a hostile witness and Appellant used leading questions as was proper considering the nature of the witness. He was fully interrogated by Appellant. The contention concerning lack of cross examination is without merit.

VI

Appellant contends that the Administrative Law Judge, the Investigating Officer and the Court Reporter conspired together to fraudulently prepare the transcript in the case at hearing. Appellant has offered no evidence to substantiate his claim. Mere allegations of collusion are insufficient. Decision on Appeal 1522 (McMURCHIE). See Decision on Appeal 2279 (LEWIS). I have examined the record and find no evidence to support Appellant's claim. These arguments are totally without support.

VII

Appellant contends that the Administrative Law Judge's decision is an unlawful abridgement and infringement of his First and Fifth Amendment rights. This argument is without merit. Appellant neither offers evidence nor cites the transcript in support of it. Careful examination of the record provides no support for this argument in fact or law. Appellant has been denied no rights guaranteed him by the U.S. Constitution in these proceedings.

CONCLUSION

There is a 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 Long Beach, California on 17 September 1980 is AFFIRMED.

B. L. STABILE
Vice Admiral, U.S. Coast Guard
VICE COMMANDANT

Signed at Washington, D.C., this 7th day of September 1983.

***** END OF DECISION NO. 2320 *****

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