

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT NO. Z-631134-D1,
LICENSE NOS. 427 934 AND 425 322
Issued to: Robert S. CARTER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2028

Robert S. CARTER

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, now 5.30-1.

By order dated 12 September 1974, an Administrative Law Judge of the United States Coast Guard at San Francisco, California, suspended Appellant's license and seaman documents for 9 months outright upon finding him guilty of misconduct. The specifications found proved allege that while serving as a THIRD MATE on board the SS ST. LOUIS under authority of the document and license above captioned, Appellant did, FIRST on or about 7 November 1973 while said vessel was in the port of Singapore, wrongfully fail to perform his duties due to intoxication; SECOND, on or about 18 November 1973, while said vessel was in the port of Hong Kong, wrongfully fail to perform his duties due to intoxication. THIRD, on or about 19 November 1973, while said vessel was in the port of Hong Kong, wrongfully fail to obey an order of the Master by being under the influence of alcohol while on watch. FOURTH, on or about 19 November 1973, while said vessel was in the port of Hong Kong, wrongfully fail to perform his duties due to intoxication.

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

The Investigating Officer introduced in evidence, various documents, the original logbook and extracts from the log of the S.S. St. Louis, and the deposition of Thomas Sheehan, Master.

In defense, Appellant offered no evidence, but rather elected to vigorously attack the evidence offered by the Coast Guard on various grounds such as hearsay, irrelevancy, and the lack of specificity.

At the end of the hearing, the Judge rendered a written decision in which he concluded that the charge and all specifications had been proved. He then served a written order on Appellant suspending all documents, issued to Appellant, for a period of 9 months outright.

The entire decision and order was served on 27 September 1974. Appeal was timely filed.

FINDINGS OF FACT

On 7 November 1973, Appellant was serving as Third Mate on board the SS ST. LOUIS and acting under authority of his license and documents while the ship was in the port of Singapore.

After receiving reports that the Appellant had been drinking, the Master personally observed that Appellant to have impaired speech, the smell of alcohol about him and to be in an intoxicated condition. The Appellant failed to stand his assigned watch on deck, but rather proceeded to and remained in the wheelhouse. At this time the Master gave him verbal warning that he not report for duty in an intoxicated condition.

On 8 November 1973 the Master gave Appellant a formal warning in writing. This formal warning was intentionally not put in the logbook, rather it was calculated to afford Appellant an opportunity to mend his ways relative to the use of intoxicants.

On 18 November 1973, while the said vessel was in the port of Hong Kong, the Master, having been ashore, returned to the vessel to learn that Appellant, who was supposed to be on duty, could not be found to be relieved of his 0800-1600 watch. The Master found Appellant at 1600 sitting in the officer's mess in a highly intoxicated condition. Appellant was scheduled to double back and have the next 0000-0800 watch. The Master ordered him not to stand watch, but rather to go on duty at 0800, 19 November, thus affording him 16 hours to sleep and sober up. The Captain again warned Appellant to not appear for duty when under the influence of intoxicants.

On 19 November, 1973, Appellant was still intoxicated at 0800 and in no condition to stand watch. The Master did not permit Appellant to stand watch and thereupon assigned another to take his duty.

BASES OF APPEAL

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

- (1) The Administrative Law Judge failed to remain impartial
- (2) The evidence is insufficient to support the findings
- (3) The order is excessive.

APPEARANCE: Jennings, Gartland and Tilly, San Francisco, California; John Gary Warner, Esq.

OPINION

I

Appellant's argument alleging partiality of the administrative law judge are without merit. Appellant objects to the manner in which the Investigating Officer was instructed following the ruling that log entries offered into evidence were in substantial compliance with 46 USC 702. The remarks of the Administrative Law Judge provided a reasonable clarification of his ruling. Such

explanatory remarks are consistent with the requirement of 46 CFR 5.20-1(a). "The administrative law judge shall regulate and conduct the hearing in such a manner as to bring out all the relevant and material facts, and to insure a fair impartial hearing." The strict procedural rules of a court trial are not applicable to remedial administrative proceedings.

For the Administrative Law Judge to insure that all participants understand each step of the proceedings and all rulings therein cannot be equated to partiality in his conduct of the hearing.

II

It is not necessary to resolve the question of whether or not the log entries offered into evidence were in substantial compliance with 46 U.S.C. 702. Substantial compliance with the statute is required if the log entries alone are to present a prima facie case for the government. However, in this hearing, independent probative evidence was presented in the form of the lengthy deposition of Captain Sheehan. So long as the evidence contained in the logs is relevant and material, it shall be received before these administrative proceeding. Hearsay evidence is admissible unless the declarant is readily available to appear as a witness. (46 CFR 5.20-95). The fact that log entries may not be in substantial compliance with 46 U.S.C 702 does not preclude their admissibility. [46 CFR 5.20-107(b)]. All evidence contained in the record satisfies the criteria set forth in the regulations governing these proceedings.

III

Captain Sheehan's personal knowledge of events related to all specifications appear in the record in his deposition. No allegation rests upon evidence contained in the log entries alone. The deposition contains substantial firsthand knowledge of the Master in addition to hearsay. Upon careful reading of the deposition, coupled with the log entries and letter of warning, the Administrative Law Judge clearly had before him an adequate presentation of evidence of sufficient credibility to permit him to make findings of fact.

Appellant offered no evidence to rebut the case. With sufficient credible uncontroverted evidence before him to permit a finding that all specifications were proved, the Administrative Law Judge cannot be said to have erred in making such a finding. The evidence, when viewed in its entirety, is sufficient to support the decision.

IV

Appellant's claim that the order was excessive for the offenses proved misstates the true nature of the order.

Appellant's Document was suspended for six months remitted on twelve months probation from 21 February 1973 at New Orleans, Louisiana, for failure to perform duties, intoxication and possession of intoxicants, while serving aboard the S.S. THOMPSON LYKES. The instant offenses occurred within the period of probation. Therefore, imposition of the six months suspension previously ordered was required.

For the four additional offenses contained in the present specifications a three months suspension was ordered. Review of the guidelines in the Scale of Average orders (46 C.F.R. 5.20-165) indicates that, in view of the number of offenses committed by Appellant, revocation of his license and document would not have been an unreasonable sanction. Licensed officers are expected to maintain a high standard of character and responsibility in performance of their duties. Under the surrounding circumstances I consider the order not to be excessive.

ORDER

The order of the Administrative Law Judge dated at San Francisco, California on 12 September 1974, is AFFIRMED.

O.W. SILVER
Admiral, U.S. Coast Guard
Commandant

Signed at Washington, D.C., this 27th day of June 1975.

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