

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs
MERCHANT MARINER'S DOCUMENT (Redacted)
Issued to: Cleveland WALKER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

2145

Cleveland WALKER

This appeal has been taken in accordance with Title 46 United States Code 239 (g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 10 December 1976, and Administrative Law Judge of the United States Coast Guard at Houston, Texas, suspended Appellant's seaman's documents for three months plus three months on three months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as an AB seaman on board the United States SS SAM HOUSTON under authority of the document above captioned, Appellant:

- (1) on 5 September 1976 wrongfully had intoxicants in his possession aboard the vessel at sea, and failed to perform duties,
- (2) on 6 September 1976, wrongfully had intoxicants in his possession at sea, and failed to perform duties, and
- (3) on 1 October 1976, wrongfully failed to perform duties, at Savannah, Georgia.

At the hearing, Appellant did not appear, although he had requested a change of venue for his own convenience and had received due notice of the change granted and of the scheduled hearing. The Administrative Law Judge entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence voyage records of SAM HOUSTON and another vessel.

There was no defense.

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

The entire decision was served on 11 April 1978. Appeal was timely filed and was ready for resolution on 13 July 1978.

FINDINGS OF FACT

On all dates in question, Appellant was serving as an able seaman on board the United States SS SAM HOUSTON and acting under authority of his document.

On 5 September 1976, when Appellant failed to report for his assigned watch at sea, he was looked for but not found in his quarters. Three full bottles of vodka and one empty bottle were found in his room. He was found a few minutes later in another seaman's room, intoxicated.

On 6 September 1976, when Appellant again failed to report for watch at sea, he was found intoxicated in his own room with a bottle of vodka partially filled.

On 1 October 1976, at Savannah, Georgia, Appellant had special arrival duties, which he failed to perform.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that in view of Appellant's family problems and a period of physical disability the suspension ordered is too severe.

APPEARANCE: Appellant, pro se.

OPINION

The evidence adduced as to the wrongfulness of Appellant's possession of intoxicants was insufficient. The entries in the official log book record the fact that vodka was found in Appellant's quarters on both 5 and 6 September 1976. While it appears on the face of the matter that SAM HOUSTON was engaged on a voyage requiring the presence of a shipping commissioner for the signing on of the vessel's articles, and while it may be presumed that the standard form was used for the shipping agreement, containing the usual prohibition against "grog," there have been occasions on which masters have relaxed the strictness of the written agreement. It is not necessary to analyze situations like those in this context. What is important here is that the master of SAM HOUSTON apparently did not look upon the possession of vodka itself as a wrongful act.

The finding of the spirit is recorded incidentally to the statement as to Appellant's intoxication. It does not appear that the vodka was confiscated and, indeed, it is not surprising that the same discovery in Appellant's room was made on the second day. It must be concluded from this that the master condoned the presence of the intoxicant aboard the vessel in Appellant's case although he did not condone the abuse of the substance insofar as it apparently led to failures to report for duties.

It may be noted here that with respect to a specification involving SS SEALAND PRODUCER, which the Administrative Law Judge dismissed, the official log book entry specifically recorded that the possession of intoxicants had been forbidden aboard the vessel and that the contraband had been confiscated. It is also noted that in the instant matter the evident intoxication of the person was not alleged as the cause of the failures to perform duties.

II

The Administrative Law Judge's findings first recited that Appellant was serving under authority of his seaman's document aboard both SAM HOUSTON and SEALAND PRODUCER. The next substantive findings on the merits of the case begins, "while so serving aboard said vessel..." Considering the entire context I have corrected the findings to reflect that the vessel aboard which the acts of misconduct found proved took place was SAM HOUSTON.

III

With respect to the matter alleged to have occurred aboard SEALAND PRODUCER, the Administrative Law Judge found that "the reliable, probative and substantial evidence did not prove that..." Appellant committed the offenses. I take this to mean that there

was not reliable, probative, and substantial evidence that the offense was committed, especially since no evidence to the contrary had been entered.

Of this log entry, the initial decision says, "the master does not show that he read the entry...or received a reply, "and also declares that the entry "does not [substantially comply with the requirements of 46 U.S.C. 702] due to the fact that it does not show that the master of the vessel read the log entry... and gave...an opportunity to reply."

The tenor of these comments makes it appear that the decision to dismiss the specification dealing with SEALAND PRODUCER was based solely on a belief that an official log book entry which is not executed in compliance with 46 U.S.C. 702 has no weight at all. This is not correct application of principle. 46 CFR 5.20-107 (a) makes it clear that official log book entries are admissible in evidence under 28 U.S.C. 1732. The effect of paragraph (b) of that section is to provide for special weight to be accorded such entries made in substantial compliance with 46 U.S.C. 702. Given an entry admissible under paragraph (a) the evidence must be tested under the usual criteria. The tests for administrative proceedings are whether the evidence is such that a reasonable man could accept it and in the ordinary course of human affairs arrive at a conclusion, subject to a caveat that finds may not be predicated on hearsay alone.

The "shop book" rule takes the log entries out of the category of "hearsay alone" and if the record then meets the ordinary tests of inherent credibility and reliability, with absence of self-contradiction and patent implausibility, findings may properly be made. (Decision on [Appeal No. 2117](#).) In the instant matter, for example, then official log book entry is inherently plausible and on plain reading presents no immediate cause for complete rejection. Although the dismissal of the specification must stand, it is noteworthy that the authenticated record of the shipping agreement, an independent piece of evidence, tended strongly to corroborate the overall effect of the log entry but was apparently overlooked.

IV

Appellant's grievance that the order is too severe cannot be acknowledged even if the substantive offenses of "wrongful possession of intoxicants" are not proved. The hardship on the family is one of the unfortunate but foreseeable consequences of the type of conduct indulged in and Appellant's prior record, including eight earlier remedial actions under R.S. 4450 for

misconduct, must be influential. Far from tending to encourage leniency, Appellant's failure to avail himself of the opportunity to be heard even after obtaining, for his own convenience, a change of venue, and his subsequent unavailability for service of the initial decision, discourage the thought that mitigation of the order would be appropriate.

ORDER

The findings of the Administrative Law Judge as to the specifications alleging wrongful possession of intoxicants aboard SS SAM HOUSTON are SET ASIDE and the specifications are DISMISSED; the findings of the Administrative Law Judge as to the specifications alleging failure to perform duties aboard SAM HOUSTON and the Order, dated at Houston, Texas, or 10 December 1976, are AFFIRMED.

J. B. HAYES
Admiral U. S. Coast Guard
Commandant

Signed at Washington, D. C., this EIGHTH day of JANUARY 1979.

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