

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-1152447  
AND ALL OTHER SEAMAN'S DOCUMENTS  
Issued to: Francisco ESPERANZA

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1914

Francisco ESPERANZA

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.

By order dated 1 March 1972, an Administrative Law Judge of the United States Coast Guard at New York, N. Y., admonished Appellant upon finding him guilty of misconduct. The specifications found proved alleges that while serving as a Second Pumpman on board the United States SS MARYLAND TRADER under authority of the document above described, on or about 2 February 1972, Appellant wrongfully refused to obey a lawful command of the Second Assistant Engineer not to use a torch.

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

The Investigating Officer introduced in evidence the affidavit of service and voyage records from the SS MARYLAND TRADER.

In defense, Appellant offered in evidence his own testimony.

At the end of the hearing, the Administrative Law Judge rendered an oral decision in which he concluded that the charge and specification had been proved. He then served a written order on Appellant admonishing Appellant.

the entire decision was served on 4 March 1972. Appeal was timely filed on 10 March 1972. A brief in support of appeal was received on 7 June 1972.

#### *FINDINGS OF FACT*

On 2 February 1972, Appellant was serving as a Second Pumpman on board the United States SS MARYLAND TRADER and acting under authority of his document while the ship was in the port of Albany, N. Y.

On the above date Appellant overtook to repair the main valve on the #6 tank which he had previously noticed to be in need of such repair. He was under no specific orders to repair the valve, but considered it his responsibility to do so in the interest of the safety of the vessel. He took the valve to the machine shop in the engine room where the Second Assistant, who was the engineering watch officer at that particular time, was using the welding torch. When the Second Assistant had finished his work, Appellant picked up the torch and commenced using it in the repair of the valve.

As Appellant was using the torch, the Second Assistant told him not to use it. When he inquired why he should not use the torch, Appellant was informed that the Chief Engineer did not want him to use the torch and that the Chief did want appellant to claim overtime for the work. Appellant disregarded the Second Assistant and continued to use the torch and completed the job. Following this, Appellant went to the office of the Chief Engineer to inquire why he was not supposed to use the torch. After discussion and some alleged pushing and shoving, Appellant was taken to the Master and logged for the present offense.

#### *BASES OF APPEAL*

This appeal has been taken from the order imposed by the

Administrative Law Judge.

Appellant's contentions on appeal are generally that (1) the specification alleged does not make out a charge of misconduct; (2) Appellant was justified in disobeying the Second Assistant; and (3) the findings of the Administrative Law Judge are contrary to the weight of the evidence.

APPEARANCE: Rolnick Tabak, Ezratty and Hunter by Bernard Rolnick, Esq.

### OPINION

#### I

Appellant's first contention was urged to the Administrative Law Judge in the form of a motion to dismiss at the beginning of the hearing. The assertion is that the failure to cease working with the torch was not misconduct on the part of Appellant since the repair work was in the best interests of the vessel. Misconduct as contemplated by the statute (46 U.S.C. 239) and defined by pertinent regulation (46 CFR 137.05-20) encompasses: ". . . human behavior which violates some formal, duly established rule, such as the common law, the general maritime law, a ship's regulation or *order*, or shipping articles." (Emphasis supplied). The specification clearly sets forth the facts which are the basis of the charge and is sufficient to enable the person charged to identify the offense and to prepare a defense. The Administrative Law Judge was correct in denying Appellant's motion.

#### II

Appellant's second contention is premised upon the theory that he was justified in not obeying the directives of the watch officer because he had previously been allowed to work with the torch by the former Chief Engineer, that the repair work was necessary to the continued safety of the ship, and that Appellant considered himself as being responsible directly to the First Assistant or to the Chief Engineer rather than to the Second Assistant. None of these theories is persuasive. Appellant himself recognizes that "under the rules of the Coast Guard any officer can give any unlicensed personnel an order which has to be obeyed." (Appellant's Brief p. 2). This is especially true when the officer

in question is the engineering watch officer who has the direct responsibility for the safety and welfare of the ship for that period of time.

If Appellant truly thought that he had a right to use the torch or that the order had not in fact come from the Chief Engineer as indicated (R. 26, R. 38), the proper remedy was to cease using the tool and take the matter up with the Chief or with the Master. Discipline must be maintained on merchant vessels in order to insure safe and efficient operation; disobedience to lawful orders cannot be tolerated. Appellant's intentions in repairing the broken valve on his responsibility are laudable and it is unfortunate that so much has been made of an insignificant incident; however, I am without alternative and must affirm the decision and order of the Administrative Law Judge as being based on reliable and probative evidence and entirely appropriate under all of the circumstances.

Appellant's final contention is clearly without merit and requires no further consideration herein. It is enough that there is more than substantial evidence in the record to support the decision.

*ORDER*

The order of the Administrative Law Judge dated at New York, N. Y., on 1 March 1972, is AFFIRMED.

C. R. BENDER  
Admiral, U. S. Coast Guard  
Commandant

Signed at Washington, D. C., this 30th day of March 1973.

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