

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-877347
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Ronald W. BEATON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1922

Ronald W. BEATON

This appeal has been taken in accordance with Title 46 United States Code 239(g) and 46 Code of Federal Regulations 137.30-1.

By order dated 28 October 1970, an Administrative Law Judge of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman's documents for six months plus six months on six months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as an able seaman on board the SS TRANSERIE under authority of the document above captioned, Appellant:

- (1) on 24 June 1969 wrongfully failed to join the vessel at Manila, P.R.;
- (2) on 3 and 4 July 1969 wrongfully failed to perform duties at Keelung, Taiwan; and
- (3) on 17 August 1969, failed to perform duties both at Da Nang, RVN, and at sea.

At the hearing, Appellant did not appear. 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 the SS TRANSERIE.

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 specifications had been proved. He then entered an order suspending all documents issued to Appellant for a period of six months plus six months on six months' probation.

The entire decision was served on 17 November 1970. Appeal was timely filed on 17 November 1970. Appellant has chosen not to submit anything beyond his original notice of appeal.

FINDINGS OF FACT

On 24 June 1969, Appellant was serving as an able seaman on board the SS TRANSERIE and acting under authority of his document while the ship was in the port of Manila, P.R. On that date Appellant wrongfully failed to join the vessel.

On 2 July 1969, Appellant was accepted back as an able seaman aboard the vessel at Keelung, Taiwan.

On 17 August 1969, Appellant failed to perform his in-port deck duties at Da Nang, and failed to stand his watch at sea.

BASES OF APPEAL

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

APPEARANCE: Appellant, *pro se*.

OPINION

I

Before proceeding to Appellant's contention I consider the evidence presented as to the specification dealing with the alleged misconduct at Keelung, Taiwan, shortly after Appellant was accepted back aboard the vessel.

The official log book entry, at page 26 of the log, reads:

"Keelung, Taiwan July 4, 1969 Ronald W. Beaton AB Z-877347 on 12-4 watch.

Beaton failed to stand his 12-4 PM watch on July 3rd also failed to stand his 12-4 AM watch on July 4th.

For missing these two (2) watches Beaton is fined 1 day's pay.

\$15.84

(signature of chief mate) (signature of master)

The above statement was read
to Beaton and his reply was:"

Following this immediately, filling up the page appears this:

"Beaton went away raving calling names
(see page 41)
without waiting for copy.

(signature of chief mate) (signature of master)"

Although the basic entry is written in relatively faint contrast to the paper, except for the illegible signature of the chief mate, the portion quoted second above is very dark and in sharp contrast to the paper, leading to belief that it was written with a different pen. This fact alone, of course,

would not warrant an inference or even a suspicion that the entries were made at different times. Pursuing the reference "(see page 41)," however, arouses doubts as to both the entries having been made at the same time.

Pages 40 and 41 are the records of the offenses on 17 August 1969. Both pages are devoted exclusively to Appellant. Page 40 is relatively faint to start with and becomes fainter. Page 41's continuation proceeds to become fainter (once again except for the signature of the chief mate). Just below the middle of the page, below the signatures of the chief mate and the master, appear the words "The above was read to Beaton and his reply was:" At this point the writing is so faint as to be almost indecipherable. But again the writing becomes strong beginning with the words "Beaton was raving and calling names. Beaton walked off without taken (sic) a copy."

It appears to be beyond the possibility of coincidence that the master's pen failed on two different occasions six weeks apart just as he was preparing to record Appellant's reply to log entries. The striking differences in the ink at both places, the similarity of language about Appellants's "raving," and the otherwise inexplicable reference on page 26 to page 41 persuade me that the entry relative to events of 3 and 4 July 1969 was not presented to Appellant for reply until, at the earliest, 17 August 1969.

For this reason the entry for events for 3 and 4 July 1969 was not made in substantial compliance with 46 U.S.C. 702 and is, under the circumstances, stripped of presumptions arising from records kept in the regular course of business. On this record, the allegations dealing with events of 3 and 4 July 1969 cannot be found proved by the quality of evidence required in administrative proceedings.

The evidence as to the other offenses is not tainted by the error noted here.

II

Turning to Appellant's contention that the order of suspension in this case is too severe, I look to the prior record presented to

the Administrative Law Judge after he had found the charges proved.

This record dated back to 1953 when Appellant was admonished. In 1958 and again in 1961 he was admonished for offenses such as failure to join, failure to perform and intoxication. In March 1968 the apparent prior admonishments had little effect and his document was suspended and he was placed on probation for sleeping on watch, failure to perform and intoxication. In August of the same year, and again in December he was placed on probation and his document suspended for failure to perform and failure to join. In light of this pattern of continuing misconduct I find the Judge's order intrinsically not to be too severe, but rather somewhat lenient.

CONCLUSION

I conclude that the alleged offenses of 3 and 4 July 1969 were not established by evidence of the quality required in administrative proceedings, and that the second specification found proved must be proceedings, and that the second specification found proved must be dismissed.

Upon a reevaluation of the order in light of this dismissal, I am still constrained to find Appellant's contentions as to severity without merit.

ORDER

The findings of the Administrative Law Judge as to the events of 3 and 4 July 1969 are SET ASIDE. The specification as to offenses on those dates is DISMISSED. The findings of the Administrative Law Judge as to the other offenses found proved are AFFIRMED and the order of the Administrative Law Judge entered at San Francisco, California on 28 October 1970, is AFFIRMED.

C. R. BENDER
Admiral, United States Coast Guard
Commandant

Signed at Washington, D.C., this 27th day of April 1973.

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