

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-902-768-1 AND  
ALL OTHER SEAMAN'S DOCUMENTS  
Issued to: Paul A. ADAMS

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1923

Paul A. ADAMS

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 14 January 1971, an Administrative Law Judge of the United States Coast Guard at Houston, Texas, suspended Appellant's seaman's documents for six months outright plus six months on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as an oiler on board the United States SS SILVER DOVE under authority of the document above described, on or about 30 November 1970 and 1, 2 and 4 December 1970 Appellant wrongfully absented himself from his vessel and duties without permission.

At the hearing, Appellant did not appear. The Administrative Law Judge entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence certain voyage records of the SILVER DOVE. Because of Appellant's absence, nothing was offered in defense.

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. The Administrative Law Judge then entered an order suspending all documents issued to Appellant, for a period of six months outright plus six months on 12 months' probation.

The entire decision and order was served on 6 December 1971. Appeal was timely filed.

#### *FINDINGS OF FACT*

On 30 November 1970 and 1, 2 and 4 december 1970, Appellant was serving as an Oiler on board the United States SS SILVER DOVE and acting under authority of his document while the ship was in the port of Constantza, Romania and on the above-mentioned dates was wrongfully absent from his vessel and duties without permission.

#### *BASES OF APPEAL*

This appeal has been taken from the order imposed by the Administrative Law Judge. The Appellant attempts to explain the reasons for his absences from the vessel and his duties and the reason for his absence from the hearing. It is also urged that the order is a "very harsh penalty for these charges."

#### *OPINION*

The issues raised on appeal are matters in defense of the charge found proved. Such items would have been proper subjects to place before the Administrative Law Judge for his consideration during the hearing, but they are not timely when raised for the first time on appeal, and will not be considered.

The record before me contains clear error of a jurisdictional nature which, though not raised on appeal, governs the disposition of this case. To proceed with a hearing in absentia the record must contain proof that the Appellant was provided notice of the

hearing. The record is devoid of substantial evidence that the Appellant had been given notice of the hearing. The Investigating Officer and Administrative Law Judge made reference to an "affidavit of service" which was "on file." Since the record contains no such affidavit it must be concluded that what was referred to was the notice of hearing appended to the record which was not entered in evidence. The Investigating Officer and the Administrative Law Judge engaged in a colloquy concerning the circumstances of service of the charges and notice of the hearing, but at no time did the Investigating Officer testify under oath as to such circumstances. In the absence of proof of adequate notice, the in absentia proceedings are a nullity.

*ORDER*

The order of the Administrative Law Judge dated at Houston, Texas, on 14 January 1971 is VACATED, the findings are SET ASIDE and the charge is DISMISSED.

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

Signed at Washington, D. C., this 26th day of April 1973.

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