

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1043267-D4 AND
ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Gerald W. BAYLESS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1820

Gerald W. BAYLESS

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

By order dated 5 August 1969, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's seaman's documents for five months outright plus six months on twelve months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as an able seaman on board SS TRANSGLOBE under authority of the document above captioned, Appellant:

- (1) on 24 February 1969 failed to join the vessel at Saigon, RVN;
- (2) on 5 and 7 March 1969 created a disturbance at the American consulate and used foul and abusive language to consular officials while at the consulate in connection with repatriation proceedings; and
- (3) on 6 and 8 March 1969 created disturbances at Tan Son Nhut Airport, RVN.

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

The Investigating Officer introduced in evidence voyage records of TRANSGLOBE and a consular report.

In defense, Appellant offered no evidence.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved. The Examiner then entered an order suspending all documents issued to Appellant, for a period of five months from 24 April 1969, plus six months on twelve months' probation.

The entire decision was served on 8 August 1969. Appeal was timely filed on 3 September 1969. Although Appellant had until 2 March 1970 to perfect his appeal, he has added nothing to the originally stated grounds.

FINDINGS OF FACT

On 24 February 1969, Appellant was serving as an able seaman on board SS TRANSGLOBE and acting under authority of his document while the ship was in the port of Saigon, RVN. On that date he failed to join the vessel.

On 5 and 7 March 1969, Appellant, intoxicated, created disturbances at the American consulate in Saigon and used foul and abusive language to consular officials who were arranging for his repatriation.

On 6 and 8 March 1969, while efforts were being made to get Appellant aboard a commercial aircraft for the purpose of repatriation, Appellant again intoxicated, created disturbances at Tan Son Nhut Airport.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the Examiner's order is too severe and creates a hardship for Appellant's family.

APPEARANCE: Appellant, *pro se*.

OPINION

I

There is a threshold difficulty here in a variance between allegations and findings made and the proof. Both specifications dealing with the disturbances at the consulate and the airport allege that at those times Appellant was in the service of TRANSGLOBE, and the Examiner specifically so found in each case.

After his failure to join TRANSGLOBE on 24 February 1969, Appellant was no longer in the service of that vessel.

The variance is not fatal. Appellant was in Saigon because he is an American seaman, and was in fact at the consulate and the airport in the process of repatriation. He was therefore acting under authority of his document within the meaning of R.S. 4450 (46 U.S.C. 239).

II

The order in this case is not excessive. It necessarily includes two months' suspension because of a violation of a previously ordered period of probation, and the Examiner took into consideration two still earlier actions against Appellant's document.

The amount of hardship brought upon Appellant's family by his own misconduct is not the test in determining an appropriate period of suspension.

In view of the fact that all the disturbances created by Appellant disrupted efforts of government officials to assist him out of predicament into which his failure to join TRANSGLOBE had placed him, the Examiner's order is seen to be lenient.

ORDER

The order of the Examiner dated at San Francisco, California on 5 August 1969, is AFFIRMED.

T. R. SARGENT
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 10th day of September 1970.

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