IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-1268056 AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: James E. INMAN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1824

James E. INMAN

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 19 February 1970, an Examiner of the United States Coast Guard at New Orleans, La., suspended Appellant's seaman's documents for six months upon finding him guilty of misconduct. The specifications found proved allege that while serving as an ordinary seaman on board SS GREEN LAKE under authority of the document above captioned, Appellant:

(1) on or about 15 May 1969, while the vessel was at a foreign port, wrongfully failed to perform his assigned duties;

(2) on or about 20 May 1969, while the vessel was at sea, wrongfully failed to perform his assigned duties;

(3) on or about 21 May 1969, while the vessel was at a foreign port, wrongfully failed to perform assigned duties; and

(4) on or about 21 May 1969, wrongfully deserted the vessel at a foreign port.

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 GREEN LAKE.

In defense, Appellant offered in evidence his own testimony.

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 six months.

The entire decision was served on 19 February 1970. Appeal was timely filed on 20 February 1970, and perfected on 5 May 1970.

FINDINGS OF FACT

On all dates in question, Appellant was serving as an ordinary seaman on board SS GREEN LAKE and acting under authority of his document.

Appellant signed aboard GREEN LAKE as a "pierhead jump" at Mobile, Ala., on 28 March 1969.

On 15 May 1969, at Qui Nhon, RVN, Appellant failed to perform his assigned duties.

On 20 May 1969, when the vessel was at sea, Appellant failed to perform his assigned duties.

On 21 May 1969, at Manila, Philippine Republic, Appellant failed to perform his assigned duties.

On 21 May 1969, also at Manila, Appellant deserted from GREEN

LAKE. At the time of his desertion he had earned $1247.74 and forfeited, as unpaid wages, $653.21.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that:

(1) Appellant was authorized to leave the vessel because the master had not issued draws in accordance with 46 U.S.C. 597; hence Appellant was released from the obligation of his contract;

(2) Appellant notified the master of his intention to leave the vessel a half day before he actually left the vessel, but the master did nothing about it;

(3) "atrocities" were committed on Appellant after he left the vessel; and

(4) the order is too severe.

APPEARANCE: Kierr and Gainsburgh, by Robert J. David, Esq., New Orleans, La.

OPINION

I

It has been argued for Appellant that he knows the law with respect to draws and that he knew that he was released from the articles when certain draws were not allowed. Thus his departure from the vessel at Manila, with the intent not to return, was a justified departure and not desertion.

It is apparent, however, that Appellant is not as familiar with the law as he now asserts on appeal. He expressed his belief on the record, and he refers one to this point on appeal, that "if you are in port for over five days, you are supposed to get a draw for every five days." This is not correct. The five day period in 46 U.S.C. 597 has nothing to do with the length of time in any one port. The section specifically provides that in any one port on

the same entry, a seaman is entitled to only one draw, and this is true no matter how long the stay at that port.

A seaman may be excused under certain conditions for not knowing exactly what a law says, but when a seaman later sets up his own construction of a law as justifying an otherwise wrongful action he does so at his peril.

When Appellant chose to advise the chief mate that he was leaving the vessel at Manila, he did not, according to his own testimony, mention the question of draws or wages. The issue as presented at hearing and on appeal appears to be *arriere pensee*, and not a consideration urged at the time of the occurrences.

For purpose of this discussion, however, it may be acknowledged that when a seaman has lawfully demanded a draw and the master has refused it the seaman is released from his contract and is entitled to full payment of wages earned. A demand must be made, however.

The Examiner found insufficient evidence to support a finding that Appellant had made a demand for lawful draw. The only evidence on the matter was Appellant's own, and he stated unequivocally that he had made no demand for wages. 46 U.S.C. 597 does not operate to release a seaman from his contract unless a demand is made. Activity of a union delegate, if proved, does not satisfy the requirement s of 46 U.S.C. 597.

II

There are two other aspects of the draw which also undermine Appellant's position.

Appellant specifically complained before the Examiner that no draw was permitted to him when the vessel was at Saigon, a period of about a week beginning 2 May 1969, and later at Qui Nhon, where the vessel was again located for a week. There is no evidence, however, that there was no draw permitted in Manila, the port at which Appellant left the vessel. Assuming that a breach of the articles had occurred at Saigon or Qui Nhon with respect to

Appellant, this alone would not authorize him to leave the vessel at any time or place he might choose in the future.

If a seaman, without protest, accepts the benefits of his agreement after a breach and continues to serve, earn wages, and accept maintenance, he has condoned the breach. Absent a claim that the master unlawfully refused a draw in Manila, there is not even offered here an attempt to justify departure from the vessel at that port.

The other aspect of the "draw" question is one of simple arithmetic. Appellant acknowledged that he received a draw at Honolulu and another at sea (not required by law) before arrival in Vietnamese waters. When Appellant left the vessel at Manila on 21 May 1969, he had earned in wages $1247.74. Since Appellant's wages began on 28 March 1969, this means that he earned approximately $21.00 per day while working aboard the vessel. Yet when Appellant left the ship he had remaining in earned but unpaid wages only $653.21. This means that he had drawn $594.53 up to that time. This amounts to only $29.34 less than one half of the wages earned to the date when Appellant left the ship.

If it is assumed that a draw, not mentioned in the record, was made at Manila, the point made above, that no breach of the articles existed at Manila such as to authorize departure from the vessel, is strengthened. On the other hand, if there was no draw at Manila, and the last draw allowed was the one at sea prior to entry into Vietnamese territory, it is obvious that Appellant was entitled to no draw at either Saigon or Qui Nhon. The purported defense is entirely without merit.

III

Appellant's second point is also without merit. His testimony at the hearing was only that he notified the chief mate of his intention to leave the vessel, and he admitted that the chief mate warned him not to. He did not assert, as he does on appeal, that he notified the master of his intent to leave the vessel. One of his complaints on appeal is that the master, to whom his intent was presumably reported by the chief mate, did nothing to stop him from leaving the ship.

There is no evidence that the master personally advised Appellant that his intended departure would be desertion, but this is not of the essence. Despite Appellant's emotional reference to an analogy of a person's allowing a suicidal person to jump from a bridge, a master has no authority to restrain a potential deserter from deserting, nor does he have a duty to dissuade a potential deserter from his intended course of action.

IV

Whatever "atrocities" may have been committed on Appellant after he had deserted his ship and was under the sole jurisdiction of the Philippine Government are irrelevant to the question of whether Appellant had deserted from the vessel.

As to the severity of the order, I can say only that this was a matter clearly within the discretionary function of the Examiner.

The Table of Average Orders at 46 CFR 137.20-165, although not binding on examiners, shows a six month suspension as appropriate for desertion at a foreign port. The Examiner correctly found proved more than a desertion at a foreign port. His order could well have been more severe than it was without there being a legitimate challenge as to its being arbitrary or capricious.

ORDER

The order of the Examiner dated at New Orleans, La., on 19 February 1970, is AFFIRMED.

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

Signed at Washington, D. C., this 27th day of October 1970.

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