

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-1068242 AND ALL
OTHER SEAMAN'S DOCUMENTS
Issued to: Jerry Leon DOSS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1829

Jerry Leon DOSS

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 8 October 1969, an Examiner of the United States Coast Guard at Houston, Texas, suspended Appellant's seaman's documents for four months upon finding him guilty of misconduct. The specifications found proved allege that while serving as an oiler on board SS FRANK LYKES under authority of the document above captioned, Appellant:

- (1) on or about 17 August 1969, at a foreign port, absented himself from the vessel and his duties;
- (2) on or about 21 August 1969, at a foreign port, absented himself from the vessel and his duties;
- (3) on or about 21 August 1969, at a foreign port, wrongfully absented himself from the vessel and his 0001-0800 watch;

- (4) on or about 22 August 1969, at a foreign port, wrongfully absented himself from the vessel and his 0001-0800 watch;
- (5) on or about 23 August 1969, at a foreign port, wrongfully absented himself from the vessel and his 0001-0800 watch;
- (6) on or about 24 August 1969, at a foreign port, failed to preform his duties between 0001-0800, being under the influence of alcohol;
- (7) on or about 25 August 1969, at sea, failed to stand his 0000-0400 watch, because of being under the influence of alcohol; and
- (8) on or about 26 September 1969, at a domestic port, wrongfully failed to stand his 0001-0800 watch.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence voyage records of FRANK LYKES.

In defence, 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 four months.

The entire decision was served on 14 November 1969. Appeal was timely filed on 17 November 1969. Although Appellant had until 14 January 1970 to do so, he has added nothing to his original notice of appeal.

FINDINGS OF FACT

On all dates in question, Appellant was serving as an oiler on

board SS FRANK LYKES and acting under authority of his document.

On 17 August 1969, at Inchon, Korea, Appellant was absent from the vessel without authority and failed to stand his 0000-0400 and 1200-1600 watches.

On 20 August 1969, at Makpo, Korea, Appellant was absent from the vessel without authority and failed to stand his 0001-0800 watch.

On 21 August 1969, at Makpo, Korea, Appellant was absent from the vessel without authority and failed to stand his 0001-0800 watch.

On 22 August 1969, at Makpo, Korea, Appellant was absent from the vessel without authority and failed to stand his 0001-0800 watch.

On 23 August 1969, at Makpo, Korea, Appellant failed to stand his 0001-0800 watch, because of intoxication.

On 24 August 1969, at Makpo, Korea, Appellant failed to stand his 0001-0800 watch, because of intoxication.

On 25 August 1969, at sea, Appellant failed to stand his morning watch because of intoxication.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the order is too severe and that the defense was not properly understood at the hearing.

APPEARANCE: Appellant, *pro se*.

OPINION

I

Appellant's two contentions must be rejected out of hand. The order of the Examiner is easily seen as lenient considering the

number of offenses involved and the record of Appellant over a year and a half, which shows two misconduct actions under R.S. 4450 between 2 July 1968 and the date of the offenses in the instant case.

Appellant does not support in any way his contention that his defense was misunderstood by the Examiner, and the matter need not be considered.

II

There are matters, not raised by Appellant, which I must discuss because they affect a determination that I must make as to the number of specifications found proved.

III

The "on or about" practice of pleading in specifications is acceptable under the theory that when time is not of the essence of the misconduct alleged, contingencies of proof may be anticipated in that one date or another may eventually be found to be the date of the act depending upon determination of questions to be litigated. I emphasize, however, that investigating officers should not automatically resort to the "on or about" method of specifying dates when the evidence available is sufficient to identify the date. By the same token, an Examiner confronted with "on or about" allegations of date should not hesitate to fix the date in his findings when the evidence establishes a date certain.

IV

Similarly, when the allegation of place of an act of misconduct is not of the essence, a specification which alleges that an offense was committed in a "foreign port" is acceptable under the "contingency of proof" theory but again the identity of the port should be specified when known or ascertainable, as adding to the notice that the person charged is entitled to. I note in this case that one specification alleged that an offense occurred in "a domestic port." It is apparent that these different allegations are virtually meaningless unless the offense is such that it would be one in a foreign port and not in a domestic port, or *vice versa*.

I repeat here that the wartime security measures which were in effect when suspension and revocation proceedings first came under the cognizance of the Coast Guard and which led to identification of ports as "foreign" or "domestic" to preserve secrecy as to the location of vessels are no longer to be considered.

When the evidence is such that an investigating officer can identify the place of occurrence of an act of misconduct he should do so in his allegations. When the evidence is such that an examiner faced with "at a foreign port" or "at a domestic port" pleadings can make findings as to the port involved, he should do so.

In the instant case, it will be noted that the Examiner found proved in all specifications acts of misconduct "on or about" a certain date and "in a foreign port" or "in a domestic port," as alleged. My findings, based upon the evidence are more explicit as to place and date.

V

When the documentary evidence of log entries is placed in one to one correspondence with the specifications, it can be seen that as to 23 August 1969 the evidence proves both more and less than the "on or about" 23 August specification alleges. (Compare my "Finding of Fact" as to 23 August with the specification dealing with that date.)

The evidence does not prove that Appellant was absent from the vessel, although it proves the reason for his failure to perform duties--intoxication. The error is not fatal and will be cured by a modification of the Examiner's findings.

It can also be seen that there is absolutely no evidence as to an offense "on or about 26 September 1969, at a domestic port." The error here will be cured by setting aside the Examiner's findings as to that specification and dismissing the specification. The dismissal of that specification will still leave seven acts of misconduct proved and will, in view of what was said in "I" above, necessitate no change in the order.

ORDER

The findings of the Examiner as to Specification 5 are MODIFIED to provide it was proved that on 23 August 1969, at Makpo, Korea, Appellant wrongfully failed to stand his watch from 0001 to 0800. The findings of the Examiner as to the specification alleging an offense "on or about 26 September 1969 at a domestic port" are SET ASIDE and the specification is DISMISSED.

The order of the Examiner dated at Houston, Texas on 8 October 1969, is AFFIRMED.

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

Signed at Washington, D. C., this day of 1970.

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