IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-273334-D7
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: John B. ROLFES

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1867

John B. ROLFES

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 4 June 1970, an Examiner of the United States Coast Guard at New Orleans, La., suspended Appellant's seaman's documents for four months plus four months on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a deck engine mechanic on board SS DOLLY TURMAN under authority of the document above captioned, on or about 8 April 1970, Appellant failed to join the vessel at Saigon, RVN.

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

The Investigating Officer introduced in evidence voyage records of DOLLY TURMAN.

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 specification had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of four months plus four months on twelve months' probation.

The entire decision was served on 15 June 1970. Appeal was timely filed on 24 June 1970. Although Appellant had until 15 August 1970 to add to his original notice of appeal he has not done so.

FINDINGS OF FACT

On 8 April 1970, Appellant was serving as a deck engine mechanic on board SS DOLLY TURMAN and acting under authority of his document while the ship was in the port of Saigon, RVN.

In view of the action taken here no other findings are necessary.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Because of the action to be taken, specific bases of appeal need not be set out.

APPEARANCE: *Pro se.*

OPINION

I

The findings of fact made by the Examiner are not satisfactory here especially in view of the statements made in his "OPINION." I quote the three evidentiary findings made in support of the ultimate finding that the matters alleged in the specification were facts:

"1. Mr. Rolfes signed on the vessel at Houston, Texas on 24

February *[sic]* 1970 and failed to join his vessel on its voyage from Saigon on 8 April 1970. Mr. Rolfes rejoined his vessel on 22 April 1970 at Singapore and remained aboard until the end of the voyage at New Orleans on 2 June 1970.

2. Mr. Rolfes admitted he failed to join his vessel at Saigon on 8 April 1970.

3. There is an entry in the Official Logbook dated 8 April 1970 containing the statement that Mr. Rolfes was AWO*[sic]* for foar *[sic]* to eight sea watch and failed to join on sailing at 0630, 8 April 1970.

4. The aforementioned log entry was made in accordance with provisions of applicable statute."

If this were all that need be considered, there would be no difficulty in sustaining the Examiner's conclusion that the charge was proved.

The Examiner's "OPINION" raises questions. He summarizes the testimony given by Appellant, but not completely. Appellant testified that he was standing eight hour port watches and that his schedule 1600-2400, and 0400-1200 prevented him from getting ashore because of the curfew in Saigon. He said also that he requested the Chief Engineer to allow another watchstander to replace him, at his expense, so that he would not have to go to work at 1600, and that the First Assistant told him that it would be all right, so that he dressed and started ashore just after 1600. He testified also that on his way to leave the ship he encountered the First Assistant (not the Chief as the Examiner recounted, D-2), R-7, and asked when the vessel would sail, since no sailing board had been posted. The First, he said, replied that he did not know when the vessel would shift from port watches to sea watches. (Appellant stood the 4-8 sea watch.)

In town, Appellant says, he encountered violence and rioting, went to see an acrobatic performance, and because he could not risk violating the curfew, remained at a hotel until morning. When he reached the ship in the morning at 0800 he says, intending to obtain a draw, he found that the vessel had sailed at 0600, and

that sea watches had been set at midnight which meant that he had been due to report for watch at 0400 although he did not know this.

Appellant testified that if sea watches had not been set, he would not have had to report for duty until 1600.

The Examiner's summary of this testimony is quoted:

> "Mr. Rolfes, in testifying, stated that he left the vessel about 1600 hours 7 April 1970 prior to a sailing board being posted and was proceeding off the vessel to go into town when he came in contact with the Chief Engineer who at the time was coming aboard. Mr Rolfes further stated that he conversed with the Chief Engineer as to when the vessel would be sailing and that the Chief Engineer did not know. Mr. Rolfes further stated that after so talking to the Chief Engineer, he went ashore with the impression that the vessel would not sail until at least after 1600 on 8 April 1970 at which time he was due back for his watch of 1600 to 2400 hours."

The Examiner then says:

> "Mr. Rolfes should have at least ascertained the time of sailing after he was ashore and in proper time to return to the vessel..."

I have said in the past that a seaman who goes ashore in a foreign port has a duty to ascertain when he should be back to the vessel when no sailing board has been posted and no other fixed time for his return has been set, before he leaves the vessel. Decision on Appeal No. 988. I hold also that a person who had gone ashore without authority cannot complain that an expected sailing time was moved forward especially when he had made no effort to ascertain sailing time after going ashore without authority.

"Failure to join," as an offense cognizable under R. S. 4450, is generally predicated upon an unauthorized absence from the vessel at sailing time. When a person on authorized absence from his vessel misses his ship because the vessel sailed without notice to him during his period of authorized absence he had not "failed

to join."

I have never held, however, that a person on authorized absence from his vessel has, without more, a duty to communicate with the vessel to ascertain possible changes in plans during the period of authorized absence. The last sentence quoted from the Examiner's OPINION implies such a duty.

II

This is a case in which it must be repeated again that an examiner's opinion cannot be the vehicle for statement of findings of fact. See Decision on Appeal No. 1816. Appellant in this case was either absent from the vessel at both 0400 and at sailing time without authority or he was absent with authority and without a duty to communicate with the vessel during his period of absence.

CONCLUSION

Since the Examiner's findings of fact are as consistent with an authorized absence form the vessel as with an unauthorized absence, and since the Examiner's opinion that a person on authorized absence has a duty during the period of authorized absence to ascertain the sailing time of a vessel is not supportable on any precedent, the ultimate findings cannot be sustained and the charges must be dismissed.

The action taken here must not be construed as meaning that an examiner, on the record of this case, could not, by well-stated findings and expression of reasons therefor, have properly found the charges proved.

ORDER

The order of the Examiner dated at New Orleans, La.,

on 4 June 1970, is VACATED. The charge is DISMISSED.

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

Signed at Washington, D. C., this 17th day of January 1972.

INDEX

***** END OF DECISION NO. 1867 *****

Top