IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-550375-D2 AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: William Leon SIPE

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1683

William Leon SIPE

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 3 February 1967, an Examiner of the United States Coast Guard at New Orleans, La., suspended Appellant's seaman's documents for 3 months outright plus 3 months on 12 months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as a deck maintenance man on board the United States SS HIGH POINT VICTORY under authority of the document above described, on or about 22 December 1966, Appellant wrongfully destroyed a lock on a ship's door with a fire axe, wrongfully failed to join, and deserted at Yokohama, Japan.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of guilty to the charge and the specifications alleging the breaking of the lock and the failure to join, but not guilty to the desertion.

The Investigating Officer introduced in evidence voyage

records of HIGH POINT VICTORY and the testimony of six witnesses.

In defense, Appellant testified in his own behalf.

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

The decision was served on 24 April 1967. Appeal was timely filed on 24 April 1967. Although further time was granted, Appellant has submitted nothing in addition to his original appeal.

FINDINGS OF FACT

On 22 March 1966, Appellant was serving as a deck maintenance man on board the United States SS HIGH POINT VICTORY and acting under authority of his document while the ship was in the port Yokohama, Japan.

On that date, in an effort to get through a locked screen door from a passageway to the outside deck, Appellant smashed the lock with an axe. (There was an open door to the outside at the other end of the athwartship's passage.)

Outside, the crew was preparing to get underway. The gangway was being rigged in, but for some reason had stuck with the lower end only about a foot from the ground.

The boatswain, noticing that Appellant was somewhat intoxicated ordered him off the deck, for his own and for others' safety. Appellant declared that he could get no "overtime" on this ship. He walked down the gangway.

Several crewmembers, including the boatswain, called to him to come back on board. He did not. At the foot of the gangway he called back up to the others, profanely, that he was not going to sail on any ship that wouldn't give him overtime. He then disappeared from sight, and the vessel sailed.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that Appellant left the ship in fear of his life and that the lock he broke was worth only about $3.00.

APPEARANCE: Appellant, *pro se*

OPINION

I

Although the Examiner found the specification as to the breaking of the door lock proved by the evidence, it was in fact "proved by plea." Nothing in Appellant's testimony at hearing was inconsistent with his plea. His assertion on appeal of the relatively small value of the lock is irrelevant. The misconduct consisted not of damaging valuable property but of deliberately and violently destroying ship's property.

II

Appellant argued at hearing, and repeated on appeal, that he was justified in leaving the ship because he was in fear of his life. A specification dismissed by the Examiner had alleged that Appellant had engaged in a fight with another crewmember on an earlier date. But it is not this man the Appellant alleges fear of.

He specifies the boatswain, the chief mate, and the crowd of sailors who stood on deck calling to him to come back on board. He mentions that after he had smashed the door lock he demanded to know who had gone to the master to report that he had been threatening someone with an axe. He admits that he was then told that no one had so reported, but that the report had been only that he had an axe.

The Examiner heard all the witnesses, including the boatswain and the chief mate and concluded that there was no fear in Appellant, either of long standing or immediate, to prompt him to leave the ship. Any theory of long standing fear is dispelled by

the fact that when Appellant smashed his way out to the deck he was going out to work and earn overtime, not to leave the ship. The Examiner concluded that the conduct of the boatswain, in ordering Appellant from the deck, was not only not a threat to Appellant's safety but was indeed an act directed toward his safety.

From the point of view that there was conflicting evidence on this matter before the Examiner, it must be said that there was substantial evidence to support his findings, and that is enough to require that his findings be affirmed. On review, it may even be said that had the Examiner found other than he did there would be grave suspicion that he had disregarded substantial evidence and had relied upon evidence intrinsically without substance.

III

As a technical matter, it must be observed that when Appellant offered his defense of justification to excuse an apparent desertion, his plea of guilty to the "wrongful failure to join" specification should have been changed. A "failure to join" cannot, even by admission, be "wrongful" if the departure from the ship with intent not to return was justified. This is not of much importance since the desertion was found proved, but if, when the Examiner ultimately made his decision, he had found the departure justified, he would have been in the inconsistent position of either dismissing a specification to which a plea of guilty was on the record or of finding a specification proved by plea inconsistently with a dismissal of a desertion because of a finding of justified departure.

IV

In this same connection, it is noted that the Examiner found proved, upon the same set of facts, a specification alleging desertion and a specification alleging failure to join. When there is a desertion involving the missing of a ship on its sailing, there is also a failure to join. This is not to say that there cannot be a desertion without a failure to join. There can be a desertion because of the element of intent in desertion, the departure from the ship with the intent not to return, even if there is a later return to the ship. There can be a desertion even if the ship does not sail, if the seaman does not come back during

his period of obligation. But when there is a blending of the elements:

(1) departure from the vessel,

(2) intent not to return, (proved or not)

(3) failure to return, and

(4) sailing of the ship,

the two offenses need not be charged separately. A specification alleging desertion, under such conditions, can be found proved as to the failure to join when the intent not to return is found not proved.

Similarly, as in this case, both specifications should not be found separately proved, as if they were different offenses, when the failure to join is transformed into only an evidentiary fact of the desertion charge.

In the instant case the failure to join is merged into the desertion, and the failure to join specification should be dismissed as superfluous, having been found proved under the desertion specification.

V

In some case, the finding that there has been a multiplication of offenses found proved on the same facts, one offense a lesser part of another, might lead to a modification of a suspension period on the theory that the Examiner's order may have been predicated on the number of specifications found proved. Here, there is no need to entertain such considerations. The Examiner's order is, in itself, appropriate to the fully proved charges of violent damage to ship's property and desertion.

When it is considered that the record shows that appellant had had five prior actions under R.S. 4450 recorded against him, the order appears lenient. There is no reason to disturb it.

ORDER

The Findings of the Examiner are MODIFIED to reflect that the failure to join was found proved under the specification alleging desertion, and that the failure to join specification is therefore DISMISSED on superfluity.

The order of the Examiner dated at New Orleans, La. on 3 February 1967, is AFFIRMED.

P. E. TRIMBLE
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D.C., this 14th day of March 1968.

INDEX (SIPE)

Charges and specifications

Desertion, when FTJ need not be pleaded separately
Failure to join, when not to be pleaded separately from desertion

Desertion

includes failure to join at times
forms of desertion
fear as a defense, not found

Failure to join

when lesser included in desertion
when charging not needed apart from desertion
fear as defense to desertion requires not guilty plea to FTJ.

Findings of Examiner

desertion and FTJ, when superfluous

***** END OF DECISION NO. 1683 *****

Top