

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1135501 AND ALL
OTHER SEAMAN'S DOCUMENTS

Issued to: HARVEY L. GLOTZER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1691

HARVEY L. GLOTZER

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 29 March 1967, an Examiner of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman's documents for six months. The specification found proved alleges that while serving as an ordinary seaman on board the United States SS RIDGEFIELD VICTORY under authority of the document above described, on or about 12 January 1967, Appellant deserted his vessel at Bangkok, Thailand.

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 copies of voyage records of RIDGEFIELD VICTORY.

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 six months.

The entire decision was served on 1 April 1967. Appeal was timely filed on 19 April 1967. Several months elapsed before appeal was perfected.

FINDINGS OF FACT

On 12 January 1967, Appellant was serving as an ordinary seaman on board the United States SS RIDGEFIELD VICTORY and acting under authority of his document.

After much discussion between Appellant and the master of the vessel, not now relevant, about the possibility of a mutual release, Appellant departed the vessel without authority at Bangkok, Thailand, about an hour and ten minutes before scheduled sailing time. Taking his motorcycle he went to visit the American consulate. On returning from the consul to rejoin the ship he had a spill and was injured. The motorcycle was demolished. As a result, he missed the ship.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is Appellant's contention that the evidence was insufficient to prove the essence of desertion, the intent not to return to the vessel's service.

APPEARANCE: Schulman, Abarbanel & Kroner, New York, New York by
William W. Hall, Jr., Esquire

OPINION

I

The only pertinent "finding of fact" made by the Examiner in

this case was that Appellant deserted RIDGEFIELD VICTORY at Bangkok, Thailand, on 12 January 1967,

From the Examiner's "Opinion" it is clear that Appellant had unsuccessfully sought a mutual release from the master and had appealed to the American consul. The consul advised him that mutual release could be arranged only with the presence and consent of the master.

Appellant returned to the ship, assisted in securing for sea, and then, about an hour and ten minutes before scheduled sailing time, left the ship without authority. Taking his motorcycle, he made another unsuccessful appeal to the consul.

While this portion of the Examiner's "Opinion" is couched in terms of a recital of Appellant's testimony, it contains this statement:

"He took his motorcycle and on returning from the consul to rejoin the ship he had a spill, was injured and as a result he missed the ship."

The Examiner does not reject this testimony, nor give any reason why it should not be believed. It is therefore accepted as fact.

But in these very words the essence of desertion is negatived. Appellant did not miss the ship because he intended to. He missed the sailing because, on his way to rejoin, he had an accident and was injured.

There is no evidence that Appellant intended, after returning to the ship, to leave it again, and no such speculation may be made. The reliable evidence shows only a wrongful failure to join.

Had Appellant been on an authorized absence from the vessel when his accident occurred, a question might have been raised as to his fault in connection with the accident. Since Appellant was ashore without authority he is responsible for the consequences of anything that happened insofar as his obligation to sail with the ship is concerned.

II

While the Examiner dismissed one of three original specifications as "not proved," a specification alleging wrongful failure to join was merely "dismissed." This followed from the fact that "wrongful failure to join" had been proved within the finding that "desertion" had been proved. The "dismissed" specification was superfluous.

The specification was superfluous in the first place. There is no need for alternative pleading when a desertion involves a failure to join.

CONCLUSION

The findings of the Examiner must be modified to reduce the misconduct found proved from desertion to wrongful failure to join. It is therefore appropriate to modify the order.

It is noted that in eight years of service in the Merchant Marine, this is the first recorded instance of misconduct by Appellant.

ORDER

The findings of the Examiner are MODIFIED to show that Appellant wrongfully failed to join RIDGEFIELD VICTORY at Bangkok, Thailand, on 12 January 1967. The order of the Examiner is modified, and Appellant is hereby ADMONISHED. As MODIFIED, the findings and order of the Examiner entered at San Francisco, California, on 29 March 1967, are AFFIRMED.

W. J. SMITH
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 27th day of March 1968.

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Charges and Specifications

desertion and failure to join need not be pleaded in the alternative

Desertion

failure to join included, need not be pleaded in alternative

intent needed

negatived when seaman is actually returning to his ship when injured.

Failure to join

accident while on unauthorized absence no defense.

lesser offense included in desertion pleading, alternative to desertion not needed.

***** END OF DECISION NO. 1691 *****

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