

IN THE MATTER OF LICENSE NO. 322484 MERCHANT MARINER'S DOCUMENT NO.
Z-103706-D1 AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Carl N. KUNTZ

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1694

Carl N. KUNTZ

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 16 November 1966, an Examiner of the United States Coast Guard at Boston, Massachusetts, revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specifications found proved allege that while serving as a Third Assistant Engineer on board the United States SS CARROLL VICTORY under authority of the license above described, Appellant wrongfully failed to perform his duties on 3 December 1965, 5, 6, 8 and 16 January 1966; participated in a disturbance and wrongfully had possession of intoxicants on 2 December 1965; wrongfully caused ship's property to be destroyed on 5 January 1966; wrongfully engaged in a fight on 8 January 1966; and wrongfully deserted the vessel on 17 January 1966.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence log book entries and other documentary evidence relating to the charge, including deposition of the Chief Engineer, the Third Mate, and the Master, and the testimony of the Master.

In defense, Appellant offered in evidence his own testimony, the stipulated testimony of the Second Assistant Engineer, and certain documents relating to the desertion specification.

At the end of the hearing, the Examiner rendered an oral decision in which he concluded that the charge and before-mentioned specifications had been proved. The Examiner then served a written order on Appellant revoking all documents issued to him.

The entire decision and order was served on 17 November 1966. Appeal was timely filed on 13 December 1966.

FINDINGS OF FACT

From 12 August 1965 to 17 January 1966, Appellant was serving as a Third Assistant Engineer on board the United States SS CARROLL VICTORY and acting under authority of his license while the ship was on voyage to the Far East.

On 2 December 1965 while the vessel was anchored in Qui Nhon, Vietnam, her Master discovered a case of beer belonging to Appellant and threw it overboard. Later that day Appellant, while intoxicated, participated in a disturbance outside the Master's cabin.

On 3 December 1965 Appellant failed to stand the 0000 to 0800 watch.

On 5 January 1966 Appellant, again intoxicated, fell asleep in his bunk while smoking a cigarette. The mattress caught fire and ultimately had to be destroyed. This same day Appellant again failed to stand the 0000 to 0800 watch.

On 6 January 1966 Appellant failed to stand his watch.

On 8 January 1966 Appellant was trying to stand the 0000 to 0800 watch. He was so intoxicated, however, that around 0200 he accidentally shut off the ship's power while tinkering with the generator. The Master had him relieved and sent to bed. A half hour later the Chief Engineer returned from shore and confronted Appellant in the latter's quarters. He demanded to know why Appellant was not standing his watch. The two men became involved in a fist fight, which was broken up by the Master. About ten minutes later Appellant encountered the Chief Engineer in a passageway and they had another fist fight, which was again broken up by the Master.

On 16 January 1966 Appellant was again absent without authority from his 0000 to 0800 watch. The vessel due to depart Moji, Japan, that evening at 2000 hours. Due to engine difficulties the time of departure was delayed until 0800 on 17 January. Shortly after midnight the Third Mate witnessed Appellant and Mr. Peters, the Second Assistant Engineer, packing their gear into suitcases. They told the Third Mate that they were taking their personal belongings and licenses and leaving the ship. At 0035 Appellant and Peters walked down the gangway and never returned to the vessel. A search of their quarters after the SS CARROLL VICTORY departed Moji on the 17th revealed no personal effects of either man. In addition, both men's licenses were missing from the license rack.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the desertion specification was not proved.

APPEARANCE: Gabriel R. Caggiano, Esquire, of Boston,
Massachusetts.

OPINION

Although not tried jointly for desertion, Appellant and Second Assistant Engineer *Peters* were represented by the same attorney on concurrent dates. The appeal brief in both cases is identical although the grounds raised therein apply only to the fact

situation in the Peters case and not to the case at bar. See Appeal No.

The probative evidence indicates Appellant took his license and all other personal gear and walked off the vessel declaring he was, in effect, leaving for good. He was not on the ship when she departed at 0800 on 17 January 1966. Taken together, these facts clearly show Appellant deserted the vessel. Appellant's contention that he was going to return to the ship before she left the port is simply not credible.

CONCLUSION

In addition to the numerous specifications found proved in the instant decision, Appellant has a prior record of misconduct. His consistent pattern of misbehavior aboard the SS CARROLL VICTORY, culminating with his desertion in a foreign port, leave no proper alternative to revocation of his license and all other seaman's documents.

ORDER

The order of the Examiner dated at Boston, Massachusetts, on 16 November 1966, is AFFIRMED.

W. J. SMITH
Admiral U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 1st day of April 1968.

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