

IN THE MATTER OF LICENSE NO. 297552 MERCHANT MARINER'S DOCUMENT NO.
Z-173585-D3 AND ALL OTHER SEAMAN'S DOCUMENTS

Issued to: James D. PETERS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1698

James D. PETERS

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 documents upon finding him guilty of misconduct. The specifications found proved allege that while serving as a Second Assistant Engineer on board the United States SS CARROLL VICTORY, under authority of the license above described, on or about 2 December 1965, Appellant wrongfully had intoxicating liquor in his possession, wrongfully participated in a disturbance, wrongfully assaulted and battered another crewmember, and wrongfully failed to perform his duties; on or about 16 January 1966 wrongfully failed to perform his duties; and on or about 17 January 1966 wrongfully deserted the vessel.

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 logbook entries relating to the specifications alleged, the depositions of the Master and Third Mate, and the testimony of the Master.

In defense, Appellant offered in evidence his own testimony, the testimony of the former Third Assistant Engineer, and certain documents relating primarily 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 written decision and order was served on 17 November 1966. Appeal was timely filed on 13 December 1966.

FINDINGS OF FACT

On 2 December 1965, Appellant was serving as a Second Assistant Engineer on board the United States SS CARROLL VICTORY and acting under authority of his license while the ship was in the port of Qui Nhon, South Vietnam.

That morning the Master and Chief Engineer discovered a case of beer and a bottle of vodka in Appellant's quarters. They threw this liquor over the side and recorded the incident in the official log.

Later in the day there was a disturbance in the passageway outside the Master's cabin. Appellant, who was intoxicated, was participating in this disturbance. When asked what the trouble was, Appellant replied that his hand was hurting him. The Master ordered Appellant to his quarters and directed the purser/pharmicists mate, George W. Ranger, to prepare a warm water solution in a pan, which he did. The two of them then proceeded to Appellant's quarters. As Mr. Rager set the pan down on a settee, Appellant punched him on the right cheekbone just below his eye, inflicting a serious wound in that area.

Appellant was assigned the 4:00 p.m. to midnight watch that

day and failed to stand it. He did not seek or receive permission to be relieved of this duty.

On 16 January 1966 the vessel was in the port of Moji, Japan. Appellant returned from shore in the early evening, being scheduled to stand the 8:00 p.m. to midnight watch. He was intoxicated, however, and as a result failed to report to the engine room at all that evening. Around 10:00 p.m. he went to the Master's quarters and complained that the Chief Engineer had struck him. The Master replied that because the Chief Engineer was then busy repairing some machinery in the engine room, he would not investigate the alleged incident until the next morning.

At little after midnight on the morning of the 17th of January, the Third Mate observed Appellant and the Third Assistant Engineer packing their belongings into suitcases. They told the Third Mate they were going to leave the vessel. with all their gear and that he could so inform the Master. Soon thereafter the Third Mate saw the two men go ashore carrying their suitcases.

Shortly before the scheduled sailing time of 8:00 a.m. on the 17th, a search made of the quarters of the Appellant and the Third Engineer revealed that all their personal gear was missing. In addition, their licenses had been removed from the license rack. Neither man was aboard when the SS CARROLL VICTORY departed Japan on the morning of 17 January 1966.

BASES OF APPEAL

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

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

OPINION

At the hearing Appellant stated that he did not intend to

desert the vessel but only wanted to leave her for one night and return in time to sail the next morning. He claimed he would have joined the vessel upon her departure from Moji but the failure of the hotel staff to awaken him on time. Apparently abandoning this theory, Appellant now asserts he acted properly in deserting the vessel. He cites two justifiable grounds for leaving a ship without permission: (1) fear for one's personal safety; and (2) physical disability. Although it is not clear whether Appellant argues that these two grounds are raised alternatively - in which case they would appear inconsistent - or whether they are to be taken as cumulative reasons for his absence from the CARROLL VICTORY on 17 January 1966. It is assumed that he intends the latter.

There is little doubt that Appellant intended to desert the vessel. He packed all his personal belongings, obtained his license, and walked off the ship after announcing to the Third Mate he was "going to leave the ship, license, gear and all". Moreover, his assertions of legal justification are not borne out by the facts. If Appellant were in such extreme fear of the Chief Engineer it does not seem likely he would be willing to sail with him the next morning, as he testified at the hearing, if he was suffering so badly from a physical ailment, it seems illogical that he would want to come back to the ship the next morning instead of trying to obtain medical aid at a shoreside facility. He left word with nobody on board as to where he was going or when, if ever, he would return - even though he was at that very time supposed to be standing a watch. On the basis of the credible evidence in this case, no defense for desertion has been made out.

CONCLUSION

There is reliable and substantial evidence in the record warranting an affirmance of each finding of misconduct. Appellant has been going to sea since 1938, and his only prior record is a probationary sentence entered in 1944. On the other hand, desertion by a licensed officer can only be considered a serious offense. In addition, it is noted that as a result of Appellant's assault and battery the victim has lost the use of his right eye. Despite his previous good record it is considered that the Examiner's order of revocation is entirely proper and is approved.

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 8th day of April 1968.

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