

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-530976-D1
AND ALL OTHER SEAMAN'S DOCUMENTS Z-530976D1

Issued to: Amron STOVALL

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1705

AMRON STOVALL

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.300-1.

By order dated 17 May 1967, an Examiner of the United States Coast Guard at Seattle, Washington, revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as a messman on board SS SAN JUAN under authority of the document above described, on or about 22 March 1966, Appellant wrongfully had marijuana in his possession aboard the vessel.

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 revoking all documents issued to Appellant.

The entire decision was served in February 1968. Appeal was timely filed in March 1968 and perfected on 12 June 1968.

FINDINGS OF FACT

Because of the disposition to be made of this case, no findings of fact are made.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant's arguments on the merits need not be discussed here. He objects to the procedure on the grounds that he was permitted to sail pending notice to appear for hearing and that he never received such a notice until after the hearing was over. Details will become apparent in "OPINION" BELOW.

APPEARANCE: APPELLANT, *Pro se*.

OPINION

I

The charge and specification *in* this case were served on 5 July 1966. The hearing was scheduled for 1000 on 11 July 1966. The hearing opened at 1110 on 11 July 1966. Appellant did not appear.

When the Examiner was satisfied that proper service had been made, he granted a motion of the Investigating Officer to proceed *in absentia*. After it was apparent that *prima facie* case was not immediately available, the Investigating Officer moved to take the testimony of seven absent witnesses by deposition on written interrogatories. The Examiner granted the motion and adjourned for a month, to 10 August 1966, presumably to allow the Investigating Officer time to prepare the necessary documents.

The record does not show the hearing as being reconvened on 10 August 1966. In fact, the next notation in the record is the

Examiner's statement reopening the matter at 1010 on 28 April 1967. Again, Appellant was not present, but one "John M. Darrah, associated with Mr. Duane Vance" appeared, "representing the seaman."

The Examiner said:

"I believe that the record will indicate that this hearing was originally opened July 11th, 1966. And there have been various conferences and, perhaps, reconvenings since that time, but mostly the record should indicate that interrogatories which were sent to several witnesses all have been returned and these interrogatories have been forwarded to Counsel." R-11

The depositions were entered in evidence and the Investigating Officer rested. Counsel then announced that he was unable to communicate with Appellant although he had been instructed to keep in touch with him, and would therefore introduce no defense. R-16,17.

After argument, the Examiner asked, "...Mr. Darrah, do you feel that you are in a position to accept service for Mr. Stovall?" The reply was a definite negative.

Service of the decision on Appellant was not achieved until February 1968. A record of service provided by Appellant shows that after the Examiner's decision was entered on 17 May 1967, Appellant made one foreign voyage and then sailed rather consistently but solely on coastwise voyages until 21 January 1968.

II

Before proceeding to lay the groundwork for disposition of this appeal, it must be noted that the Examiner's solicitation of an attorney to accept service of his decision was not only improper in the context of this case but was unauthorized under 46 CFR 137.

Not only was the attorney not specifically authorized on the record to prosecute an appeal, he was not even, on the record of proceedings, authorized to appear at the hearing.

III

In recent cases, there has been a need to discuss appearances of attorneys on the record without specific or apparent authority from the party. Decisions on Appeal Nos. [1677](#) and [1710](#). Ratifications of the attorney's act have been found in subsequent acts or statements of the person charged.

In this case Appellant's own argument on appeal might be accepted as a ratification or even as an acknowledgment of the attorney's status. He says, "...I engaged Mr. Duane Vance to represent me."

But in this case Appellant repudiated his attorney's conduct of the case, just as, in effect, the attorney repudiated his client on the record. Appellant says:

"Mr. Vance asked for and got a continuance from the original date--on the grounds that he had an appointment in Alaska. On the next date--after his return from Alaska at 9:30 A.M., he and I went to the Alaska Building prepared to present our case. We met. Commdr....and he seemed surprised to see us at that time. We were not on the docket for that particular day. My attorney left me in the Hallway and he went into the Commander's Office. Approximately 45 minutes later he emerged and in the presence of Commander....he had made some other arrangements but since I was not needed for awhile I was free to get another vessel."

Appellant goes on to say that he was afterward in communication with his attorney, advising that he was shipping out of the Marine Cooks and Stewards' Hall in San Francisco, and on one occasion completed payment of his retainer and specifically advised of the ship he was about to take. Appellant claims that in good faith he sailed out of San Francisco, expecting to hear from his attorney, until he was summoned to the Marine Inspection Office in San Francisco in January 1968 to be given notice of the Examiner's decision.

I am not unaware of the fact that service upon vessels the crews of which are not required to be signed on before a shipping commissioner, as Appellant elected to serve after 17 August 1967, may render a seaman difficult to locate. But during the hiatus in this hearing, from 11 July 1966 to 28 April 1967, Appellant made four foreign voyages and was in fact serving aboard India Bear on a foreign voyage when his attorney declared, on 28 April 1967, that he was unable to locate him.

IV

If the record of proceedings in this case were of normal reliability, Appellant's assertions might be dismissed out of hand. But obviously many events occurred off the record which should have occurred on the record.

While counsel accepted by the Examiner placed the fault for non-communication upon Appellant, Appellant places the fault on accepted Counsel.

Objections to the taking of depositions should be settled on the record. Interrogatories should be settled on the record. Hearings should be adjourned to days certain or appropriate notice should be provided for on the record. None of these things was done here.

The introduction of counsel off the record, the arrangements for postponements off the record, the settling of interrogatories, initially and properly requested unilaterally, off the record cannot be condoned.

The Examiner himself stated on 28 April 1967 that the record should reflect "various conferences and, perhaps, reconvenings." R-11. The record reflects no such things.

This appeal thus presents a naked claim by Appellant that his counsel did not perform his duties opposed by a naked assertion of the counsel, never properly authorized on the record, that Appellant was delinquent in discharging his obligations.

In view of the obvious defects in the record, the findings and order in this case cannot be sustained.

V

There remains the question of disposition of the case. The available evidence presented appears to be such that complete dismissal of the charges would not be appropriate.

Remand to the Examiner must be considered, but, in view of the issues raised and the state of the record, remand to the Examiner at Seattle would accomplish little.

Appellant lives on the East Coast and, because of the nature of the offense found proved, is without a Merchant Mariner's Document. To remand the case to Seattle might result only in a battle of affidavits to account for the time spent between 11 July 1966 and 28 August 1967. Assuming that an attorney could testify such as to refute Appellant's claim that he had been available but had not been called to appear, this is not a desirable procedure and would still not adequately correct the record.

It is evident from the fact that both the Investigating Officer and the Examiner accepted the *bona fides* of an attorney after the hearing had begun in *absentia* that there is some substance to Appellant's assertion that on at least two occasions he and his counsel were present at the Coast Guard Office. It may easily be inferred that the "arrangements" which Appellant mentioned were an agreement between his counsel and the Investigating Officer to prepare seven sets of interrogatories and cross-interrogatories for the needed depositions and to set up the procedure for obtaining the depositions. This would obviously take time, during which Appellant's presence in Seattle would not be required. It is therefore plausible that he would be permitted to sail during the interim. The terms or conditions, however, do not appear on the record.

It may be noted that when Appellant's counsel announced on 28 April 1967 that he had been unsuccessful in locating his client, he stated also, without contradiction, that the Investigating Officer

had made unsuccessful efforts to trace Appellant. No mention was made of any effort to reach Appellant via the union hiring hall from which Appellant claims he said he would be shipping. It is noted also that the last deposition taken was given on 15 November 1966 at New York. At this time, and until 16 January 1967, Appellant was serving aboard XAVIER VICTORY on a foreign voyage. From 3 February 1967 to 24 March 1967, he was serving aboard GOLDEN BEAR on a foreign voyage; and, as mentioned before, on the very date of conclusion of the hearing he was aboard INDIA BEAR on a foreign voyage.

An investigating Officer is under no duty to locate an absent person in this case, as counsel asserted, the record does not reflect what the nature of the efforts was.

At this time it does not appear possible for the record to be "corrected" to reflect the vital "conferences and, perhaps, reconvenings" that the Examiner referred to. It is believed that a remand to the Examiner would accomplish nothing.

CONCLUSION

It is concluded that the most appropriate disposition of this case is to set aside all proceedings. For convenience in setting rehearing the charges will be dismissed without prejudice.

ORDER

The Findings and Order of the Examiner dated at Seattle, Washington, on 17 May 1967, are VACATED. The charges are DISMISSED, without prejudice to reinstitution at an appropriate time and place.

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

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

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