

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-887882
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Andrew H. DERRICK

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1713

Andrew H. DERRICK

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 11 December 1967, an examiner of the United States Coast Guard at Long Beach, Calif., suspended Appellant's seaman's documents for twelve months outright plus twelve months on twelve months' probation upon finding him guilty of misconduct. the specifications found proved allege that while serving as an oiler on board SS GOPHER STATE under authority of the document above described, on or about 3 December 1967, Appellant:

- (1) wrongfully assaulted and battered the master of the vessel, and
- (2) wrongfully disobeyed a direct order of the master.

At the hearing, Appellant failed to appear. The Examiner entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence voyage records of GOPHER STATE.

Since Appellant did not appear, there was no defense.

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

The entire decision was served on 14 December 1967. Appeal was timely filed on 9 January 1968, and perfected on 3 March 1968.

FINDINGS OF FACT

On 3 December 1967, Appellant was serving as an oiler on board SS GOPHER STATE and acting under authority of his document while the ship was in the port of Long Beach, California.

In view of the disposition to be made, no further findings, beyond that of jurisdiction, need be made.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that Appellant did not recognize the master because he was a replacement master whom he had never seen before, and that Appellant, when the master started to empty a bottle of whiskey belonging to Appellant into a sink, "grabbed the bottle and told him I would pour it out myself, and that is all that happened."

APPEARANCE: Appellant, *pro se*.

OPINION

The grounds for appeal urged in this case are inadequate. Insofar as they contest the findings of fact by declaring that Appellant did not shove the master but merely "grabbed" the bottle from him, they are not timely offered. Appellant had the opportunity to appear at the hearing and offer evidence to contradict the record in the log book, but he chose not to avail himself of it. Even if he had appeared at the hearing, he would have had the burden of explaining why, when confronted with evidence of his offense, as provided for by statute, he made no denial but only asked to be signed off the vessel.

As to the fact that the master was a new master and not recognized by Appellant, there is not much in the way of mitigation. The appeal itself admits that the "gentleman" who entered Appellant's room was a person in authority, because Appellant now declares that the only reason he grabbed the bottle was that he was willing to pour the whiskey down the sink himself. This recognizes that he had no right to have the whiskey and that the "gentleman" had the right to require disposition of it.

II

The order entered in this case raises question as to propriety. Assault and battery upon a master is a criminal offense made punishable, under 46 U.S.C. 701, by two years' imprisonment, without regard to whether the offense was committed within the "special maritime and territorial jurisdiction of the United States."

The Examiner may be correct in his reasoning that revocation was not appropriate in this case and that a one year suspension would suffice. I am not convinced, however, that the additional year of suspension on a year's probation is appropriate. Under the "Table of Average Orders" (46 CFR 137.20-165) a suspension of one year is considered to be the maximum desirable suspension short of complete revocation. As a practical matter, a suspension of more than one year serves no useful purpose, once it is allowed that the seaman should be permitted to recover his document.

It would be inequitable that after Appellant had returned to sea after a year ashore he should be faced with an automatic

suspension of another year, by reason of violating a probationary order, for a negligent offense of failure to join.

It would appear better to leave a potential future examiner unfettered by a mandatory requirement that he suspend for at least a year. I am sure that should Appellant appear again before another examiner an offense found proved at that time can be appropriately dealt with, in light of Appellant's existing record, without there having to be a violation of probation involved.

CONCLUSION

The findings of the Examiner, with respect to the specifications found proved, are based upon reliable, probative, and substantial evidence and should be affirmed. The order of the Examiner should be modified so that Appellant will not be on probation, threatened with another full year's suspension for a minor offense, when he is permitted to return to sea.

ORDER

The findings of the Examiner, insofar as they relate to the specifications found proved, are AFFIRMED. The order of the Examiner, entered at Long Beach, California, on 11 December 1967, is MODIFIED, to provide for a suspension of one year, without more, and as MODIFIED is AFFIRMED.

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

Signed at Washington, D. C. this 8th day of July 1968.

Appeal

evidence not timely offered on

Evidence

timely introduction is at hearing

Examiner's order
held in appropriate

Intoxicating Liquor

right of master to dispose of

Master

authority to dispose of intoxicating liquor

***** END OF DECISION NO. 1713 *****

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