

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-641606-D3
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Charles Francis HUDIBURGH

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1717

Charles Francis HUDIBURGH,

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 15 November 1967, an Examiner of the United States Coast Guard at Baltimore, Md. suspended Appellant's seaman's documents for three months on nine months' probation upon finding him guilty of misconduct. The specifications found proved allege what while serving as an AB seaman on board SS NANCY LYKES under authority of the document above described, Appellant:

(1) on 20 September 1967, at Yokosuka, Japan, wrongfully failed to perform duties between 1300 and 1700 by reason of intoxication;

(2) at the same time and place, wrongfully had liquor in his possession;

(3) on 14 October 1967, at Yokosuka, wrongfully failed to turn to and perform duties in connection with securing the vessel for sea and unmooring because of intoxication;

(4) at the same time and place wrongfully showed insubordination to the chief mate by calling him "mentally insane."

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and each specification except the second to which he pleaded guilty.

The Investigating Officer introduced in evidence voyage records of NANCY LYKES and the testimony of the chief mate.

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 all specifications had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of three months on nine months' probation.

The entire decision was served on 20 November 1967. Appeal was timely filed on 15 December 1967. Although Appellant requested a transcript of proceedings and one was furnished him on 18 January 1968, no further perfection of the appeal has been made.

FINDINGS OF FACT

On all dates in question, Appellant was serving as an AB seaman on board the SS NANCY LYKES and acting under authority of his document.

On 20 September 1967, while the vessel was at Yokosuka, Japan, the chief mate of the vessel found it necessary to "knock" Appellant off from work for the afternoon because of intoxication. At the time, a half-filled bottle of intoxicating liquor was in Appellant's possession in his room.

On 14 October 1967, also at Yokosuka, Appellant was required to be at work on deck at 1800 to perform duties in connection with securing the ship for sea and unmooring. At 1815, the chief mate found Appellant in the messroom, intoxicated. When the mate ordered Appellant to his quarters because he was "under the

influence of alcohol," Appellant replied that the mate was "under the influence of insanity." When asked what he meant by that comment, Appellant replied, "Well, you're mentally insane."

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the Examiner gave too much weight to the testimony of the chief mate and not enough to his own. Additionally, Appellant has supplied a letter, to which he referred in his testimony at the hearing as having been typed by him on 20 September 1967, after the chief mate had "knocked him off," as proof that he was not intoxicated at the time.

Appellant also argues that the offense set forth in the fourth specification was not insubordination.

APPEARANCE: Appellant, pro se

OPINION

I

Appellant implies that the Examiner improperly accepted the testimony of the chief mate because the mate is a licensed officer and Appellant is not, and specifically takes exception to this language of the Examiner:

"Since the Chief Mate is the responsible officer he has wide discretion in making this determination [of intoxication] and his opinion is ordinarily entitled to greater weight than the person whose condition is under scrutiny and who frequently are convinced of their own ability without justification."

This view, Appellant urges, makes it impossible for a seaman to defend against a charge of intoxication.

It is possibly true that in a single and isolated case a mate could "frame" a seaman and improperly charge him with intoxication,

and that the formality of logging procedures set up under 46 U.S.C. 201, *et seq.* and 46 U.S.C. 701, *et seq.*, might constitute such a case that the unsupported testimony of the seaman might be insufficient to advance a convincing reply to such legally recorded charges. It is not likely that such an actual condition might occur. For it to happen would require bias and prejudice on the part of the reporting officer with malicious intent. No motive that comes to mind would support a view that bias, prejudice, and malice should be attributed to a mate for reporting one or two incidents of failure to perform duties because of intoxication. If bias, or prejudice or malice exists, this is a matter for affirmative proof.

There is nothing in this record upon which a finding could be made that the Chief Mate's testimony is suspect. On appeal, Appellant urges that the master had a resentment against him because of an encounter on another ship. This in no way impugns the reliability of the mate.

Appellant's attack on the chief mate's judgement is also weakened by his admissions at the hearing that on the occasion when he was "knocked off" on 20 September 1967 he had been drinking in his room during the noon hour and that on 14 October 1967 he was drinking beer all afternoon ashore, as was his habit, before returning to the ship. It is true that he testified that on the earlier occasion he had drunk only one "double shot" and that he told the master, on the second occasion that he had drunk "about five beer." (It is also noteworthy that he testified that he divested himself of approximately ten American dollars in Japanese currency at the bar on the latter occasion buying only one beer for another.) Appellant also admitted that he was sitting in the messroom on that occasion at 1815 when he should have been at work at 1800. On all the evidence it cannot be said that the Examiner was arbitrary or capricious in accepting the chief mate's testimony that Appellant was intoxicated on two occasions.

II

The letter which Appellant has provided in support of his appeal was obviously not available to him for production at the hearing. Even if it had been it would not have necessarily changed the Examiner's evaluation of the testimony of the eyewitness. It

is not impossible, as Appellant asserts, for a person to manipulate a typewriter at a time when he is incapacitated to perform his primary duties as a seaman. The letter itself shows three different spellings of the word "alcohol," and a statement, "Maybe I was under the influence." Its addition to the record does not require a reversal of the Examiner's findings.

III

As to the insubordination specification, Appellant declares that what he said to the chief mate was not that he was "mentally insane" (with expression Appellant considers "semiliterate" and as such would not use it), Appellant contends that what he actually said, "taking my cue from `under the influence of alcohol,'" was "You are under the influence of insanity."

The Chief mate testified that Appellant used the expression "under the influence of insanity" and, when asked what that meant, said, "Well, you're mentally insane." (R-12). Dispute as to the precise language is a quibble.

The Examiner carefully explained to Appellant that "insubordination" could be construed as broader than "disobedience of orders," and that the language used was of an insubordinate nature.

There is substantial evidence to support the Examiner's findings in this respect.

ORDER

The order of the Examiner dated at Baltimore, Maryland on 15 November 1967, is AFFIRMED.

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

Signed at Washington, D. C., this 21th day of July 1968.

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