

IN THE MATTER OF LICENSE NO. 343982 MERCHANT MARINER'S DOCUMENT NO.
Z-272349 AND ALL OTHER SEAMAN'S DOCUMENTS

Issued to: Elmore J. BLAIR

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1722

Elmore J. BLAIR

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 14 November 1967, an Examiner of the United States Coast Guard at Houston, Texas, suspended Appellant's seaman's documents for two months outright plus four months on twelve months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving under authority of the document and license above described, Appellant:

- (1) as second mate, deserted SS AMERICAN HAWK at Osaka, Japan, on 7 June 1966, and
- (2) as second mate wrongfully failed to join SS HERMINA at Charleston, S.C., on 24 May 1967.

At the hearing, Appellant elect to act as his own counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence voyage records of AMERICAN HAWK and HERMINA.

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 both specifications had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of two months outright plus four months on twelve months' probation.

The entire decision was served on 15 November 1967. Appeal was timely filed on 24 November 1967.

FINDINGS OF FACT

On 6 June 1966, Appellant was serving as second mate on board SS AMERICAN HAWK and acting under authority of his license and document while the ship was in the port of Osaka, Japan.

On that date Appellant deserted from AMERICAN HAWK and thus was not aboard when the vessel sailed from Osaka on 7 June 1966.

On 24 May 1967, Appellant was serving under authority of his license and document as second mate aboard SS HERMINA. On that date, he wrongfully failed to join the vessel at Charleston, S. C.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. The appellate document iterates in part the testimony Appellant gave before the Examiner. The contention on appeal is construed as being that the Examiner erred in failing to accept Appellant's testimony as rebutting the case established by the records of the vessels.

APPEARANCE: Appellant, *pro se*.

OPINION

I

The Examiner did not err in accepting the voyage records of AMERICAN HAWK and HERMINA as establishing a *prima facie* case against Appellant. A *prima facie* case constitutes the quantum of evidence needed to support a finding. The only question then is whether the Examiner was arbitrary and capricious in rejecting Appellant's evidence as probative and whether as a matter of law the attempted defense should have prevailed.

The Examiner gave reasons for rejecting Appellant's testimony as to both specifications and the reasons are adequate. On review they may be spelled out and elaborated upon so that it may be clear that Appellant's defense was not only properly but almost necessarily rejected.

II

As to the desertion from AMERICAN HAWK, the evidence against Appellant was that he left the vessel at Osaka on 6 June 1966 before the sailing board had been posted taking with him luggage, his sextant, and his license, leaving aboard a "few pieces of personal effects."

Appellant's defense was essentially that the master was impossible to get along with, that he had tried to be signed off at every port, that when he left the vessel at Osaka he had no intention not to return before sailing but intended only to give the master something to "think about," that at midnight on 6 June 1966 the chief engineer of the vessel came to his hotel room and told him that the vessel was to sail at 0700 the next morning, and that he made arrangements to be on board but that his return was prevented by the fact that a needed launch was not operating so that by the time he reached the ship's berth by taxicab the vessel had sailed.

If all of this were accepted as true the results might be

different, but analysis of Appellant's own testimony shows an example of the now proverbial "tangled web" of deception.

If Appellant actually intended to give the master something to "think about," it must be inferred that intended to act as if he were leaving the ship permanently even though he intended to be back before sailing. Some objective evidence refutes this, and Appellant's own detailed explanations of his actions go too far to permit any credence in his testimony.

III

It is noted first that when Appellant left the ship, with the intention of "bluffing" the master into thinking he had gone permanently, he had not the slightest knowledge of the scheduled sailing time. He left before the sailing board was posted, so that he could not have had a gauge to measure the time available to him in which to return to the vessel. Appellant's own declaration is that he learned of the sailing time from the chief engineer who came to his hotel room at midnight. This testimony is not confirmed in any way, but it is obvious that a man who specifically intends to return to the ship before it sails does not leave to chance his appraisal of its sailing time.

Further, each specific "explanation" of Appellant entangles him deeper in the "web."

He denied that he took "luggage" ashore, explaining that he took only a typewriter and radio to be repaired, and that the typewriter case might have looked like "luggage", leading to a misconception by those who saw him.

This explanation is, of course, inconsistent with his claim that he intended to make it appear that he was leaving the ship permanently. (Appellant did not testify as to the sextant.)

The typewriter and radio were to be repaired, the Examiner was told, by a friend in Kobe. Appellant did not testify as to how or where he delivered the typewriter and radio to his friend, but he did say that when he was informed at midnight that the ship was to sail at 0700 (R-13) he decided that he would just have to leave his typewriter and radio behind him, to be picked up at some other

time.

Incredible as this may be, Appellant also testified (R-18) that he did not carry his typewriter and radio ashore; he sent them ashore.

Thus one version given by Appellant of his departure from the ship is that he carried only his license, and that was in his pocket. R-18.

IV

Here again, the detailed explanation confutes the general defense. If Appellant left the ship carrying on him personally his licenses pocket, unknown to anyone, he could not have been intending to make such a demonstration as to give the master something "to think about." He further explained (R-14) that he took the license only because the glass in the rack was broken and the rack was unlocked. It must be inferred from this that the license was taken only because Appellant feared that it might be stolen. This possibility would have been of concern to Appellant whether he was leaving the ship for a short time (with intent to return before sailing) or was working on board. A consistent defense would require that Appellant took his license, along with his gear, as part of his bluff.

V

The "luggage" defense must be looked at again. Appellant, inconsistently with his claimed intent to give the master something to "think about," asserted that it took three men to carry his clothing and effects from AMERICAN HAWK to WASHINGTON BEAR at Okinawa on 25 June 1966 when the vessels on which he was serving and had been serving met. This testimony was obviously designed to refute the log entry for AMERICAN HAWK that he was permitted to remove his "few pieces of personal effects."

Appellant's testimony would at that point add up to the total that he had "sent" his typewriter and radio ashore, carried his license ashore in his pocket, and left all other property aboard the ship. (It is noted again that Appellant does not discuss his sextant.) But on cross-examination Appellant was asked what he did

for clothes between the time he "missed" AMERICAN HAWK on 7 June 1966 and met the ship again at Okinawa on 25 June 1966. (R-18) He explained this by saying that he had sent laundry ashore earlier so that he had no problem with clothes.

Noteworthy is that Appellant's direct testimony specified that when he was informed at midnight of 6 June 1966 that the vessel was sailing at 0700, 7 June, he resigned himself to the fact that his typewriter and radio would have to be left behind to be picked up at a later time. As of that moment of the hearing, Appellant was apparently unconcerned about any clothing which might have to be left behind, but when the question of clothing was raised, to support his offered defense that he had not taken luggage ashore he was forced to invent a claim that he had clothing ashore already.

VI

To sum up on this point, it is necessary to believe, if Appellant's contentions are to be given credence, that he went through the actions of an apparent deserter in order to force the master to some kind of special considerations. But as to each and every element that might have been construed by a master as indication that the person intended to desert, Appellant either denies that it happened or gives an extraneous and contradictory explanation.

The Examiner did not err in rejecting Appellant's testimony which is inherently contradictory and implausible.

VII

Another fundamental flaw in Appellant's defense is seen in his testimony that he asked the master, with whom he could not get along, for discharge at every port en route. Specifically, he testified that he asked the master, who had become master at Newark, N. J., to permit him to sign off at Mobile, Ala., and that his request had been refused. The fact is that from Newark to Mobile the vessel's crew was not on "foreign" or "intercoastal" articles at all. Appellant was well aware of the fact that he had

no obligation to the vessel beyond the moment when "foreign" or "intercoastal" articles were to be signed. Despite his avowed desire to be permitted to sign off at Mobile, Appellant definitely, without compulsion, "signed on" for the foreign voyage at Mobile. This fact also undermines the credibility of his testimony that he wished to get off the ship but was not permitted to, if, indeed, such testimony was relevant in the first place.

VIII

Before leaving this specification it must be noted that the Examiner's ultimate finding was that Appellant deserted from AMERICAN MATE. This was obviously an inadvertent statement. The specification, the evidence, and the opinion all show that AMERICAN HAWK was the vessel involved. Correction of this error is almost purely ministerial and results in no prejudice to Appellant.

IX

As to the failure to join HERMINA at Charleston, S. C. on 24 May 1967, Appellant's defense was that he intentionally and deliberately left the vessel to seek medical attention which he had needed for some time before he left the ship. Appellant also argues that he considered that his obligation to the ship ended when the vessel reached a port in the United States, and that he could, therefore, leave the vessel at its first port of arrival in the United States.

The Examiner made no findings as to Appellant's physical conditions, possibly because there was no supporting evidence to claims of a severe and incapacitating condition extending over a period of weeks. But the Examiner, in his opinion, did note that there was a three day period at Charleston which would have afforded Appellant opportunity to have had treatment or to have been found "not fit for duty." Instead, Appellant left the ship immediately and went home, after being specifically advised by the master that Charleston was not the final port of discharge.

ORDER

The findings of the Examiner are MODIFIED to reflect that the desertion found proved was from AMERICAN HAWK, and the findings, as

MODIFIED, and the order dated at Houston, Texas, on 14 November 1967 are AFFIRMED.

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

Signed at Washington, D. C. this 13th day of September 1968.

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