

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-237770-D1
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Ismael RIVERA

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1725

Ismael RIVERA

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 24 January 1968, an Examiner of the United States Coast Guard at New York, N. Y. suspended Appellant's seaman's documents for three months on nine months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as an able seaman on board SS EXECUTOR under authority of the document above captioned Appellant:

(1) on or about 8 December 1967 wrongfully failed to report at a fire and boat drill;

(2) on or about 13 December 1967, at Venice, Italy:

(a) was wrongfully absent from the vessel,

(b) failed to obey an order of the master not to leave the vessel, and,

(c) wrongfully failed to join the vessel.

At the hearing, Appellant elected 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 EXECUTOR.

In defense, Appellant offered in evidence his own testimony.

At the end of the hearing, the Examiner rendered an oral decision in which he concluded that the charge and 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 27 January 1968. Appeal was timely filed on 13 February 1968. Although Appellant had until 22 July 1968 to perfect his appeal, he had added nothing to the grounds stated on 13 February 1968.

FINDINGS OF FACT

On all dates in question, Appellant was serving as an able-bodied seaman on board SS EXECUTOR and acting under authority of his document.

On 8 December 1967, at sea, Appellant wrongfully failed to report for a fire and boat drill.

On 13 December 1967, after Appellant had expressed a desire to go ashore at Venice, Italy, for medical attention, he was ordered by the master to remain on board because a doctor was coming to the ship. Appellant disobeyed the order and left the ship. He did not return before sailing time and failed to join the vessel on sailing on that date.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that:

(1) Appellant was under sedation on 8 December 1967 and did not hear the bell for fire and boat drill;

(2) Appellant wanted to go to a hospital in Venice on 13 December 1967, not to be seen by a doctor aboard the ship, and therefore had a right to leave the vessel;

(3) That because of head injuries he lost his way back to the vessel at Venice and therefore did not "fail to join"; and

(4) The Examiner found that the evidence was insufficient to support what was originally "specification 6" in this case (the specification relative to the fire and boat drill), but still held, as a conclusion of law, that the specification had been proved.

APPEARANCE: Appellant, pro se.

OPINION

I

To take Appellant's fourth point first, it is noted that he misconstrued the Examiner's finding. The Examiner's sixth finding was that the evidence was insufficient to support the original fifth specification, not the original sixth specification.

The Examiner's seventh finding of fact, dealing with the failure to report for fire and boat drill, the matter of the original sixth specification, was:

"On 8 December 1967 while the vessel was at sea, the person charged wrongfully failed to report for muster at fire and boat drill."

This finding was consistent with the conclusion that the specification had been proved.

Appellant seems to have assumed that each numbered finding of the Examiner corresponded to the identically numbered specification. However, the Examiner's first finding dealt with the general question of jurisdiction, and thus each subsequent finding dealt with the specification numbered one less than the number of the finding.

II

With respect to Appellant's first argument, that he was under sedation and therefore did not hear the bell for fire and boat drill, the Examiner found that Appellant, while off duty, was ambulatory and not excused from attendance at the drill. Since the finding is predicated upon substantial evidence it will not be disturbed.

III

From the record, there is no doubt that Appellant was given a direct order by the master not to leave the ship because a doctor was coming aboard. Appellant cannot argue his own desire to go to a hospital as a defense for justifying his leaving the ship. Thus, he not only disobeyed an order but was absent from the vessel without authority.

IV

The failure to join was correctly found. The Examiner, within his discretion, rejected Appellant's explanation of why he was unable to get back to the ship. There was conclusive evidence that Appellant was not on board when the vessel sailed.

The offense of failure to join may be found when there is found a combination of unauthorized absence from the vessel, whether antecedent to or at the time of the sailing of the vessel, and a failure to be on board when the vessel sails during the period of unauthorized absence. The absence here was not only clearly unauthorized but expressly forbidden.

V

A question may be raised as to whether there was a duplicity in the findings in this case since the wrongful absence of Appellant from the vessel was an essential element of each of three specifications, the failure to obey an order, the absence itself, and the failure to join. There is still, however, an essential element peculiar to two of these that makes it different from both of the others. An unauthorized absence is one thing. But an unauthorized absence need not involve direct disobedience of an order nor missing the ship. In this case, the unauthorized absence should be considered as being merged with either the failure to obey an order or the failure to join.

CONCLUSION

The specification dealing with mere absence is dismissed as superfluous upon the whole of the findings.

ORDER

The order of the Examiner dated at New York, N. Y. on 24 January 1968, is AFFIRMED.

P. E. TRIMBLE
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 16th day of October 1968.

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