

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-746 055-D1 AND ALL  
OTHER SEAMAN'S DOCUMENTS  
Issued to: Samuel H. MILLS

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1731

Samuel H. MILLS

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 4 June 1968, an Examiner of the United States Coast Guard at New Orleans, La., suspended Appellant's seaman's documents for three month outright plus three months on twelve months' probation upon finding him guilty of misconduct. The specifications found proved alleges that while serving as an AB seaman on board the SS ELIZABETH LYKES under authority of the document license above captioned, Appellant:

(1)/I/on or about 24 April 1968 wrongfully absented himself from the vessel from 1300 to 1700, at a foreign port;

(2)/I/on or about 30 April 1968, wrongfully failed to stand a sea watch from 2000 to 2400, in a foreign port; and

(3)/I/on or about 3 May 1968, wrongfully failed to stand his watch from 1800 to 2400 at a foreign port.

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

The Investigating Officer introduced in evidence voyage records of ELIZABETH LYKES.

There was no defense.

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

The entire decision was served on 5 July 1968. Appeal was timely filed on 24 July 1968.

#### *FINDINGS OF FACT*

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

On 24 April 1968, at Le Havre, France, was absent from the vessel without permission from 1300 to 1700.

On 30 April 1968, Appellant was unable to perform his duties while the vessel was docking at Hamburg, Germany, and while the vessel was docking and undocking at the Kiel Canal, nor could he stand his regular sea watch from 2000 to 2400.

On 3 May 1968, Appellant was unable to perform his duties in securing for sea at Gdynia, Poland, and was unable to stand his regular watch at sea after departure from that port. These failures occurred from 1800 to 2400.

#### *BASES OF APPEAL*

This appeal has been taken from the order imposed by the

Examiner. It is contended that while Appellant missed "a couple of watches, there was no harm done, and he should not be suspended."

APPEARANCE: Appellant, *pro se*.

#### OPINION

When an able bodied seaman wrongfully fails or is unable to perform his duties there is "harm done." The ship's organization and operations are affected. Someone else must be used to perform his duties. In the event that the master is forced to use a less qualified person, or an equally qualified person who is overtired, the additional, potential danger is great.

It may be noted that the findings of fact made here as to the events of 30 April 1968 and 4 May 1968 go beyond the scope of the specifications alleged and the findings of the Examiner. This is because the evidence adduced, the voyage records of ELIZABETH LYKES allows for no other findings.

Technically, findings that the offenses committed on these two dates were committed "in a foreign port" are incorrect in that the evidence is clear that the vessel was at sea at the end of the two time periods alleged. This is not considered fatal however.

From the evidence there is no way to apportion which ports of the failures occurred in port and which at sea, so that it cannot be said that the "import" offenses alleged and found proved terminated at a given time before the end of the alleged periods, thereby allowing a lesser finding as to time. Still, the evidence is uncontrovertible that the offenses of failure to perform during the hours alleged did occur. As to the nature of the offenses, failure to perform duties, as such, it is immaterial whether they are committed in port or at sea.

Since an offense of failure to perform is usually aggravated by a finding that the offense was committed at sea, the allegations found proved in this case actually benefit Appellant, and the technicality that the vessel was not in port at the end of the two periods of time is not such an error as to require correction on the whole record.

### III

Whether the Examiner's order is excessive is a question impliedly raised by Appellant.

The Examiner had before him Appellant's prior record. This showed the following:

- (1) 1 May 1963 - Appellant was warned after directly contributing to injuries to himself and another by falling off a ladder while intoxicated aboard SS KENT;
- (2) 7 September 1963 - suspended for three months plus three months on six months' probation for failure to perform duties because of intoxication and causing a disturbance because of intoxication aboard SS CHILORE;
- (3) 23 May 1967 - warned for failure to perform duties because of intoxication aboard SHIRLEY LYKES; and
- (4) 31 May 1967 - suspended for two months for failure to perform duties because of intoxication on three occasions and wrongful possession of liquor aboard STELLA LYKES.

With five occasions of action under R. S. 4450 against him on less than five years, Appellant is indeed fortunate to have received so lenient an order from the Examiner as he did in this case.

### CONCLUSION

There is no reason to disturb the findings or order of the Examiner.

### ORDER

The order of the Examiner dated at New Orleans, La., on 4 June 1968, is AFFIRMED.

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

Signed at Washington, D. C., this 24th day of October 1968.

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