

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1 082867-D1
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Joseph James NEMECEK

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1734

Joseph James NEMECEK

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 26 May 1967, an Examiner of the United States Coast Guard at San Francisco, Calif., suspended Appellant's seaman's documents for four months upon finding him guilty of misconduct. The specifications found proved allege that while serving as a fireman/watertender on board SS SEATRIN NEW JERSEY under authority of the document Appellant:

- (1) on or about 13 and 14 March 1967, at Cam Ranh, Vietnam, failed to perform duties by reason of intoxication.
- (2) on or about 23 March 1967, at sea, failed to perform duties;
- (3) on or about 23 March 1967, at sea, wrongfully had intoxicating liquor in his possession;

- (4) on or about 23 March 1967, at Nagoya, Japan, failed to perform assigned duties;
- (5) on or about 28 March 1967, at Yokohoma, Japan, failed to perform assigned duties;
- (6) on 4 April 1967, at Da Nang, Vietnam, failed to join the vessel;
- (7) on 6, 7, 8 and 9 April 1967 at Qui Nhon, Vietnam, failed to perform assigned duties; and
- (8) on 21 April 1967, at Vung Tau, Vietnam, wrongfully failed to perform duties.

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 fifth to which he pleaded guilty.

The Investigating Officer introduced in evidence voyage records of SEATRAN NEW JERSEY.

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 specifications had been proved, the fifth specification by plea. The Examiner then entered an order suspending all documents issued to Appellant for a period of four months.

The entire decision was served on 31 May 1967. Appeal was timely filed on that date. Since Appellant asked for a transcript of proceedings he was granted a stay of two months from the date of delivery of the transcript to perfect his appeal. However, no further grounds for appeal have been stated and the case is determined on the grounds presented in the original notice.

FINDINGS OF FACT

On all dates in question Appellant was serving as a fireman/watertender on board SS SEATRAN NEW JERSEY and acting

under authority of his document.

On 13 and 14 March 1967, at Cam Ranh, Vietnam, Appellant failed to perform duties by reason of intoxication.

On 23 March 1967, at sea, Appellant failed to perform his duties. On the same date, he wrongfully had intoxicating liquor in his possession.

On 24 March 1967, at Nagoya, Japan, Appellant failed to perform assigned duties. On 28 March 1967, at Yokohoma, Japan, Appellant also failed to perform assigned duties.

On 4 April, 1967, Appellant failed to join the vessel at Da Nang, Vietnam. Having rejoined the vessel, he failed to perform duties on 6, 7, 8, and 9 April 1967, at Qui Nhon, Vietnam, and again on 21 April 1967 at Vung Tau, Vietnam, he failed to perform duties.

BASES F APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that (1) Appellant did not have his witnesses at the hearing because the vessel paid off in Seattle, Washington, and his witnesses were not available, and (2) the order is "too strict."

APPEARANCE: Appellant, *pro se*.

OPINION

I

Appellant's first argument is an assertion of lack of due process in that he was denied defense witnesses because his hearing was held in San Francisco while witnesses were paid off the ship in Seattle. His own statements at hearing show that the ship had not yet paid off at Seattle.

The record shows that when the Examiner asked Appellant whether he wanted witnesses from the ship Appellant gave a rambling statement that had nothing to do with witnesses. R-9.

When the Examiner asked Appellant whether he wished to have his hearing at Seattle, Appellant said, "No." R-10.

When the Examiner asked Appellant whether he wished to take testimony of witnesses from the ship by deposition, Appellant said, "I'll just let it drop." R-29.

Since appellant was given ample opportunity either to obtain a change of venue or to obtain testimony by deposition, his argument as to denial of rights at hearing has no merit.

II

Considering the table of average orders at 46 CFR 137.20-165, and the fact that eight specifications of misconduct were proved in this case, the order of four months' suspension is not, on its face, unreasonable.

Appellant's prior record, as of this hearing, was:

- (1) suspended two months on eighteen months' probation, 4 March 1960;
- (2) suspended for one month, plus three months on twelve probation, 3 November 1964;
- (3) suspended three months plus three months on eighteen months' probation, 17 May 1966;
- (4) suspended two months, 26 January 1967.

The record in this case does not indicate why the fourth suspension order above did not consider that a violation of the probation ordered in the third order above had probably occurred. But the order in the instant case was entered with full knowledge of the entire record here set out and in the knowledge that Appellant, at the time of the offenses in the instant cases, was serving on a temporary document issued pending disposition of his appeal from the 26 January 1967 order.

While the order in the instant case was framed to fit disposition of the then pending appeal (See Decision on Appeal No. [1695](#)), it can be seen that the order is, under all conditions, lenient. Appellant's second contention is without merit.

ORDER

The order of the Examiner dated at San Francisco, California on 26 May 1967, is AFFIRMED.

P. E. TRIMBLE
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 6th day of November 1968.

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