

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-170997-D2 AND
ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Frederick T. Nickerson

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1748

Frederick T. Nickerson

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 July 1967, an Examiner of the United States Coast Guard at Long Beach, California suspended Appellant's seaman's documents for three months outright plus six months on twelve months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as an AB seaman on board SS COLUMBIA VICTORY under authority of the document above captioned Appellant:

- (1) on or about 30 April 1967, at Southport, N. C., wrongfully failed to perform duties in securing the vessel for sea;
- (2) on or about 1 June 1967, at sea, wrongfully failed to perform duties by reason of intoxication; an
- (3) on or about 2 June 1967, at sea, wrongfully failed to stand a lookout watch because of

intoxication.

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 COLUMBIA VICTORY.

There was no defense.

At the end of the hearing, the Examiner rendered an oral 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 outright plus six months on twelve months' probation.

The entire decision was served on 28 July 1967. Appeal was timely filed on 3 August 1967 and perfected on 27 November 1967.

FINDINGS OF FACT

On all dates in question, appellant was serving as an AB seaman on board SS COLUMBIA VICTORY and acting under authority of his document.

On 30 April 1967, Appellant wrongfully failed to perform duties in connection with securing the ship for sea at Southport, N.C.

On 1 June 1967, Appellant wrongfully failed to perform duties at sea by reason of intoxication.

BASES OF APPEAL

This appeal has been taken from the findings made by the Examiner with respect to the third specification only.

It is contended that when an offense recorded in an official log book is one of failing to perform duties between 2000 and 2400

on a certain date the record must be made before midnight or there is a failure of substantial compliance with statutory provisions.

It is also urged that the evidence in support of the third specification is defective because it purports to record an offense in the period of 2000-2400 on 2 June 1968, but also purports to have been made at 0800 and to have been read to Appellant at 0845 on that date.

APPEARANCE: Bodle, Fogel, Julber and Reinhardt, of Los Angeles, California, by Robert j. Clements, Esq.

OPINION

I

Appellant's assertion that an offense of failure to perform duties from 2000 to 2400 must be recorded in the log before midnight cannot be accepted. It is so obvious that an entry as to such an offense made on the succeeding calendar day is in substantial compliance with 46 U.S.C. 202 and 702 that the point need not be belabored.

II

Appellant's other point, however, has merit. There is an obvious deficiency in the log entry in that it is dated and timed for the writing of the entry and the reading to the crew-member several hours before the offense was committed. The deficiency could have been cured by parol evidence, but to assume that the entry must have been made on 3 June because the offense to which it refers terminated at midnight of 2 June begs the question.

The entry was not in substantial compliance with the statutes, and since it is the only evidence with respect to the third specification the findings on that specification must be reversed.

CONCLUSION

Since one specification is to be dismissed, a modification of the order is appropriate.

ORDER

The findings of the Examiner made at Long Beach, California, on 26 July 1967, are AFFIRMED except as to the third specification which is found not proved and DISMISSED. The order of the Examiner is modified to provide for outright suspension of two months and further suspension of four months on twelve months' probation. As MODIFIED, the order is AFFIRMED.

W. J. SMITH

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