IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z 107799 D1 AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Raymond T. HELLER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1752

Raymond T. HELLER

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 12 May 1967, an Examiner of the United States Coast Guard at Long Beach, California, suspended Appellant's seaman's documents for six months plus six months on twelve months' probation upon finding him guilty of misconduct. The specification found proved allege that while serving as a fireman/watertender on board SS ROBIN GOODFELLOW under authority of the document above captioned, Appellant:

(1) wrongfully failed to perform duties by reason of intoxication on 10 April 1967 at Jacksonville, Florida;

(2) wrongfully secured the fires in the port main boiler and departed the engine room without proper relief on 11 April 1967 at Charleston, N. C.;

(3) wrongfully failed to perform duties by reason of intoxication on 12 April 1967 at sea;

(4) wrongfully had intoxicating liquor in his possession on 12 April 1967 at sea.

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

The Investigating Officer introduced in evidence voyage records of ROBIN GOODFELLOW.

There was no defense.

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 Examiner then entered an order suspending all documents issued to Appellant for a period of six months plus six months on twelve months' probation.

The entire decision was served on 23 July 1968. Appeal was timely filed on 20 August 1968 and perfected on 14 October 1968.

FINDINGS OF FACT

On all dates in question, Appellant was serving as a fireman/watertender on board SS ROBIN GOODFELLOW and acting under authority of his document.

On 10 April 1967, when the vessel was departing Jacksonville, Florida, at about 2020, Appellant was found intoxicated while on watch in the engine room.

On 11 April 1967, at Charleston, South Carolina, Appellant, on watch at about 0815, shut down the fire in the port boiler and left the engine spaces. Neither act was authorized. The chief engineer observed that Appellant was intoxicated, and ordered him to stay out of the engine room. At about 1015 Appellant's room was searched but no intoxicants were found.

On 12 April 1968, while the vessel was at sea, Appellant reported for watch at 0800. When the engineer of the watch observed that Appellant was intoxicated he dismissed Appellant from

the engine room. At about 0815 the master, the chief engineer, and the chief mate went to Appellant's room. He was found drinking. Several bottles of intoxicants were found and confiscated.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner.

The brief filed for Appellant may be classified to four points.

First is that while Appellant had been drinking on the occasions when intoxication was in question, he was not intoxicated, and it is customary for seaman to drink before going on watch.

Second is that Appellant shut down the boiler to avert an explosion, and that the inexperienced third assistant engineer had not recognized the danger, but had called the chief engineer instead. In this connection, it is asserted that after shutting down the boiler he called his oiler to relieve him and left the engine room. On leaving the engine room he met the chief engineer and told him that he was so upset over the conditions that he felt that he should be relieved and that a replacement fireman should be sent below. Consent to this was granted, it is said.

Third, it is said that there was an unreasonable search and seizure of his liquor since:

(1) there was no search warrant;
(2) a [union] delegate was not present;

(3) Appellant was not present;

(4) no notice was given; and

(5) there was no probable cause for search.

In connection with this fifth assertion, Appellant suggests that the only "probable cause" could have been that all merchant

seaman have liquor in their rooms and thus to have searched Appellant's room alone was discriminatory.

Fourth, it is said that Appellant's prior record does not justify the suspension ordered here.

APPEARANCE: Adah H. Aragon, Esq., San Pedro, California

OPINION

I

With respect to Appellant's first two points it is noted that the brief itself acknowledges that its assertions are based upon what "this seaman indicated" was the truth. As such, the matter is affirmative defense and, for what it was worth, should have been presented to the Examiner. The appeal gives no reason for Appellant's failure to avail himself of the opportunity to be heard which was afforded to him. The *prima facie* case established on the record cannot be attacked on appeal by a naked assertion that something else was the truth.

So untimely are the assertions on appeal that there is no reason to speculate about what effect they might have had upon the Examiner in view of "no comment" replies made to log entries properly made. In passing, however,it must be rejected that some sort of official notice should be taken that all seamen drink before going on watch or that a fireman who has been drinking may shut down a boiler because he thinks a licensed engineer in charge of the watch is inexperienced.

II

The argument as to unreasonable search and seizure misconceives the power and duty of the master of a ship. No discussion of this is needed, however, because Appellant's brief also misconceives the facts.

On the occasion on which the liquor was found in Appellant's room, the master went to the room precisely because this was the third straight day Appellant had been drunk on watch, and the ship

was at sea. Appellant was not only present in the room (despite the assertion in his brief) but was actually drinking when the master arrived and confiscated the liquor.

Not a suspicion of ground for complaint is exposed by this point on appeal.

III

Appellant's brief, in its discussion of his prior record, also misconceives the nature of a "warning" under 46 CFR 137. Appellant states that he received a "warning" in 1965, but that this was some sort of triumph for him because " a suspension was recommended." It is obvious from the Federal regulations that a "warning" is given only when an investigating officer sees no need to bring the matter to a hearing looking to suspension or revocation of the seaman's document. Needless to say, a "warning" is given only with the consent of the person warned, who has the right to hearing before an examiner.

Appellant's brief intimates also that the suspension ordered in this case is a sort of punishment for what he had done in the past, and goes on to contest the past issues again. As to the latter portion of this argument, it may be said that a final prior record of action under R.S.4450 and 46 CFR 137 cannot be collaterally attacked on its merits in a latter proceeding.

As to the former contention of Appellant on this point, it need only be said that the instant order entered is the fourth recorded action against Appellant's document since 1960. While consideration of the total number of offenses alone would justify the Examiner's order in this case, it could be said that an unauthorized shutting down of a boiler of a ship, as found here, would by itself authorize the suspension ordered.

CONCLUSION

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

ORDER

The order of the Examiner dated at Long Beach, California, on 12 May 1967, is AFFIRMED.

W. J. SMITH
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 12th day of March 1969.

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