

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-737865-D3
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Hancel H. LACY

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1759

Hancel H. LACY

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 30 January 1969, an Examiner of the United States Coast Guard at Long Beach, California suspended Appellant's seaman's documents for six months upon finding proved a charge of misconduct. The specifications found proved allege that while serving as an AB seaman on board SS TRANSCARIBBEAN under authority of the document above captioned Appellant:

(1) failed to perform duties on 5 July 1968 at Subic Bay, R.P.;

(2) failed to perform duties by reason of intoxication on 30 July 1968, at Manila, R.P.;

(4) failed to perform duties because of intoxication on 13 August 1968 at Yokohama, Japan;

(5) failed to perform duties because of intoxication on 23 August 1968, at sea; and

while so serving aboard SS HARVARD VICTORY,

(6) failed to perform duties on 22 November 1968, a Cam Ranh Bay, RVN; and

(7) failed to perform duties on 25 November 1968, at Cam Ranh Bay, RVN.

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 TRANSCARIBBEAN and HARVARD VICTORY.

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.

The entire decision was served on 31 January 1969. Appeal was timely filed on 3 February 1969.

FINDINGS OF FACT

On all dates in question Appellant was serving as an AB seaman on SS TRANSCARIBBEAN, as alleged, or on SS HARVARD VICTORY, as alleged, under authority of his document. On the dates alleged, Appellant committed the acts of misconduct alleged, and found proved by the Examiner.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that Appellant was ill at the time of the hearing and was prejudiced by the fact that the hearing proceeded in his absence. It is also contended that the master of TRANSCARIBBEAN sold beer to his crew and this was the cause of Appellant's being "logged".

APPEARANCE: Appellant, *pro se*.

OPINION

I

Appellant's explanation for his failure to appear for hearing is not persuasive. He says:

" During the time of the hearing I was visiting my brother in Redding, California, at which time I was bedridden with the flu. I was under the impression that my brother had written a letter to your office explaining my absence, but I later discovered he had neglected to do so. A doctor was notified of my illness; his suggestions were to stay in bed and obtain plenty of rest, at which time I did."

With Appellant's history of prior hearings, it is to be presumed that he knew the serious consequences of the instant proceeding.

The asserted illness is not established by any evidence. The assertion itself declares that a doctor was "notified". It does not seem likely that such a notification was by mail and that it was entrusted to another person. If Appellant could with facility get his notification to a doctor, he could as easily have notified the Coast Guard office.

It is also noted that when the Examiner questioned the Investigating Officer as to why 23 January 1969 had been set for the hearing date, when the charges were served on 9 January 1969, the answer was that this had been done at Appellant's request, with no statement as to a reason for delay. Appellant's desire to appear for his hearing was not strong.

While no date is asserted for Appellant's recovery from his illness, the record shows clearly that from 9 January 1969 to 3 February 1969, after the decision had been served on him, Appellant personally made no representation as to his inability to appear or to have appeared.

This ground for appeal has no merit.

II

Appellant's second point becomes irrelevant by virtue of his failure to contest at hearing. Even if Appellant had been able to establish that the master had sold him beer, he would be far from proving that this amounted to a condonation of his own failures to perform duties.

ORDER

The order of the Examiner dated at Long Beach, California, on 30 January 1969, is AFFIRMED.

W. J. SMITH
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 2 day of MAY 1969.

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