

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-817 784-D4 AND ALL
OTHER SEAMAN'S DOCUMENTS
Issued to: Francisco J. PEREIRA

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1768

Francisco J. PEREIRA

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 19 October 1967, an Examiner of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman's documents for three months upon finding a charge of misconduct proved. The specifications found proved allege that while serving as a plumber/machinist on board SS BOISE VICTORY under authority of the document above captioned, Appellant:

- (1) on or about 2 October 1967, while the vessel was at sea, failed to obey an order of the master to return to him a copy of a letter;
- (2) on or about 3, 4, 5, 6, 9, 10, 11, 12, 13, 14, and 15 October 1967, failed to perform duties at sea;
- (3) on or about 2 October 1967, wrongfully created a disturbance at sea; and

- (4) on or about 2 October 1967, failed to obey an order of the master not to use certain toilet facilities on the ship.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the testimony of three witnesses and voyage records of BOISE VICTORY.

In defense, Appellant offered in evidence his own testimony, that of two witnesses, a shirt, and a medical record.

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, on 14 December 1967, entered an order suspending all documents issued to Appellant for a period of three months.

The entire decision was served on 5 April 1968. Appeal was timely filed on 26 April 1968. Appellant had until 18 November 1968 to perfect his appeal, but has offered no additional grounds to those stated in his original notice.

FINDINGS OF FACT

On all dates in question, Appellant was serving as a plumber/machinist on board SS BOISE VICTORY and acting under authority of his license while the ship was at sea.

On 2 October 1967, after a complaint had been made to the master of BOISE VICTORY that Appellant, who was occupying a room in the area of the living quarters assigned to the licensed engineers, was using toilet facilities assigned to the exclusive use of the licensed engineers, the master issued a written order that Appellant, and another unlicensed person similarly quartered, were not to use those facilities but were to use those set aside for the unlicensed crew. Within a few hours of the service of this written order upon him, Appellant was found using the prohibited facilities.

When complaint of this fact was reported to the master, Appellant was summoned to the master's office. Since Appellant was at dinner when he received notice of the summons, he waited until he had finished dinner and had called the other two unlicensed crew delegate to accompany him (Appellant himself was the third delegate), before repairing to the master's office.

Present at this meeting were the three delegates, the master, the chief and first assistant engineers, the chief mate, and the chief electrician, who had been the other person to whom the order had been given.

Appellant first denied that he had received the master's written instruction, then admitted that he had received it while denying that he could recall who gave it to him, later admitting that he had been given the written order by the chief engineer, but ultimately declaring that he did not consider a written instruction of the master not to use one facility but only to use another to be an order.

Appellant was presented with the master's copy of the order. This paper Appellant passed to the other delegates for their inspection. When they had examined it and returned it to him, Appellant asked the master whether the written notice was an order. The master replied that it was and asked for return of the document. Appellant refused to give it to him, stating that he wanted it for himself.

Several times the master told Appellant to return the document to him. Appellant did not, but left the room and headed toward the ladder. The master followed him, demanding the document. As Appellant was putting the document into his trouser pocket the master made a physical effort to recover it. Appellant then asked the master whether he had been given a "direct" order to return the paper. When the master stated that it was, Appellant surrendered the document. From the time of the master's first demand for his copy of the order to its surrender by Appellant about five minutes had elapsed and at least five separate demands had been made.

Later that night Appellant called a union meeting of the unlicensed crew, at which he complained that the master had hit him

and hurt him. Both the other delegates who had been at the master's office at the confrontation were present at the meeting.

The next day Appellant complained that he was hurt and called for the chief mate. The mate found no unusual symptoms, saw no bruises on Appellant's body, and pronounced him fit for duty.

Appellant was summoned to the master's office to be read a "logging" about his conduct. Appellant refused to appear, declaring that he was incapable of moving and that he was afraid to go to the master.

Appellant never worked again up to the end of the voyage. The master, who did not deign to go to Appellant's quarters, did have the other unlicensed crew delegates read the lengthy log entries to Appellant and give him a copy during this hiatus up to the end of the voyage.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant's position may be reduced to two:

- (1) he was denied due process, and
- (2) the Examiner did not give proper weight to Appellant's evidence.

APPEARANCE: Appellant, *pro se*.

OPINION

I

As I construe Appellant's first ground for appeal, as stated in his initial notice of appeal but not elaborated upon in any later filing, it may be reduced to these elements:

- (1) Appellant did not have legal counsel at his hearing, and

- (2) Appellant was improperly denied a change of venue from San Francisco to Jacksonville, Florida, for his hearing.

II

As to the denial of transfer of venue to Jacksonville, Florida, even little need be said. This was a case in which live seamen witnesses, who might go to sea or go home, were ready in the antechamber to be heard.

An automatic transfer of venue to Jacksonville, Florida, would obviously have frustrated the purpose of these proceedings. The witnesses sitting in the anteroom, might never have been heard.

In fact, however, Appellant consented on the record to proceeding at San Francisco after it had been pointed out that his own witnesses were waiting.

III

In the same way, Appellant's complaint about lack of representation at the hearing is untimely. After some discussion of the failure of Appellant's chosen representative to appear and of the expected movements of the ship, Appellant said:

"I'm not pleading guilty or anything, but if I could go ahead with the case and if it don't come out the way I kind of feel, I can appeal." R-5.

Appellant has, and has exercised his right to appeal, but he cannot be heard to claims denial of due process because of his own election to proceed without representation.

IV

Appellant complains that the Examiner did not believe him, but believed instead the witnesses who appeared against him. It is fundamental that the Examiner is the judge of credibility. Since the witnesses whom he believed were not inherently incredible, there was substantial evidence to support his findings.

It may be noted, nevertheless, that one of Appellant's contentions is that he was the object of prejudice because he was a union delegate, but one of the witnesses against him as to the events in the master's office was also a delegate, and neither of Appellant's witnesses (one of whom was a delegate) corroborated his version of the events which they witnessed.

This contention of Appellant is without merit.

CONCLUSION

There was no denial of due process in this case and the findings of the Examiner were based on substantial evidence.

ORDER

The order of the Examiner dated at San Francisco, California, on 14 December 1967, is AFFIRMED.

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

Signed at Washington, D. C., this 26th day of May 1969.

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