IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-274119-D7
AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Henry GLOVER, Jr.

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1774

Henry GLOVER, Jr.

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 31 October 1968, an Examiner of the United States Coast Guard at New Orleans, Louisiana, suspended Appellant's seaman's documents for three months outright plus three months on twelve months' probation upoon finding him guilty of misconduct. The two specifications found proved allege that while serving as an ordinary seaman on board SS THOMPSON LYKES under authority of the document above described, on or about 1 October 1968 while the vessel was in a foreign port, Appellant did wrongfully engage in a fist fight with a fellow crewmember, William Orville Thomas; and that on or about 1 October 1968, while the vessel was in a foreign port did fail to perform his duties from 0400 to 0800 and from 1600 to 2000, due to being under the influence of alcohol.

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

The Investigating Officer introduced into evidence the shipping articles for voyage 41 of THOMPSON LYKES the testimony of the chief mate of the vessel; the testimony of William Orville Thomas, an ordinary seaman; and the testimony of W. A. Mitchell described variously as a seaman and a messman.

In defense, Appellant offered in evidence his own testimony.

Subsequent to the end of the hearing, the Examiner rendered a written decision in which he concluded that specification one was proved, specification two was proved by plea, and the charge was proved.

FINDINGS OF FACT

On or about 1 October 1968, Appellant was acting under authority of his document while aboard the THOMPSON LYKES.

Early in the morning of 1 October 1968 Appellant and one William Orville Thomas were playing cards aboard THOMPSON LYKEKS while at anchor in a foreign port. An argument arose between them concerinig a certain card and both men rose to their feet. Appellant struck Thomas in the face with his fist and Thomas returned the blow. Appellant fell to the deck whereupon he was assisted first to his feet and then to his room by other crewmembers, ending the fight.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Essentially Appellant seems to present four bases of appeal as follows:

1) The Examiner was in error when he found that Appellant wrongfully engaged in a fist fight because Appellant was not the aggressor in the argument and the resultant fight.

2) The Examiner was in error when he found that Appellant was intoxicated at the material time.

3) The penalty should be reduced because although the Appellant did fail to perform on the date and time in question, he was not intoxicated.

4) The penalty should be reduced because Appellant has had only one admonition (22 April 1958) in 26 years of service aboard merchant vessels and also because it will work hardship on his family.

APPEARANCE: Appellant, *pro se*.

OPINION

I

Appellant's first point, that the Examiner wrongfully found him to be the aggressor in the argument, must be rejected. There is sufficient evidence in the record to support the Examiner's finding that not only did Appellant engage in a fist fight, but that he struck the first blow (R-9, 13). The Examiner's finding need be supported only by substantial evidence, not "proof beyond a reasonable doubt" as is required in a criminal proceeding. Decision on Appeal No. 1019. Since the Examiner found that Appellant struck the first blow, there was sufficient basis for him to find that Appellant wrongfully engaged in the fist fight.

II

The second point raised on appeal, that the Examiner erred when he found that Appellant was intoxicated at the material time, appears more strongly based. There is no evidence in the record to support the Examiner's finding that Appellant was in fact intoxicated at the material time. The only testimony bearing at all on this point was presented by Chief Mate Powell (R-6) where he described Appellant's condition sometime after the fight: "He said this incoherently, *like* [emphasis supplied] he was under the influence of alcohol...". This testimony does not serve to show that Appellant was intoxicated at the material time because it applied to a time after the fight had occurred. Futhermore, since the mate was describing Appellant's incoherence, not asserting its cause, (which may have been the injuries incurred in the fight)

absent some other evidence tending to show intoxcation this testimony would not support a finding that Appellant was in fact intoxicated even at the time the mate questioned him. The reversal of this Finding of Fact of the Examiner however will have no effect on the outcome of this decision for the reasons stated below.

III

Appellant also asks that the imposed penalty be reduced, for while he failed to perform his duties as alleged, he did not miss his watches due to intoxication. Accepting this assertion as true, (which need not be done in view of Appellant's plea of guilty to the second specification) the mere failure to perform duties coupled with the wrongful fighting would justify the penalty imposed. See Decision on Appeal No. 1503 discussed below.

IV

The Appellant asks for a reduction in the ordered suspension on the grounds that his prior good record (one admonition for failure to perform ten years earlier in twenty-six years of service) and the hardship that this penalty will work on his family warrant it. It is my opinion that neither ground would warrant a reduction in the imposed penalty.

V

In the first place, the imposed penalty itself is not overly severe. In a similar case (Decision on Appeal No. 1503) Appellant seaman was found guilty of misconduct due to wrongfully engaging in a fistfight and failing to perform his duties for one day. The Examiner imposed a suspension of two months outright plus four months on a twelve months' probation. This imposition was upheld on appeal despite the fact in that case the man had a prior *clear* record. Fighting aboard merchant ships and missing watches are serious offenses. Not only may men be injured in the former situation, but both instances result in a situation where, for a period of time the vessel loses the services of men necessary for her safe operation, or, in the alternative, some men must bear more than their share of the burden of such operation with the inefficiency and lack of safety attendant to such lopsided duty

assignments. Furthermore, both situations, fighting aboard the ship and missing watches, almost inevitably sow the seeds of discontent and animosity. A certain level of discipline and cooperation must be maintained aboard merchant ships. Breaches of this discipline and endangering of the cooperative effort such as the misconduct involved here can not be countenanced. The penalty imposed in this case, in view of the seriousness of the offense, and Appellant's prior record of misconduct is clearly not excessive. Therefore, since the Examiner took the Appellant's record into considration in framing his decision, and since his order is not unjustly severe, the penalty imposed will not be reduced on the basis of such prior record.

As to Appellant's assertion of hardship imposed on his family by the order, whatever the hardship, it is outweighed by the severity of his misconduct and no reduction of the penalty imposed will be ordered on this ground.

CONCLUSION

The bases for appeal offer no reason to disturb the order of the Hearing Examiner.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 31 October 1968 is AFFIRMED.

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

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

INDEX

Appeals

Modification of Examiner's findings

Failure to perform duties

Found although charged intoxication not established
Missing watch as serious offense

Fighting

A serious offense
Striking first blow as basis for finding wrongfully engaged in
Wrongfully engaged in

Findings of Fact

Must be based on substantial evidence

Intoxication

Adequacy of testimony
Finding o f not supported by incoherence otherwise explainable
Testimony re condition must relate to material time

Order of Examiner

Commensurate with offense
For fighting and FTP
Prior record considered

Proof

Beyond a reasonable doubt
Degree required

Revocation or suspension

For fighting and FTP
Held not excessive
Misconduct as grounds for
Order upheld although finding modified

Prior record considered

***** END OF DECISION NO. 1774 *****

Top