

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT  
AND ALL OTHER SEAMAN'S DOCUMENTS Z-1130923

Issued to: John R. Cessford

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1777

JOHN R. CESSFORD

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 2 November 1966, an Examiner of the United States Coast Guard at Houston, Texas, suspended Appellant's seaman's documents for nine months plus six months on twelve months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as a deck maintenance/AB on board SS TRANSORLEANS under authority of the document above captioned, Appellant:

- 1 on 20 July 1966 was absent from the vessel and his duties without authority at Bombay, India;
- 2 and (3) on 21 and 22 July 1966, failed to perform duties at Bombay, India;
- 4 on 4 August 1966 failed to perform duties at sea because

of intoxication;

5 on 5 August 1966, failed to perform duties at sea;

6 on 3 September 1966 at Kawjalein, M.I., failed to perform duties because of intoxication;

7 on the same date and at the same place failed to obey an order of the mate on watch;

8 on the same date and at the same place, addressed abusive language to ship's officers;

9 on the same date and at the same place threatened to set fire to the vessel which was then discharging oil cargo;

10 on the same date and at the same place, assaulted the chief mate, with a threat to life, and directed abusive language toward him;

11 on the same date and at the same place, failed to obey an order of the master to open his locker for inspection;

12 on the same date and at the same place, created a disturbance aboard the vessel by:

(i) attempting to set fire to the vessel;

(ii) threatening the life of the chief mate;  
and

(iii) directing abusive language to ship's officers;

13 on 7 September 1966, failed to perform duties at Sand Island;

14 at the same time and at the same place, failed to obey an

order of the chief officer to turn a valve;

15 at the same time and place, absented himself from the vessel without authority

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 TRANSORLEANS and testimony of two witnesses.

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 nine months, plus six months on twelve months' probation.

The entire decision wa served on 15 November 1968. Appeal was timely filed on 29 November 1968. Although Appellant was given until 14 April 1969 to file further material, he has not done so.

#### *FINDINGS OF FACT*

On all dates in question, Appellant was serving as a deck maintenance/AB on board SS TRANSORLEANS and acting under authority of his document.

On the dates and at the places in question Appellant performed acts or failed to perform as set out above in the specifications found proved.

#### *BASES OF APPEAL*

This appeal has been taken from the order imposed by the Examiner. It is contended that Appellant was denied due process by a hearing held in his absence with a resultant denial of his right to call witnesses and produce evidence.

APPEARANCE: APPELLANT, *pro se*.

OPINION

It is axiomatic that the holding of a hearing *in absentia* after due notice is not a denial of due process. Lack of notice or denial of the right to appear would, of course, violate due process requirements.

In this case, notice of hearing was properly given to Appellant on 28 September 1966, with the hearing scheduled for 1000, 5 October 1966. The record shows that a few minutes before the scheduled time the Investigating Officer received a telephone call from a person identifying herself as Appellant's wife, who advised that her husband had been arrested the previous night in Lake Charles, La. A call to the Parish jail at Lake Charles verified that Appellant was being held in custody for failure to make bond.

Since there were two "going" witnesses the Examiner permitted their testimony to be taken, subject to, in the words of the Investigating Officer, "having Mr. Cessford or his counsel question them at a later date if they so desired."

After the testimony of these witnesses had been taken the Examiner proposed an adjournment until 13 October 1966. At the Investigating Officer's suggestion, to give more time to Appellant, the date for reconvening was set for 17 October 1966.

On 10 October, the Investigating Officer received a telegram from Appellant advising that he was "on bond" and asking for an indefinite stay on his hearing. On 13 October Appellant acknowledge receipt of a letter which informed him that the hearing was scheduled for reopening at 1000, 17 October 1966, that an indefinite stay could not be granted, and that he should communicate immediately if he wished to arrange a continuance to a day certain.

No further communication was received from Appellant, and the hearing proceeded to conclusion on 17 October 1966.

This narrative is ample demonstration that no rights of Appellant were denied him. The burden of appearing, or arranging for a different date if he were reasonably inconvenienced by the date set, was squarely on Appellant's shoulders. His non-appearance and his failure to communicate were his own fault.

## *II*

A further comment as to Appellant's failure to communicate is in order. It must be assumed that normal methods of attempting service of the Examiner's decision were utilized in this case. It was more than two years from the date of decision before Appellant could be reached for service. This indicates, at the very least that Appellant was not so zealous to exercise his "rights" as to have "communicated" even within two years of the hearing. If it were necessary to decision in this case, which it is not, deliberate evasion of the process by Appellant could be inferred.

## *III*

Although the matter was not raised on appeal, I noted that the matters of specifications 8, 9, and 10, specifically alleged as individual acts of misconduct, are also alleged as specifics under the more general specification, number 12, which alleged that Appellant "created a disturbance...." by performing the three acts.

Not every act of misconduct aboard ship creates a disturbance, nor are all wrongful disturbances easily resolvable into individual acts of misconduct. Separate allegations may be desirable to allow for contingencies of proof.

In the instant case, it is believed that the "disturbance" created by the three sets of acts may not have been distinct from the totality of the acts themselves.

It is possible that some duplicitous result may have occurred. Nevertheless, if the single acts resulted in totality in a "disturbance" to the ship which they would not have been otherwise, it is not improper to allege them and the combined effect separately.

After hearing, an examiner might well find a duplicitous quality to the specifications, and dismiss one as covered by another. In the instant case there does not appear to be a sharp distinction between the three individual specifications and the one that expresses their totality. Nevertheless, there seems to be no good reason to determine whether the three individual specifications are lesser offenses of the specified disturbance or the disturbance merely a minor offshoot of three serious offenses, so that one or more specifications should be considered as duplicates of and merged with another. To attempt the distinction would not affect the propriety of the order for the offenses involved.

*ORDER*

The order of the Examiner dated at Houston, Texas on 2 November 19668 is AFFIRMED.

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

Signed at Washington, D. C., this 3 day of July 1969.

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