

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-470 624-D2  
AND ALL OTHER SEAMAN'S DOCUMENTS  
Issued to: Julian H. DEVEAUX

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1778

Julian H. DEVEAUX

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 September 1968, an Examiner of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman's documents for five months outright plus three months on twelve months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as chief cook on board SS ALOHA STATE under authority of the document above captioned, Appellant:

- (1) on 18 July 1968, at Seattle, Wash., failed to perform duties because of intoxication;
- (2) on 19 July 1968, at sea, failed to perform duties because of intoxication;
- (3) on 9 August 1968, at Siagon, RVN, failed to perform

duties because of intoxication;

- (4) on 10 August 1968, at Saigon, RVN, wrongfully failed to perform duties because of intoxication;
- (5) on 12 August 1968, at Saigon, RVN, wrongfully failed to perform duties; and
- (6) on 12 August 1968, at Saigon, RVN, wrongfully destroyed various items of ship's property by burning.

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 ALOHA STATE.

There was no defense.

At the end of the hearing, the Examiner rendered an oral 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 five months plus three months on twelve months' probation.

The entire decision was served on 25 November 1968. Appeal was timely filed on 2 December 1968. Although Appellant had until 18 April 1969 to do so, he has added nothing to his initial statement of grounds for appeal.

#### *FINDINGS OF FACT*

On all dates in question, Appellant was serving as chief cook on board SS ALOHA STATE and acting under authority of his document. During this time Appellant performed or failed to perform the acts found proved as set out above.

#### *BASES OF APPEAL*

This appeal has been taken from the order imposed by the

Examiner. It is contended that:

- (1) Appellant was not advised of "these charges" until the ship was three days at sea en route to San Francisco (this is construed as meaning that the Official Log entries were not made in substantial compliance with 46 U.S.C. 702);
- (2) the second cook was "covering" for Appellant the days he took off in Saigon; hence he did not fail to perform duties; and
- (3) the fire was accidental, and Appellant paid for the damage.

APPEARANCE: Appellant, *pro se*.

#### OPINION

##### I

The Official Log book entries concerned with the dates of 18 and 19 July show that Appellant was helplessly intoxicated on these dates, and that the entries were read to him and a copy provided on 20 July. A seaman cannot, by rendering himself intoxicated, frustrate notice to himself by the master of the making of log entries. These entries were made in substantial compliance with 46 U.S.C. 702 and establish the facts alleged in the first and second specifications.

##### II

As to the events of 9, 10, and 12 August 1968, the question is not so simple. The 12 August specification as to failure to perform duties does not allege intoxication as the cause, but the log entry does report intoxication, as does the log entry concerning the fire which burned a mattress, pillow, pillow case, spread, and two sheets.

I take official notice that 11 August 1968 was a Sunday, and recognize that no entry may have been made for the date because it may have been a chief cook's day off.

I recognize also that the record of burning the ship's property was not a record of an offense under 46 U.S.C. 701. The record would be admissible as a record kept in the regular course of business.

There is no need here to decide whether the log entries involved were made in substantial compliance with 46 U.S.C. 702 such as to constitute a *prima facie* case of the facts recorded. The record admissible as an exception to the hearsay rule was presented to Appellant. The evidence shows that the admitted the offenses and signed the admission, "Nothing I can say. It is true."

In any case, the admission of the offense by Appellant takes the matter out of the area of "hearsay alone" and permits a finding supported by Appellant's admission.

### III

There is no evidence that anyone "covered" for Appellant for the days he missed at Saigon. It seems that someone must have done his work when he failed to, but it is obvious that he had not been excused from his duties by proper authority.

### IV

In light of Appellant's admission that he was intoxicated on 12 August 1968 when the fire which he started in his room occurred, it is not material that the fire was an "accident" and that he paid for the damage. His conduct directly hazarded the ship.

### V

It is noted that Appellant was on probation at the time of the offenses in this case. The order is therefore entirely appropriate.

### ORDER

The order of the Examiner dated at San Francisco, California,

on 30 September 1968, is AFFIRMED.

P. E. TRIMBLE

Vice Admiral, U. S. Coast Guard

Acting Commandant

Signed at Washington, D. C., this 15th day of July 1969.

## INDEX

### Admissions

Effect of  
Person charged, made by  
Supporting findings

### Defenses

"Accident" insufficient when party intoxicated  
Insufficient that damages paid for

### Findings of Fact

Supported by admission and business record entry  
Supported by party's statement

### Fire

Wrongful destruction of ship's property by setting

### Hearsay Evidence

Regular course of business entries

### Intoxication

Eliminates defense of accident

Offenses arising from

Log Entries

Intoxication, sufficient to prove

Regular course of business

Substantial compliance

Substantial compliance does not require reading to  
intoxicated party

Sufficiency of, alone

\*\*\*\*\* END OF DECISION NO. 1778 \*\*\*\*\*

---

[Top](#)