IN THE MATTER OF MERCHANT MARINER'S DOCUMENT AND
ALL OTHER SEAMAN'S DOCUMENTS Z-949694-D3

Issued to: Charles E. ADDISON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1785

Charles E. ADDISON

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 29 August 1969, an Examiner of the United States Coast Guard at Seattle, Washington, suspended appellant's seaman's documents for six months outright plus four months on six months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as an AB seaman on board SS LIMON under authority of the document above captioned, Appellant on 23, 24, and 25 July 1969, at Bangkok, Thailand, failed to perform his assigned duties.

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

The Investigating Officer introduced in evidence voyage records of LIMON.

In defense, Appellant offered no evidence. As will be seen, Appellant did not appear after the first session of the hearing, and proceedings on the merits were held in *absentia*.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of six months outright, plus four months on six months' probation.

The entire decision was served on 3 September 1969. Appeal was timely filed on 4 September 1969. Although Appellant had until 10 November 1969 to file additional materials he has not done so.

FINDINGS OF FACT

On 23, 24, and 25 July 1969, Appellant was serving as an AB seaman on board SS LIMON and acting under authority of his document.

On 23 July 1969, Appellant failed to perform duties between 1300 and 1700 at Bangkok, Thailand.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that:

1) Appellant could not appear for the hearing since he was serving aboard SS OLD DOMINION STATE and could not present a defense, and

2) The decision of the Examiner was based on inadmissible or not properly authenticated voyage records of LIMON.

APPEARANCE: Appellant, *pro se.*

OPINION

I

Appellant's po*in*t that he was deprived of an opportunity to present a defense on matters in mitigation because his service aboard OLD DOMINION STATE prevented his appearance before the Examiner must be rejected.

Appellant was present, on proper notice, at the beginning of the hearing on 15 August 1969 at 0930. He elected to proceed without counsel. At 0940, the Examiner noted that appellant was drowsy. He adjourned proceedings to 1330 that afternoon and advised Appellant to get some sleep.

When appellant did not appear at the time specified the Examiner decided not to proceed but to give appellant another opportunity to be present. He sent Appellant a notice that the hearing would be reconvened at 1030 on 22 August and that if Appellant did not appear at the time and place specified the hearing would proceed in his absence. It was established that Appellant received this notice by sworn testimony of the Investigating Officer that appellant had telephoned him on 20 August 1969 and had stated that in the interim appellant had signed aboard OLD DOMINION STATE for a coastwise voyage and thus could not appear on 22 August. Appellant asked for a two and one half month postponement so that he could make a foreign voyage aboard the vessel.

When proceedings on the record were resumed on 22 August, the Examiner refused to consider this request. He was correct in doing this because of the notice he had given Appellant that the hearing would proceed in *absentia* If Appellant defaulted.

Appellant's service aboard OLD DOMINION STATE was voluntarily undertaken after he had been put on notice to reappear at 1330 on 15 August. The fact that he may have signed aboard the vessel before he received the notice of proceedings on 22 August 1969 is irrelevant. The Examiner leaned over backwards in dealing with Appellant, but as of 1330 on 15 August 1969 Appellant was in default and was entitled to no further notice.

A seaman may choose to sail during the pendency of a hearing if he wishes, but when he has been given proper notice of proceedings he cannot complain that an obligation later undertaken

prevented him from appearing in his own behalf.

II

Appellant's second argument is that the Examiner's findings were based on voyage records of LIMON that were inadmissible or not properly authenticated. Appellant does not specify a reason for inadmissibility or an argument for lack of proper authentication.

For reasons discussed below I limit my attention to the record for the offense of 23 July 1969.

I find thee both shipping articles covering the date in question and a properly made official log book entry. The copies of both documents are certified to by a Coast Guard officer.

Shipping agreements and official log books, as records required by law, have special status beyond that of a record kept in the regular course of business. They are admissible in evidence, and when a copy is proffered in evidence it is enough that the authentication be by a Coast Guard officer.

The records in this matter meet this test. Appellant's argument is rejected.

III

There is, however, a matter of great concern not raised by Appellant. Of the four offenses charged against Appellant one was found proved on the record, that of 23 July 1969. The Examiner then called for and received Appellant's prior record.

The intent of 46 CFR 137.20-160(a) is clear. Except when a prior record may become admissible for some other purpose, such as impeachment, an examiner is not to know of the record before he completes his findings on the merits of the case. In the instant case, of four offenses originally charged, the Examiner had made findings only as to one. This did not authorized him to receive information which could affect his findings as to other matters. The error here is inherently prejudicial and requires reversal.

IV

The error does not, however, affect the finding as to the misconduct of 23 July 1969. That finding was made on the record in open hearing before the prior record was erroneously received. The evidence supporting the finding was adequate. The finding may be affirmed.

The error can be cured by modification of the Examiner's order.

V

Once the finding as to the misconduct of 23 July 1969 was properly made, it was necessary for the Examiner to order a suspension of six months because the misconduct found proved violated a probation set by an order of 24 April 1969.

In the instant case, the only outright suspension ordered by the Examiner was the six month period he was required to order by virtue of the violation of the probation allowed by the earlier order. The additional order of four months suspension on six months' probation can be considered as what the Examiner found appropriate for the new offenses found proved. There is no need to speculate as to how much of this part of the order was attributable to the 23 July 1969 offense. The error can be completely cured without a rehearing, an extremely cumbersome and unproductive process, by modifying the Examiner's order so as to limit it to the period of suspension necessarily called for when he made the one finding untainted by knowledge of the prior record.

ORDER

The findings of the Examiner as to alleged misconduct of 24 and 25 July 1969 are SET ASIDE. The findings of the Examiner as to the misconduct of 23 July 1969 are AFFIRMED. The order of the Examiner, dated 29 August 1969 at Seattle, Washington, is MODIFIED, so as to provide only for a suspension of Appellant's documents for six months, and, as modified, is AFFIRMED.

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

Signed at Washington, D. C., this 8 day of Apr 1970.

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***** END OF DECISION NO. 1785 *****

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