

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1053613-D1
AND ALL OTHER SEAMAN DOCUMENTS
Issued to: RICHARD A. ZIMMER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1605

RICHARD A. ZIMMER

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 26 April 1966, an Examiner of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman documents for three months on twelve months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a deck maintenance man on board the United States SS GUAM BEAR under authority of the document above described, on or about 13 December 1965 Appellant used foul and abusive language toward and threatened the lives of two Customs officers engaged in the execution of their duties.

A specification alleging that Appellant wrongfully brought into the United States certain merchandise without declaring it, and a specification alleging intimidation of U. S. Customs officers in the performance of their official duties were found not proved.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and

each specification.

The Investigating Officer introduced in evidence certified extracts from the Shipping Articles for the SS GUAM BEAR for the voyage commencing 29 October 1965 and 13 December 1965, on which Appellant was a crew member. The two Customs officers testified with respect to the incident giving rise to the charge and specifications.

In defense, Appellant offered in evidence the testimony of a companion who stated that he did not hear the Customs officers say anything about the alleged threat. Appellant testified in his own behalf and admitted the use of profane language but stated he did not remember threatening the lives of the officers.

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

The entire decision order was served on 16 May 1966. Appeal was timely filed on 2 May 1966.

FINDINGS OF FACT

On 13 December 1965, Appellant was serving as a deck maintenance man on board the United States SS GUAM BEAR and acting under authority of his document while the ship was in the port of San Francisco, California, having returned from a voyage which commenced 29 October 1965. When Appellant attempted to carry a Zenith phonograph from the ship at approximately 0045 on 13 December 1965, he was accosted by the pier guard because he had neither a property pass nor a Customs declaration for the phonograph. Although he then returned to the vessel and obtained a property pass, the Customs officers who had been called to Pier 29 by the guard were unable to determine where the phonograph was made. As it came from a vessel which had been on a foreign voyage, Customs regulations required that it should appear on the manifest or be declared by the person bringing it ashore. Appellant was detained about two hours for questioning and a search of his person. During this time, he used foul and abusive language toward the two Customs officers and threatened to get a gun and blow their

heads off. Since he appeared to be intoxicated, the Customs officers turned him over to the Harbor Police. The phonograph was seized and charges filed for unmanifested merchandise, landing without a permit, and marks violation. Subsequent investigation revealed that there was no marks violation, and the phonograph was returned to Appellant.

There is no record of prior misconduct.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the order is not supported by the evidence and that the Examiner had not jurisdiction over the seaman at the time of the alleged misconduct.

APPEARANCE: Eugene L. Gartlant, Esq. representing Jennings, Gartland and Tilly of San Francisco, California

OPINION

The charge and specification are based on substantial evidence in the form of testimony by the two Customs officers. The question of jurisdiction is raised on the grounds that the voyage terminated on 10 December 1965 and Appellant did not sign on for the next voyage until after the incident occurred on 13 December 1965. The Articles show that Appellant received pay through 12 December and signed Articles which required him to be on board the vessel on 11 December for the voyage commencing 13 December 1965. Accordingly, Appellant was in the service of the SS GUAM BEAR and serving under the authority of his document continuously during the two voyages, including the time of the offense. The contention of Appellant with respect to lack of jurisdiction is rejected.

CONCLUSION

Appellant had gone to the ship, accompanied by his sister-in-law and a friend, to get the phonograph, which he intended as a gift for his nephew. He was unable to find the night mate to issue a property pass, and first became annoyed when accosted by the guard. Part of the difficulty was due to the

lateness of the hour, which gave rise to suspicion, and Appellant's belligerence toward the Customs officers was enhanced by his intoxicated condition. Circumstances notwithstanding, the use of foul and abusive language including threat of bodily harm to Federal law enforcement officers is clearly an act of misconduct. In view of the seriousness of the offense, the order of the Examiner is considered to be justified.

ORDER

The order of the Examiner dated at San Francisco, California, on 26 April 1966 is AFFIRMED.

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

Signed at Washington, D.C., this 4th day of May 1967.

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