

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1025319-D3 AND
ALL OTHER SEAMAN'S DOCUMENTS

Issued to: Denis Joseph McCRANN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1622

Denis Joseph McCRANN

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 10 June 1966, an Examiner of the United States Coast Guard at New York, New York, suspended Appellant's seaman's documents for three months outright plus six months on 12 months' probation upon finding him guilty of misconduct. The specification found proved allege that while serving as a bellboy on board the United States SS UNITED STATES under authority of the document above described, on or about 20 May 1966, Appellant wrongfully used foul and abusive language in the presence of passengers, to the Assistant Chief Steward.

Appellant was absent at the hearing. The Examiner therefore entered for the Appellant a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence various ship's documents and the testimony of the Assistant Chief Steward.

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 served a written order on Appellant suspending all documents issued to him for a period of three months outright plus six months on 12 months' probation.

The decision was served on 13 June 1966. On 24 June 1966, Appellant moved for a rehearing on the basis of newly discovered evidence. After two postponements the hearing was finally held on 15 July 1966. By his decision of 9 August 1966, the Examiner denied the petition for a rehearing.

The present appeal to the Commandant was timely filed.

FINDINGS OF FACT

On 20 May 1966, Appellant was serving as a bellboy on board the United States SS UNITED STATES and acting under authority of his document while the ship was at sea.

At about 1900 on this date the Assistant Chief Steward, Mr. Wilson, noticed several lights on the annunciator lit for approximately fifteen minutes without being answered. After ascertaining that Appellant was the person charged with the duty of answering calls, Mr. Wilson located him and told him about the calls registered on the annunciator. Appellant left to check out the calls, and Mr. Wilson returned to his office.

About ten minutes later Appellant rushed into Mr. Wilson's officer with an angry expression on his face and, in the presence of fifteen or twenty passengers, addressed Mr. Wilson with foul and abusive words.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the Examiner erred in not reopening the case on the grounds of newly discovered evidence.

OPINION

Appellant had been given due notice of the time and place of the hearing, but failed to appear. The documentary evidence and the testimony of Mr. Wilson, constituted reliable and probative evidence warranting a finding of guilty to the misconduct specification alleged. Likewise, the Examiner's order of three month's suspension, plus a period of probation, is considered just under the circumstances and is approved.

After learning of the decision in his case, Appellant made a petition for a rehearing, claiming that he had a witness who would testify favorable to his cause. At the hearing on his petition, Appellant, who was represented by counsel, related that he failed to appear at the 1 June hearing because he felt it was Mr. Wilson's word against his, and he "didn't think it would be this serious." (R-18,19) Appellant also contended that he had a witness who would testify that he did not notice any passengers within hearing of Appellant's foul outburst.

However, Appellant was well aware that this witness had been in the area when the incident with Mr. Wilson occurred, and could have made application for the issuance of a subpoena, and for an adjournment so that the witness might have an opportunity to appear and testify. Instead, Appellant elected to ignore the whole proceeding. Appellant has simply not given an adequate explanation for his failure to produce this evidence at the hearing, as required by regulations, 46 CFR 137.25-10. Moreover, the testimony of Appellant's witness was not of a material nature since it would not rebut the evidence of Appellant's use of foul language. The Examiner correctly denied the petition for a rehearing. See Appeal Decision No. [797](#); Appeal Decision No. [1486](#).

ORDER

The order of the Examiner dated at New York, New York, on 10 June 1966, is AFFIRMED.

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

Signed at Washington, D.C., this 22nd day of May 1967.

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Language

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