

IN THE MATTER OF LICENSE NO. 323186 MERCHANT MARINER'S DOCUMENT
NO. Z-13637-D2 AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: EDWARD H. BARTON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1623

EDWARD H. BARTON

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 4 March 1966, an Examiner of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman's documents for 2 months upon finding him guilty of misconduct. The specifications found proved allege that while serving as a Junior Third Assistant Engineer on board the United States SS CONTEST under authority of the license above described, on or about 30 January to 1 February 1966, Appellant twice wrongfully failed to perform his duties, and once wrongfully absented himself from the vessel.

Appellant did not appear at the hearing, so the Examiner entered for him a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the shipping articles and logbook of the vessel.

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 served a written order on Appellant suspending all documents issued to him for a period of 2 months.

The entire decision was served on 16 May 1966. Appeal was timely filed on 20 May 1966.

FINDINGS OF FACT

From 3 January to 23 February 1966, Appellant was serving as a Junior Third Assistant Engineer on board the United States SS CONTEST and acting under authority of his license while the ship was on a voyage to the Far East.

On 30 January 1966, the Chief Engineer and another crewmember were unable to awaken Appellant at the start of the working day. Appellant appeared to be under the influence of intoxicants at the time.

On 31 January 1966, Appellant failed to relieve the watch at 2000 hours and could not be found on board.

On 1 February 1966, Appellant refused to go on watch.

APPEARANCE: James H. Ackerman, Esquire, of Long Beach, California

OPINION

Appellant was given due notice of the time and place of the hearing and did not appear. The logbook entries were in proper form and as such constituted a prima facie case for the government. 46 CFR 137.20-107.

On this appeal it is contended that Appellant's failure to work and absence on the dates alleged were due to a medical condition, a Navy doctor in Okinawa having given him a "not fit for duty" slip. If this is true, it seems strange that Appellant did not, at the time of the logging, present this evidence to the

Master. In any event, Appellant was given the opportunity to raise this defense at this hearing and voluntarily waived it.

Appellant has a long record of prior misconduct, much of it apparently due to intoxication.

ORDER

The order of the Examiner dated at San Francisco, California, on 4 March 1966, is AFFIRMED.

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

Signed at Washington, D. C., this 24th day of May 1967.

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