

IN THE MATTER OF LICENSE NO. 278384 MERCHANT MARINE DOCUMENT NO.
Bk-272233 AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Richard J. CARDULLA

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1627

Richard J. CARDULLA

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 22 September 1966, an Examiner of the United States Coast Guard at New York City, New York, suspended Appellant's seaman's documents for two months upon finding him guilty of misconduct. The specifications found proved allege that while serving as a Third Assistant Engineer on board the United States SS SANTA MONICA under authority of the license above described, from 23 May to 29 June 1966, Appellant disobeyed orders on four occasions, and failed to perform his duties on one occasion.

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

The Investigating Officer introduced in evidence pertinent documents, including the official logbook of the vessel, and the testimony of the Chief Engineer.

Appellant testified on his own behalf.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and before mentioned specifications had been proved. The Examiner then served a written order on Appellant suspending all documents issued to him for a period of two months.

The entire decision was served on 22 September 1966. Appeal was timely filed on 5 October 1966.

FINDINGS OF FACT

From 23 May to 29 June 1966, among other times, Appellant was serving as a third assistant engineer on board the United States SS SANTA MONICA and acting under authority of his license while the ship was on a voyage to the far East.

Because of an incident which occurred when Appellant first reported aboard the vessel he and the Chief Engineer did not get along at all. The acts of misconduct charged against the Appellant all grew out of this mutual hostility.

A set of regulations promulgated by the Chief Engineer were posted in the engine room of the SS SANTA MONICA. One of these regulations required Watch Engineers to notify the Chief and First Engineers, respectively, thirty minutes before arrival at a port. Appellant was the Watch Engineer on 23 May 1966 as the vessel approached the port of Buckner Bay, Okinawa. Appellant was informed from the bridge that the ship would arrive in thirty minutes. He did not notify the Chief Engineer of this fact. Later, the Chief Engineer asked Appellant why he had failed to notify him as required by his regulations. The Appellant said nothing and walked away.

On 2 June 1966, an emergency arose in the engine room. The Chief Engineer responded to the alarm signal and, after the plant had been restored to order, told Appellant that he did not want anyone sitting down while on watch.

The next day at 0530, the Chief Engineer came into the engine room. He observed Appellant sitting with his head in his hands on top of a rag locker. After a short inspection of the area, the Chief Engineer approached Appellant, who was in the same position as before and asked him why his orders relative to sitting down had not been obeyed. Appellant merely stated: "Yes Sir." The Examiner found Appellant not guilty of disobedience, but guilty of improper performance of duties.

Appellant had rigged an extension line to his room from a companion compartment so that he could play his tape recorder. On 27 June, after this came to the attention of the Chief Engineer, the latter ordered Appellant to remove the line, or he would remove it himself. Appellant replied that he had better not come in his room. The line was not removed until three days later after another officer pleaded with Appellant to comply with the Chief Engineer's order.

On 29 June 1966, the Chief Engineer ordered Appellant to tighten up some pump glands which were leaking. Appellant waved his hand at the Chief Engineer in a derisive manner, and turned away. The Chief Engineer then ordered him to report to the Master to be logged. Appellant refused to appear.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. The following errors are assigned:

1. The Examiner erred in admitting into evidence a photostatic copy of the engine room log, and a copy of another document.
2. There is not sufficient evidence to sustain the findings of misconduct.
3. The Coast Guard has no jurisdiction over personal disputes such as this.
4. The order is excessive.

OPINION

I

Appellant's complaint about the introduction in evidence of authenticated copies instead of the original documents is not well taken. The logbook extracts were authenticated as true copies by the Coast Guard Investigating Officer and as such were admissible in evidence under regulations, 46 CFR 137.20-106. Appellant also contends that the original of the Chief Engineer's orders, including the requirement of giving him notice thirty minutes before arrival, is almost illegible and that the certified copy is therefore not a "true" copy. Regardless of whether this technical point has merit, it is clear that Appellant knew of the particular order, since he stated he told the First Engineer of the imminent arrival, as required, but did not, or could not, contact the Chief Engineer. There is no question that Appellant had actual knowledge of this order, and that he failed to comply with it.

II

Appellant's claim of lack of proof of misconduct is based on two contentions: 1) the Chief Engineer was biased; and 2) the specification dealing with failure to obey an order to remove an extension line must fall as the order was illegal.

There is little question that the Chief Engineer did not like Appellant. His testimony, however, was not hesitant, evasive or unworthy of belief. Moreover, Appellant admitted his guilt to most of the specifications in his own testimony. (R-116 to 119). At least with regard to the acts of misconduct found proved, any discrepancy in testimony was specifically resolved against the Appellant by the Examiner (order at p. 6,8). Since an Examiner has the opportunity to view the witnesses, his decision on credibility issues will not usually be disturbed. There is no reason to disturb it in this case.

The order to remove the unauthorized jury-rig line was a reasonable and proper order. The circuit Appellant was using to run his tape recorder primarily intended for navigational aids and communications equipment. A breakdown in this circuit could result in serious danger to everyone aboard; and the Chief Engineer was perfectly correct in forbidding other uses of the line.

III

The United States Coast Guard has a statutory duty to promote the safety of life and property aboard American merchant vessels, 14 USC 2. The instant case represents more than a "personal dispute" between two officers. Appellant's continual refusal to obey the legitimate orders of his superior can only be considered a serious undermining of discipline aboard the vessel. That proper shipboard discipline is directly related to the safety of personnel and cargo can not seriously be questioned. (See, e.g. The Statement of Justice Story in *The Mentor*, Fed Cas 9427). Jurisdiction is present in this case.

IV

As an officer, Appellant can be held to a higher accountability for his actions. He did not set a very good example for the unlicensed members of the SS SANTA MONICA, nor has he exhibited the sense of responsibility that is expected of a Merchant Marine officer. For these reasons, the Examiner's order of a two month's suspension is not considered excessive.

ORDER

The order of the Examiner dated at New York, New York, on 22 September 1966, is AFFIRMED.

P. E. TRIMBLE
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 26th day of May 1967.

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