

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1184406 AND ALL  
OTHER SEAMAN DOCUMENTS

Issued to: Robert Henry Wilson

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1659

Robert Henry Wilson

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 14 December 1966, an Examiner of the United States Coast Guard at New Orleans, La., suspended Appellant's seaman documents for 6 months outright plus 6 months on 12 months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as an able seamen on board the United States SS SOLON TURMAN under authority of the document above described. (1) on or about 9 November 1966, while such vessel was at New Orleans, La., Appellant wrongfully violated a Federal Statute by failing to declare dutiable merchandise and attempted to take ashore such property without fulfilling certain formalities required by the United States Bureau of Customs; (2) on or about 9 November 1966, while such vessel was at New Orleans, La., Appellant wrongfully violated a Federal Statute by attempting to destroy evidence, which was in the process of being seized; (3) on or about 2 November 1966, while such vessel was at Houston, Texas, Appellant wrongfully had intoxicating liquor aboard such vessel; and (4) on or about 9 November 1966, while such

vessel was at New Orleans, La., Appellant wrongfully had ships cargo in his possession.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and the first, second and fourth specifications. He entered a plea of guilty to the third specification.

The Investigating Officer introduced in evidence the testimony of three witnesses and the following exhibits:

- (A) Five bottles of scotch
- (B) One bottle of wine
- (C) Remains of cardboard carton
- (D) Copy of a portion of a Manifest and Freight List indicating consignment of 50 cartons of wine
- (E) Copy of a portion of Manifest and Freight List indicating consignment of 150 cartons of whiskey
- (F) Two delivery receipts indicating delivery of 49 cases of the wine described in (D) above and of 149 cases of the whiskey described in (E) above

In defense, Appellant offered in evidence his own testimony. Another witness testified at the request of the Examiner and both the Investigating Officer and Appellant were given the opportunity to examiner and cross-examine this witness.

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

The entire decision was served on 31 January 1967. Appeal was timely filed on 27 February 1967.

### *FINDINGS OF FACT*

On 2 and 9 November 1966, Appellant was serving as an able seaman on board the United States SS SOLON TURMAN and acting under authority of his document while the ship was in the ports of Houston, Texas, and New Orleans, La., respectively.

Upon returning from a foreign voyage on or about 30 October 1966, the vessel docked at New Orleans, La. Shortly thereafter it called at Houston, Texas, but then returned to New Orleans. On board was various cargo including a consignment of 50 cartons of wine to the Vivian J. Gelpi Company at New Orleans and a consignment of 150 cartons of scotch whiskey to Dave Streiffer & Company at New Orleans. These two consignments were found to be short one carton of wine and two cartons of whiskey, respectively.

At about 1330 hours on 9 November 1966, George Glenn McClain and John Judge United States Customs Investigators who testified in this proceeding, arrived at the Nashville Avenue wharf where the vessel was then docked. There, they observed Appellant and informed him that they desired to inspect the contents of the carton. Upon doing so, they found it contained several bottles of the brand of scotch whiskey missing from the consignment indicated above. When asked from where he obtained the whiskey, Appellant replied that he got it in Europe. Informed that the Whiskey would be taken into custody, Appellant picked up the carton containing the whiskey and threw it off the wharf into the water. The investigators then placed handcuffs on Appellant and one of them retrieved the carton containing the whiskey. A third customs official arrived on the scene and Appellant was escorted to his living quarters aboard ship where six bottles of the brand of wine missing from the consignment indicated above were found on his bunk. Appellant told the customs officials that he had obtained the wine and some scotch whiskey from an unknown seaman when the ship had called at Houston.

Appellant has no prior disciplinary record.

### *BASES OF APPEAL*

This appeal has been taken from the order imposed by the Examiner. It is contended, without specification, that the Examiner's findings are not supported by the facts and the law. In the event his findings are affirmed, it is contended that the Examiner's order is unduly harsh in view of Appellant's prior clear record, his cooperation with custom's officials subsequent to being apprehended, and his having already endured sufficient punishment in the form of a fine and incarceration imposed by the United States Treasury Department and a Louisiana state court respectively. Thus, it is requested that the Examiner's order be modified so as to suspend the remaining suspension period ordered by the Examiner.

APPEARANCE: Fine & Waltzer, Attorneys at Law, New Orleans, La.  
by Bruce C. Waltzer, Esq.

#### OPINION

In view of the lack of specificity involved in the contention that the Examiner's findings are not supported by the evidence and the law, it is not necessary to discuss the matter in detail. See the *Attorney General's Manual on the Administrative Procedure Act*. (1947) p. 84, note 5. Suffice it to say that, inasmuch as there is no clear error in the record, the findings of the Examiner should be affirmed.

The alternative contention, that the Examiner's order is excessive, in my opinion, should also be rejected. The offenses here involved are quite serious and, if treated lightly, might well serve to encourage other seamen to commit similar offenses. The safety of a ship's cargo would, thus, be constantly jeopardized and such a situation would be intolerable.

#### ORDER

The order of the Examiner dated at New Orleans, La., on 14 December 1966, is AFFIRMED.

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

Acting Commandant

Signed at Washington, D. C., this 20th day of September 1967.

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