In the Matter of Merchant Mariner's Document No. Z-293690-D3
Issued to: William G. Brenan

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1525

William G. Brenan

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 May 1965 at Seattle, Washington, an Examiner of the United States Coast Guard, after conducting a hearing at Portland, Oregon, revoked Appellant's document upon finding him guilty of misconduct. The offenses alleged were proved by evidence that while serving as a fireman-watertender on board the United States SS OCEANIC SPRAY under authority of the document above described, Appellant wrongfully failed to stand his watches on 24 and 25 December 1964 as well as on 21, 24 and 25 February 1965, and 9 March 1965, while the ship was at sea or in a foreign port.

Each offense is supported by a properly prepared entry in the ship's official logbook. No other evidence was introduced by the Investigating Officer and there was no evidence in defense since Appellant was not present at the hearing.

On 15 April 1965, the foreign voyage was completed at Portland. On the morning of this date, Appellant was served with the charge and specification and ordered to appear for a hearing on

16 April. At this time, he voluntarily deposited his document with the Investigating Officer. Appellant was not present or represented when the hearing was convened on 16 April and nothing had been heard from him. The Examiner continued the case subject to call.

The hearing was reconvened at Portland on 20 April. After it was established that Appellant had not been seen or heard from, the Examiner entered a plea of not guilty on behalf of Appellant and the hearing was conducted in absentia.

The Examiner's decision was served by registered mail on 29 May and Appellant filed a notice of appeal dated 8 June 1965. Nothing has been heard from Appellant prior to this time.

On appeal, Appellant states that he intended to attend the hearing and refute the false accusation, but shortly after arrival in Portland, on 15 April, he received information concerning "domestic difficulties" which demanded his immediate attention in Virginia and then in Texas. Also, Appellant contends he was required to stand 12 hours of watch every 24 hours because the vessel sailed with only two firemen on board. Appellant states that he is not proud of his past record but does not feel that it justifies revocation of his document.

Appellant's prior record consists of a one month suspension in February 1958 for creating a disturbance and assaulting the Chief Mate; six months' suspension in August 1958 for assault and batters, and failure to answer a subpoena; an admonition in 1961 for failure to perform duties; an admonition in 1962 for creating a disturbance; six months' suspension on probation in January 1963 for failure to perform duties; and six months' outright suspension plus six months' suspension on probation for creating two disturbances.

OPINION

Appellant waived the opportunity to refute the alleged offenses by neither appearing at the hearing nor contacting the Coast Guard and giving a satisfactory explanation of his absence. It is no excuse that Appellant received only one day's notice of the date set for the hearing. It has been determined that it is

sufficient notice for Appellant to appear and request a continuance to prepare his defense if he is given notice the day before (*Commandant's Appeal Decisions* Nos. 1423 and 1453), or even an hour before (*Commandant's Appeal Decision* No. 1468), the hearing begins. Hence, it would have been proper to proceed with the hearing in this case on 16 April when Appellant did not appear. *Commandant's Appeal Decision* No. 1455. Consequently, it would be reasonable to conclude that, after the Examiner allowed Appellant four additional days during which to contact the Coast Guard before reconvening the hearing on 20 April, it was improper to proceed with the hearing simply because Appellant was not notified that the hearing would reconvene on the latter date.

Elgin Joliet and Easter Railway Co. v. Burley et al., 327 U.S. 661 (1946), states, at page 666, that "due notice" of a hearing requires at least knowledge of the pendency of the proceeding or knowledge of such facts as would be sufficient to put a party on notice of its pendency. On the theory of this Supreme Court decision, the Commandant has upheld the propriety of conducting hearings in absentia in cases where the seamen have known that the hearings are pending but do not have knowledge of the date set for hearing.*Commandant's Appeal Decisions* Nos. 972, 1038, 1219 and 1254.

Since Appellant knew that the hearing was pending, the burden was on him to contact the Coast Guard, but he did not do so prior to filing his appeal almost two months after the scheduled date of the hearing. As a result, Appellant waived his right to submit any defense.

In connection with Appellant's contention that the vessel sailed with only two firemen on board, I take official notice of the Shipping Articles for the voyage which show that one of the wipers was promoted to the job of fireman-watertender. Also, the official logbook entries indicate that Appellant was required to stand only eight hours of watch a day. This supports the conclusion that there were two other firemen aboard besides Appellant rather than just two including Appellant.

The official logbook entries constitute substantial evidence of the offenses alleged. These offenses, considered together with

Appellant's extensive prior record, justify the order of revocation imposed by the Examiner.

ORDER

The order of the Examiner dated at Seattle, Washington, on 10 May 1965, is AFFIRMED.

E. J. Roland
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 12th day of November 1965.

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