

In the Matter of Merchant Mariner's Document No. Z-235267 and all
other Seaman Documents
Issued to: LYTLE E. KNUTSON

DECISION AND FINAL ORDER OF THE COMMANDANT

UNITED STATES COAST GUARD

1486

LYTLE E. KNUTSON

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 26 May 1964, an Examiner of the United States Coast Guard at Portland, Oregon, revoked Appellant's seaman documents upon finding him guilty of misconduct. The five specifications found proved allege that while serving as an able seaman on the United States SS WILDERNESS under authority of the document above described, on 23 February 1964, Appellant wrongfully failed to perform his duties as helmsman and wrongfully had possession of alcoholic beverages on the ship; from 30 March through 3 April 1964, Appellant wrongfully failed to perform his assigned duties on 16 April 1964, Appellant created a disturbance on board and deserted the ship.

At the original hearing, Appellant was not present or represented by counsel. The hearing was conducted in absentia after the Examiner entered pleas of not guilty to the charge and each specification on behalf of Appellant.

The Investigating Officer introduced in evidence a certified copy of excerpts from the Shipping Articles and entries in the ship's Official Logbook pertaining to all of the offenses alleged. On the basis of this evidence, the Examiner concluded that the charge and five specifications had been proved and entered the order of revocation.

On petition by counsel for Appellant, the hearing was reopened at Seattle, Washington, on 29 June 1964, and Appellant was permitted to testify. Appellant admitted that he did, or failed to do, the acts on which the allegations are based but he attempted to justify his conduct on each occasion and stated that he was not aware of the logbook entries concerning these events.

On 29 July 1964, the Examiner affirmed his order of revocation.

FINDINGS OF FACT

From 25 January 1964 until the afternoon of 16 April 1964, Appellant was in the service of the United States SS WILDERNESS as an able seaman and acting under authority of his document while the ship was on a foreign voyage.

At 1400 on 23 February 1964, while the ship was under way in the vicinity of Sicily, Appellant relieved the helmsman and started shouting about radical individuals sending wheat aboard on foreign ships. Appellant had been drinking wine. Since he refused to keep quiet and to pay attention to the steering when told by the Master to do so, Appellant was relieved of his watch at 1402. Shortly thereafter, the Master confiscated three bottles of wine from Appellant's locker in his room.

These matters were entered in the Official Logbook and at 1530 on 23 February, Appellant was given a copy of the entry. He replied, "I have only a few months to go for retirement and wish you would forget any forfeiture as I will not get drunk again." (There was no forfeiture involved.) Both entries were signed by the Master and Chief Mate.

From 30 March to 3 April 1964, inclusive, while the ship was at Calcutta, India, Appellant remained ashore without permission and thereby failed to perform his assigned duties on the ship. Appellant knew that the sailing board had been posted for the deck crew to be back on board at 0600 on 31 March. On each date, the offense was entered in the Official Logbook together with a forfeiture of one days' pay of \$13.09. On 8 April, an entry was made stating that the other five entries were read and explained to Appellant. He replied, "I was under the impression a shore gang was employed in my place. Received word too late." All six entries were signed by the Master and Chief Mate.

About 0200 on 16 April 1964 while the ship was at Singapore, several crew members restrained Appellant while he was shouting names at the crew and attempting to break loose in order to fight with them. The Master sent for the harbor police. They arrived at 0325 and departed at 0500 without taking Appellant. During this time, Appellant would not sail on the vessel, he wanted to be paid off by mutual consent, and he wanted to go ashore at once.

About 1000 on the same date, the ship was preparing to depart Singapore when Appellant, the Master, and two other officers went to the American Consulate. Appellant was intoxicated and kept demanding that he be paid off. Appellant took all his belongings with him. Appellant told the Consul that he did not want to be paid off but wanted to be hospitalized. Two doctors found that Appellant was "fit for duty." Appellant went with the Master and others in the launch as far as the vessel but refused to go on board. Appellant returned to the dock in the launch, went to the agent's office and eventually returned to the United States on another ship.

On 16 April 1964, the WILDERNESS got under way and departed Singapore. About 1430 on this date, Appellant was logged as a deserter. This entry, as well as two preceding entries reciting the events of 16 April relative to Appellant, were signed by the Master and Chief Mate.

Appellant's prior record consists of eight suspensions or admonitions extending between 1944 and 1963 for various offenses. The predominate offenses are failures to perform duties and intoxication. Also included are offenses of disobedience of lawful

orders, insolence toward a Master, disorderly conduct and failure to join.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the logbook entries are not adequate proof of the alleged offenses because the entries were not made in accordance with the requirements of 46 U. S. Code 702. The fact that the entries concerning 23 February are on the page following the entries pertaining to 16 April indicates that the case against Appellant was built up after he was logged as a deserter. Appellant testified that he was not aware of these logbook entries.

With respect to the alleged desertion, Appellant was justified in not returning to the ship because he was in fear of bodily harm by the Master and another seaman.

The inadequacy of the logbook is indicated by the absence of entries concerning Appellant's medical history, particularly about the serious difficulties he had with his teeth.

There was an unfair burden placed on Appellant, when the hearing was reopened, because the Examiner was reluctant to change the order of revocation which had been imposed.

Appellant is 51 years old. He has 19 of 20 years service for retirement under the union pension plan.

APPEARANCE: Stanley N. Kasperson, Esquire, of Seattle,
Washington, of Counsel.

OPINION

It is my opinion that the entries in the Official Logbook constitute substantial evidence in support of the offenses alleged since the entries were made in substantial compliance with the requirements of 46 U. S. Code 702. Although the entries of 23 February are not in chronological order in the logbook the facts that the second entry of 23 February shows Appellant's reply to the

offenses stated in the first entry and that Appellant, in his testimony, admitted the incidents logged indicate that these entries do not contravene the general purpose of 46 U. S. Code 702 which is to prevent the oppression of seamen by trumping up unfounded claims of misconduct.

The unacceptable excuse for missing five days' work at Calcutta was that Appellant thought shore workers would be employed. Appellant's reply to this effect, which appears in the logbook, is consistent with the testimony he gave when the hearing was reopened. He also testified that he knew the sailing board was posted for the deck crew to be back on board on the morning of 31 March.

Appellant could not be given an opportunity to reply to the log entry charging him as a deserter since he was no longer available. His attempts to refute this offense are not convincing. As stated by the Examiner, the most logical thing for Appellant to have done if he had left the ship in good faith was to have reported his reasons to the Consul. But he testified that his fear of bodily harm was not made known to the Consul either when Appellant visited the Consul with the Master on the morning of 16 April (R. 19) or when Appellant went back to see the Consul after not returning to the ship (R. 28).

The fact that Appellant left the ship with all his belongings indicates that he did not intend to return on board; and his testimony that he thought he would be hospitalized at the request of the Master does not ring true in the face of a logbook entry that, on 15 April, at Appellant's request he was examined by a doctor and declared "fit for duty." The record indicates that the idea of hospitalization was a mere hope on the part of Appellant to justify his leaving the ship; and that, after this excuse was completely eliminated when Appellant was twice again found fit for duty on 16 April, he relied on the excuse of fear of bodily injury by the Master and a crew member in order to justify his predetermined intent to abandon the voyage. Consequently, the logical conclusion is that Appellant did not have a legitimate excuse for refusing to sail with the ship and, therefore, he was guilty of desertion.

In his testimony, Appellant repeatedly refers to his poor

physical condition and, on appeal, criticizes the logbook on the basis of lack of entries concerning Appellant's medical history. On the other hand, Appellant admitted that he did not go to the dentist in Calcutta until 4 April which was the day after he had remained ashore without permission for five days. Apparently, the pain was not enough to interfere with Appellant's pleasure ashore for five days. Then Appellant claims that he had all five of his teeth pulled and, since he could not eat, he was in very poor condition when the ship reached Singapore. Nevertheless, he testified that he was all right a few days after the WILDERNESS departed. Thus, the logbook entries of 15 and 16 April, that on each of these two days Appellant was examined by a doctor and found "fit for duty," seem to contain adequate reference to Appellant's medical condition at this time.

If there was any reluctance on the part of the Examiner to change his order from one of revocation after Appellant testified, this was made possible by Appellant's failure to appear at the hearing on 22 May or to contact the Examiner prior to when the original decision of 26 May was served on Appellant on 28 May. Since there is no satisfactory explanation in the record for Appellant's failure to be present on 22 May, the propriety of reopening the hearing is questionable.

Although the present offenses together with Appellant's prior record amply justify the order of revocation, it will be reduced to a suspension for one year in order to give Appellant the opportunity to serve another year to obtain his pension. It is noted that after a prior outright suspension for one year in 1954, Appellant's record was not again blemished until 19609

ORDER

The order of the Examiner dated at Portland, Oregon, on 26 May 1964, is modified to provide for an outright suspension of one year.

As MODIFIED, the order is

AFFIRMED.

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

Signed at Washington, D. C., this 7th day of January 1965.

***** END OF DECISION NO. 1486 *****

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