In the Matter of Merchant Mariner's Document No. Z-818092-D4 and
All Other Seaman Documents
Issued to: CARLOS BAEZ CORREA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1129

CARLOS BAEZ CORREA

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 25 May 1959, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for four months upon finding him guilty if misconduct. The two specifications allege that while serving as a wiper on the United States SS SANTA INES under authority of the document above described, on 24 April 1959, Appellant wrongfully failed to perform his routine duties from 1500 to 1700 while the ship was at Buenaventura, Colombia; on 30 April 1959, Appellant failed to join the ship upon her departure from the same port.

At the hearing, Appellant was represented by counsel of his own choice. Appellant entered a plea of not guilty to the charge and each specification. After considering the evidence consisting of certified copies of entries in the ship's Official Logbook and Appellant's testimony, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. He then entered the order suspending all documents, issued

to Appellant, for a period of four month.

OPINION

On appeal, counsel for Appellant submits that the charges should be dismissed. It is contended that the Examiner's decision is arbitrary and without due process or law because it is based solely on unsupported assumptions, conjectural and speculative factors, and logbook entries which were not authenticated by witnesses subjected to cross-examination by Appellant to disprove the statements in the logbooks. It is urged that the latter, alone, can never constitute substantial evidence when completely contradicted as in this case by Appellant's testimony which shows that he had permission from the engine room delegate to stop working on 24 April because of injuries; and that, on 30 April, Appellant returned 20 minutes before the time the ship was scheduled to leave at 0600.

Accepting the testimony of the Appellant as did the Examiner, I agree with the reasons for his conclusions that Appellant was guilty in both instances.

With respect to the first offense, the delegate did not have the authority to release Appellant from his duties on the ship. Appellant, who is a seaman with at least 13 years experience, knew that he should obtained such permission from the First Assistant Engineer who was in charge of the engine room watch.

Concerning his failure to join, Appellant would not have missed the ship if he had returned on board an hour before the scheduled departure time. This was a requirement which Appellant admitted that he knew.

For these reasons, it is my opinion that Appellant was not deprived of due process of law by the lack of confrontation by witnesses and that the allegations are supported by substantial evidence consisting of the logbook entries.

Furthermore, Official Logbook entries made in the proper manner may be sufficient in themselves to support an alleged offense even though there is testimony contradictory to the logbook entries.

The four months' suspension is not excessive in view of Appellant's prior record which includes two offenses of failure to join and one offense of failure to perform duties.

ORDER

The order of the Examiner dated at New York, New York on 25 May 1959, is AFFIRMED.

A.C. RICHMOND
Vice Admiral, U.S. Coast Guard
Commandant

Dated at Washington, D.C., this 29th day of December, 1959.

***** END OF DECISION NO. 1129 *****

Top