

In the Matter of Merchant Mariner's Document Z-527808 and all other  
Seaman Documents  
Issued to: JULIAN A. TITO

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1477

JULIAN A. TITO

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 15 May 1964, an Examiner of the United States Coast Guard at Portland, Oregon suspended Appellant's seaman documents for three months on six months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as an oiler on the United States SS ROBIN KIRK under authority of the document above described, on 18 April 1964, Appellant wrongfully failed to join his vessel upon her departure from Yokosuka, Japan. He rejoined the ship on the following day at Yokohama which is approximately fifteen miles from Yokosuka.

At the hearing, Appellant elected to act as his own counsel. He entered a plea of guilty to the charge and specification. Appellant then stated that he did not know that he was required to be on board while the vessel was shifting from Yokosuka to Yokohama.

No evidence was introduced in view of the plea of guilty.

At the end of the hearing, the Examiner concluded that the charge and specification had been proved by plea and served a written order on Appellant.

On appeal, it is contended that customarily seamen have been free to remain ashore while their ship is shifting from Yokosuka to Yokohama; on this voyage, nothing was posted to inform the crew members that they were all required to be on board; the Master should have notified the crew of this change.

#### *OPINION*

It is apparent that Appellant's plea of guilty was entered improvidently. Therefore, it should have been changed by the Examiner to a plea of not guilty. The case will be remanded for this purpose and appropriate further proceedings.

A seaman on a foreign voyage is bound by the Shipping Articles to be on board when the vessel gets under way unless he is on authorized leave. Nevertheless, if it is true that in this case the requirement to be on board was a change from established custom and notice of this requirement was not given to the crew, Appellant should not be found guilty of misconduct.

The finding and conclusion that Appellant wrongfully failed to join the ROBIN KIRK upon her departure from Yokosuka is set aside.

#### *ORDER*

The order of the Examiner dated at Portland, Oregon, on 15 May 1964, is VACATED. The record is REMANDED with directions to reopen the hearing for further proceedings not inconsistent with this decision.

P E Trimble  
Rear Admiral United States Coast Guard  
Acting Commandant

Signed at Washington, D. C., this 18th day of November 1964.

\*\*\*\*\* END OF DECISION NO. 1477 \*\*\*\*\*

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