

In the Matter of Merchant Mariner's Document No. Z-824902
Issued to: ARCHIE SHOEMAKE BEARD

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

388

ARCHIE SHOEMAKE BEARD

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

On 9 August, 1949, Appellant appeared before an Examiner of the United States Coast Guard at Port Arthur, Texas, to answer a charge of "misconduct" supported by a specification alleging that while Appellant was serving as an able seaman on board the American SS FRANCIS DRAKE, under authority of Merchant Mariner's Document No. Z-824902, he did, on or about 14 February, 1948, desert said vessel while it was underway proceeding to sea from the port of Papeete, Tahiti, Society Islands.

At the hearing, Appellant was fully informed as to the nature of the proceeding, the rights to which he was entitled and the possible outcomes of the hearing. Appellant voluntarily waived his right to representation by counsel and chose to act in his own behalf. He pleaded "guilty" to the specification and charge proffered against him. After the Investigating Officer had completed his opening statement, he offered in evidence a certified copy of an excerpt, from the official Log Book of the SS FRANCIS DRAKE, which declares Appellant to be a deserter and that he shall

forfeit all pay.

Appellant then offered as mitigating circumstances the statement that he had been drinking and did not remember jumping over the side of the ship; he has been going to sea for nine years and has no prior record; and he has forfeited seven months' pay besides being imprisoned for two months at Tahiti. At the conclusion of the hearing, the Examiner found the charge and specification "proved by plea" and entered an order suspending for six months Appellant's Merchant Mariner's Document No. Z-824902 and all other valid licenses, certificates of service and documents held by him. Two months of the order was made an outright suspension, and the final four months subject to a probationary period of twelve months from 9 August, 1949.

Upon notice of appeal, the Examiner issued a temporary certificate to Appellant after the latter had requested that such action be taken.

In his appeal, Appellant reiterates the points he mentioned during the hearing. In addition he states that he does not feel that the suspension of six months would be excessive if it were probationary for the entire period. Appellant further states that he will never again be involved in any kind of trouble which would be the basis for disciplinary action by the Coast Guard.

FINDINGS OF FACT

On or about 14 February, 1948, Appellant was serving as a member of the crew in the capacity of able seaman on board the American SS FRANCIS DRAKE, under authority of Merchant Mariner's Document No. Z-824902, while the ship was underway proceeding to sea from the port of Papeete, Tahiti, Society Islands. On this date, Appellant and two other members of the crew deserted the ship by jumping over the side and swimming ashore. At the time this incident was reported to the Master on the vessel's bridge, the ship was at the harbor entrance between reefs and the men were almost ashore, so it was not safe to turn the ship and return to pick up the three men.

The three men were logged as deserters and their entire pay was forfeited. Upon reaching the shore, Appellant was apprehended

by the local police authorities and imprisoned for two months on the charge of having illegally entered this French possession.

OPINION

Desertion is considered to be "misconduct" within the meaning of Title 46 United States Code 239 (R.S. 4450) as amended because the manning and operation of American merchant marine ships is primarily based upon the agreement contained in the ship's articles. If a seaman abandons a voyage which he has engaged to complete, he thereby breaches his contract with the ship's Master. The seriousness of this offense arises from the fact that possible danger may result to the remainder of the crew, the ship and its cargo while the ship is undermanned. Hence, due to the comparable difficulty of obtaining replacements in foreign ports, the seriousness of the offense is enhanced when the offense takes place under the latter circumstances.

Appellant, by his plea of "guilty" to the specification, admitted the intent to abandon the voyage. Such intent is a necessary requisite of "desertion" and, being a state of mind, it is not subject to direct proof but is a presumption of fact to be inferred from other facts. As stated in the decision of the Examiner, the fact that two other seamen jumped overboard at the same time indicates that the abandonment had been discussed between the three seamen prior to the act. This further indicates the presence of the essential intent to desert which was admitted by Appellant's plea of "guilty".

CONCLUSION

The usual order for such an offense of desertion is stronger than that which was imposed by the Examiner in this case. But because of the financial loss incurred by Appellant as a result of the seven months' loss of pay and two months' imprisonment as well as because of his excellent record during nine years' service as a merchant seaman, the order of the Examiner dated 9 August, 1949, is modified to suspend Appellant's Merchant Mariner's Document No. Z-824902 and all other valid licenses, certificates of service and documents which have been issued to him, for a period of six months on twelve months' probation from 9 August, 1949.

ORDER

As so modified, the order of the Examiner dated 9 August, 1949, should be, and it is, AFFIRMED.

J.F. FARLEY
Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 21st day of November, 1949.

***** END OF DECISION NO. 388 *****

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