

In the matter of Merchant Mariner's Document No. Z-741182
Issued to: DONALD E. AKRIDGE

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

435A

DONALD E. AKRIDGE

IN THE MATTER OF

Merchant Mariner's Document No. Z-741182
Issued to: DONALD E. AKRIDGE

Merchant Mariner's Document No. Z-45909
Issued to: ROBERT A. BENDER

Merchant Mariner's Document No. Z-329546
Issued to: ALEXANDER BOZOCOS

Certificate of Service No. A-59406 (Z-35160)
Issued to: ROBERT T. BROOKS

Merchant Mariner's Document No. Z-186564
Issued to: GEORGE CASADA

Certificate of Service No. A-34742 (Z-11531)
Issued to: ALBERT CASTRO

Merchant Mariner's Document No. Z-17469

Issued to: FRANK P. CHADBOURNE

Certificates of Service Nos. A-67495, B-41075 (Z-33345)

Issued to: ARTHUR S. KENNEDY

Certificate of Service No. A-77012 (Z-454807)

Issued to: TRYGVE L. LONGUM

Certificate of Service No. E-186293 (Z-040903)

Issued to: CALCI MICALLEF

Merchant Mariner's Document No. Z-262170

Issued to: CHARLES OLSEN

Merchant Mariner's Document No. Z-32968-D1

Issued to: STANLEY OLSON

Certificates of Service Nos. A-24307, B-95102 (Z-109315)

Issued to: JOSEPH PIMENTEL

Certificate of Service No. A-82373 (Z-27938-D1)

Issued to: FRANKLIN E. SOARES

Certificate of Service No. A-62514 (Z-20495)

Issued to: EUGENE SOWDEN

Certificate of Service No. A-92077 (Z-32321-D1)

Issued to: EDWARD D. TOWNLEY

Merchant Mariner's Document No. Z-17943

Issued to: GABRIEL VIERRA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

435A

This appeal by seventeen seamen comes before me by virtue of Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

On 24 January, 1950, an Examiner of the United States Coast Guard at San Francisco, California, suspended the above named seamen's respective Certificates of Service and Merchant Mariner's Documents upon finding them guilty of "misconduct" based upon three specifications (except Longum, who was not charged with the Third Specification) alleging that, while serving in various capacities in the Deck Department on board the American SS PRESIDENT WILSON and acting under the authority of their Certificates of Service or Merchant Mariner's Documents, at the time said vessel was in the Port of Honolulu, Territory of Hawaii, they did:

"First Specification * * * on or about 11:55 P.M., 17 August, 1949, combine, conspire, or confederate with other members of the crew to disobey a lawful order of the Master to turn to and sail the said vessel from the Port of Honolulu, Territory of Hawaii.

"Second Specification * * * on or about 11:55 P.M., 17 August, 1949, disobey a lawful command of the Master to turn to and sail the said vessel from the Port of Honolulu, Territory of Hawaii.

"Third specification * * * on or about 12:30 A.M., 18 August, 1949, absent yourself from your vessel without leave from proper authority."

At the commencement of the hearing on 10 October, 1949, Examiner Edwards disqualified himself, upon motion of Appellants' counsel, due to his participation in the companion case of twelve seamen involving the same incident and based upon identical specifications. Examiner Edwards was immediately replaced by Examiner Donahue without interruption to the proceedings.

The same counsel was voluntarily retained by each one of these seventeen Appellants. At the hearing, counsel also represented five additional seamen who were charged with misconduct based upon the above first and second specifications but against who the specifications and charge were later found "not proved" and dismissed by the Examiner. There were three Quartermasters and two Night Watchmen in this latter group. Identical specifications had been prepared against the remaining eight of the forty-two unlicensed members of the Deck Department on the voyage involved

but service had not been made on these seamen at the time the hearing commenced. This group of eight remaining men consisted of three Quartermasters, one Night Watchman, and four able bodied or ordinary seamen. The facts brought out at the hearing disclosed that the charges against the Quartermasters and Night Watchmen had been dismissed because they had remained aboard the vessel and performed their duties at all times in question.

Beginning on the opening day of the hearing, counsel objected to the commencement of the proceedings on that date since the charges had been served upon Appellants only two days previously, on Saturday, 8 October, 1949. The Examiner continued the hearing for only one day to 11 October, 1949, stating that it was necessary not to delay longer than that in order to be able to obtain the testimony of personnel due to sail aboard the PRESIDENT WILSON. It was also brought out that the charges were identical to those in the companion hearing in which present counsel was retained by the persons charged therein; that counsel had been present and participated in the Coast Guard investigation from 25 August, 1949, to 5 September, 1949, which gave rise to these charges; and that, therefore, counsel was fully acquainted with the nature of the charges. It was later found that the persons whose testimony was most desired were not sailing on the PRESIDENT WILSON and that their testimony could be obtained at a later date than had been expected.

On 11 October, 1949, counsel for Appellants moved to continue the hearing on the ground that the conduct of the hearing at this time would be a denial of due process since counsel had not been given sufficient notice of the hearing to have a reasonable opportunity to consult with the persons charged. The Examiner denied the motion stating that counsel had sufficient knowledge of the surrounding facts to have prepared the defense without any further continuance. At this time, Appellants were given a full explanation of the nature of the proceedings, the rights to which they were entitled; and the possible results of the hearing. A motion by counsel to abate the proceedings until Title 46 C.F.R. 137.05-5(b) had been complied with was denied by the Examiner after argument on this point had been heard.

On 11 October, 1949, Appellants were individually charged and each of them entered a plea of "not guilty" to the charge and

specifications. The hearing was then adjourned and continued until Thursday, 13 October, 1949, on motion of the Investigating Officer.

Appellants' counsel completed his closing argument in the companion case on 12 October and the present proceedings were reconvened shortly after the Investigating Officer had completed his closing argument in the other case on 13 October.

Upon the Examiner's request for the production of documents in accordance with 46 C.F.R. 137.09-15, counsel stated that the entire proceedings were a nullity because of the arbitrary manner in which they had been instituted by denying to Appellants and counsel sufficient time to prepare their defense. On this theory and on the further ground that to surrender the documents at the beginning of the hearing would be an imposition of a sanction amounting to an invasion of the Appellants' property rights and a denial of due process, counsel refused to produce the documents and advised Appellants not to do so despite the Examiner's statement that he would issue temporary documents pending the determination of the hearing.

On 17 October, 1949, the Investigating Officer made his opening statement including reference to the personal service of the charges and specifications upon Appellants on 8 October, 1949, at which time they were afforded an opportunity to make such refutation as they saw fit. Counsel then made an opening statement on behalf of those men who were charged with all three specifications and reserved the right to make an opening statement at a later time for those seamen who were not charged with the offense alleged in the third specification.

The introduction of evidence by the Investigating Officer was begun on 17 October, 1949, only after Appellants' counsel had been specifically informed on at least two previous occasions that, due to the unexpected availability of witnesses at a later date, a motion requesting a reasonable continuance of the hearing would be granted by the Examiner. No such motion was presented by counsel despite his former protestations. After Orel A. Pierson, the Master of the PRESIDENT WILSON, had testified on direct examination on 17 and 18 October, 1949, it was stipulated that the testimony of the Master and other specified witnesses as well as the exhibits offered in the companion case, entitled "In the Matter of

Certificates of Service and Merchant Mariner's Documents issued to Jim Dimitratos, et al.," should be admitted in evidence to constitute the direct case of the Investigating Officer without prejudice to the recall of any of these witnesses by either party. Upon the acceptance of this stipulation and the granting of counsel's application to take depositions at Honolulu, the hearing was continued from 19 October to 31 October, 1949.

On 31 October and 1 November, 1949, cross-examination of the Master was completed and the testimony of Finzen, the Second Mate, was taken.

On 2 November, 1949, a motion by counsel for the persons charged to continue the hearing until 8 November, 1949, was granted. When the hearing reconvened on 9 November, 1949, counsel put in evidence all the depositions, which had been taken in Honolulu, on 25 and 26 October, 1949, after having completed his opening statement. These depositions were read into the record.

Appellants' first witness did not testify until the hearing was again reconvened on 18 November, 1949. From the latter date through 8 December, 1949, counsel for the persons charged introduced in evidence the testimony of numerous witnesses including that of several of the persons charged and the testimony of all but two of the Appellants in the companion case.

On 8 December, 1949, both parties were informed of their right to submit proposed findings and conclusions. On 8 and 9 December, 1949, counsel for the persons charged and the Investigating Officer presented oral argument before the Examiner. The hearing was then continued awaiting the decision of the Examiner. Prior to the latter event, counsel submitted proposed findings and conclusions which were ruled on by the Examiner before his decision was made known.

On 24 January, 1950, the Examiner's decision was read in open hearing. The Examiner found the charge of misconduct "proved" by proof of the specifications as to each of the seventeen Appellants and entered an order suspending their respective documents and certificates commencing on 24 January, 1950, and ending six months from the date or dates on which the documents or certificates were deposited with the Examiner. The Examiner stated that temporary documents would be issued upon request pending the determination of

the case upon appeal. Counsel then moved to reopen the hearing as to Longum on the basis of addition and new evidence. After argument, the Examiner denied the motion and the hearing was concluded.

FINDINGS OF FACT

On 7 and 8 July, 1949, the persons charged signed on the shipping articles of the American SS PRESIDENT WILSON to serve, under the authority of their certificates or documents, in various capacities in the Deck Department on voyage number eight of this vessel.

The PRESIDENT WILSON, Official Number 255039, is a passenger and freight steam vessel of 15,360 gross tons owned and operated by the American President Lines, Limited, of San Francisco, California. The ship sailed from the Port of San Francisco, on 8 July, 1949, under articles dated 6 July, 1949, covering a foreign voyage to Manila via Los Angeles, Honolulu, and such other ports as directed by the Master, and back to a final port of discharge on the Pacific Coast of the United States, for a period of time not to exceed nine months. The persons charged served in their respective capacities throughout the voyage and until the PRESIDENT WILSON returned to San Francisco on 23 August, 1949.

On her return voyage, the PRESIDENT WILSON docked at Pier 8 in Honolulu harbor at 0728 on 16 August, 1949. She was scheduled to sail for San Francisco at 1800 that day. Notices to that effect were posted at all gangways on orders of the Master.

At approximately 1730 on 16 August, 1949, the vessel was secured for sea and in all respects seaworthy. A pilot was on the bridge, tugs were standing by, and all of the members of the Deck Department were at their various unmooring stations except Manuel W. Medeiros whose station was on the forecastle head. There were 527 passengers aboard, 3135 bags of United States mail, 1102 tons of cargo, and the ship's personnel of about 338 seamen in accordance with her certificate. There were over 200 men in the Steward Department, about 60 in the Engine Department, 54 in the Deck Department (including 8 officers, 3 radiomen and one cadet) and 18 in the Staff Department.

Mooring lines fore and aft had been singled up and orders had been given to let go when a message was received on the bridge that there was a disturbance in the crew's quarters. The Chief Mate went to the scene of the trouble with four members of the Deck Department to assist him if necessary.

The trouble started when Medeiros and Kim, members of the Deck Department, were standing in the thwartship passageway leading from the crew's gangway. The position of these two men partially blocked the passageway. Several members of the Steward's Department were coming aboard at about 1750 when one of them engaged in the exchange of abusive language with Medeiros and struck Medeiros on the side of the head with a full bottle of whiskey. Medeiros sagged from the blow and was supported by Kim. The assailant drew a knife just as Medeiros recovered and threw Kim away from him. Kim kicked the knife from the man's hand and Medeiros, raving like a wild man, chased his attacker down the passageway to the stewards messhall. Kim followed Medeiros to the messhall but then left to summon assistance from other members of the Deck Department.

There followed a general free-for-all between some members of the Deck and Steward's Departments in the vicinity of the stewards' messhall. The Master and the Chief Mate reached the scene of the fight when it had become a complete riot. Since the Master was unable to control the situation, he ordered the Chief Mate to summon the local police. A variety of versions as to what occurred during the fight were submitted by the numerous witnesses who testified as to these events. Despite the mass of contradictory testimony contained in the record, the following findings are amply established by substantial evidence and are sufficient upon which to base the conclusions which are arrived at in this decision without going into unnecessary details which would serve no useful purpose:

1. Some of the seamen in both the Deck and Steward's Departments made use of large French bread knives with which to defend themselves as well as to attack members of the opposing group.
2. Kim and Medeiros resorted to the use of fire axes during the course of the riot.
3. A member of the Steward's Department named Faison was

backed into a corner of the messhall and attacked by several members of the Deck Department while they threatened to kill him.

4. Medeiros raved like a belligerent maniac throughout the disturbance until he collapsed and was taken to the hospital shortly after being disarmed by the Master.
5. The four men originally engaged by the Chief Mate to assist him in quelling the disturbance joined the other members of the Deck Department and thereby increased the proportions of the battle.
6. Although Kim and Thompson were both Deck Department seamen and the only two men known to have received knife wounds, the members of the Deck Department were undoubtedly the aggressors in the riot which eventuated, while the Steward's Department seamen retreated in fear for their lives.

At about the time Honolulu police arrived on board and when the situation was under control, Mr. Christiansen, the representative of the Sailor's Union of the Pacific at Honolulu, came aboard the vessel and attended a meeting of the Deck Department which was held at about 1930 on 16 August. Approximately thirty-five members of the Deck Department were present at this meeting and they decided to refuse to sail the ship unless certain members of the Steward's Department were removed from the vessel. Bishaw, the Deck Department union delegate, reported this decision to the Master at about midnight on 16 August after the Master had returned from the Honolulu police station. The Master then dismissed the pilot and tugs which had been standing by.

In the course of the investigation conducted by the Honolulu police on the evening of 16 August, several members of the Deck and Steward's Departments were arrested and taken to the police station for questioning. All of these men were released by the police on the same night.

Early on the morning of 17 August, members of the Deck Department swore out complaints against three men in the Steward's Department named Hayes, Faison and Holloway. These three men were arrested and released under bail. The Master was later informed that these were the seamen with whom the Deck Department refused to

sail. Later on the 17th, members of the Steward's Department swore out complaints for the arrest of four members of the Deck Department who were also arrested and released upon the posting of bail in the early evening of 17 August. In addition to these seven men, three members of the Steward's Department were subpoenaed to appear as witnesses at 0900 on 18 August, 1949.

At 0630, on 17 August, 1949, the departure of the PRESIDENT WILSON was set for 1600 on that date and the vessel was ready to get underway on a few minutes notice from this time until midnight of the 17th. Various meetings were held during the day of the 17th, between representatives of the two departments and the shipowners, in an endeavor to expedite the sailing of the vessel. The members of the Deck Department consistently maintained their position that they would not sail with Hayes, Holloway and Faison on board.

At about 1400 on 17 August, 1949, a meeting arranged by Campbell, the manager for the American President Lines in Honolulu, was held in the office of Commander Whitelaw, U.S.C.G., who was serving as Shipping Commissioner for the Port of Honolulu. In addition to the above two men, the following were present: Christiansen, Bishaw, Eskovitz (Honolulu agent for the Marine Cooks and Stewards Union), Collins (attorney for the American President Lines), Pierson (Master of the PRESIDENT WILSON), and Lt. (j.g.) Meekins (Merchant Marine Investigating Officer at Honolulu). It was agreed between all parties concerned that, subject to the approval of Mr. Harry Lundeberg (Secretary of the Sailor's Union of the Pacific), all men involved as participants in the riot or as witnesses thereto would be replaced by seamen furnished by the union agent of each of the two departments and the men would be given first class transportation back to San Francisco at the expense of the American President Lines. The replaced men were not to be discharged from the articles until the termination of the voyage. Christiansen obtained approval by telephone of this agreement from Lundeberg who was in San Francisco and certain members of the Deck Department packed their gear and went ashore without notifying the Master or any of the ship's officers that they were acting pursuant to the agreement. No replacements were furnished for these seamen as called for by the agreement.

The members of the Steward's Department held a meeting on the dock at about 1800 on 17 August and they rejected the terms of the proposed agreement when it was submitted to them by Eskovitz. This decision was communicated to Campbell by telephone and relayed to Christiansen when he called to tell Campbell that Lundeberg had approved of the agreement. Since Christiansen then reiterated the determination of the Deck Department to abide by the same condition upon which they would sail, immediate plans to depart had to be again changed.

On the evening of 17 August, 1949, a meeting was held on board the PRESIDENT WILSON beginning at about 2130. All 42 unlicensed members of the Deck Department were ordered by the Master to attend this meeting and a list of the ship's personnel was checked to ascertain that these 42 men were all present before the meeting was commenced. Also present were Eskovitz and the Steward's Department delegate, Christiansen, the Chief Engineer and the Engineering Department delegate, the Chief Steward, the Chief Officer, Commander Whitelaw, Lieutenant (j.g.) Meekins, and Captain Pierson. Meekins checked the crew list to be sure that all the deck men were mustered and present. When assured of this, he repeatedly told the men that no subsequent agreement could relieve them of their commitment under the shipping articles to obey the lawful commands of the Master and that the Master was going to order them to sail the ship but that he first wanted to acquaint them with the law pertaining to the authority of the Master aboard his ship. Meekins then read the provisions of 18 United States Code 2192 and 2193 which provide penalties for members of a crew revolting or inciting others to disobey the lawful orders of the Master of a vessel of the United States.

The Engineering and Steward's Department delegates reported that all members of their respective departments were on board and ready to sail. When the Deck Department was called upon, Christiansen acted as their spokesman and stated that all members of the Deck Department were on board and they were ready to sail on the one condition that the three members of the Steward's Department previously named would be removed from the ship. The members of the Deck Department were then told that they would be given thirty minutes to talk it over among themselves and decide what to do before the Master gave his order. All hands except the

members of the Deck Department and Christiansen then left the meeting.

The Master and others returned in about a half hour but the Deck Department men were still talking and arguing. The Master waited outside for another thirty minutes until the sound of the voices had subsided. During this time, no one left the scene of the meeting except Christensen who again called Lundeberg. Finally, the Master reentered the messhall and at 2355 ordered "that all members of the unlicensed Deck Department turn to and sail this vessel from the Port of Honolulu at 2355 this date." This order was read to the Deck Department members by the Master and he then handed the original of the written order to Bishaw, the union delegate of the Deck Department.

Either before or after the reading of the order, or at both times, several individuals voiced their objections to sailing because of the pending court action scheduled for the following morning or due to fear of being knifed by one of the members of the Steward's Department. But the sole condition given, upon which the Deck Department as a whole would agree to sail, was the removal of the three men. The Master stated that he would pay off any man under court process but that he would not pay off the entire Deck Department. Immediately before or after the order was delivered orally and in writing, the members of the Deck Department shouted, "We quit."

Shortly thereafter all except 10 of the 42 unlicensed members of the Deck Department, including all of the Appellants herein, went ashore without authority, and, excepting Longum, they did not return aboard the vessel with any intention of performing their duties until after the three Steward's Department men had left the ship on the morning of 19 August, 1949, for the remainder of the voyage. When it became apparent that his order would not be obeyed, the Master dismissed the pilot and the tugboats which had been standing by to assist the PRESIDENT WILSON in getting underway. None of the seamen who left the vessel made any attempt to see the Master about signing off the articles despite the fact that the Master had expressed his willingness to release those men who were required to appear in court the following morning.

In the early morning of 18 August, 1949, in a conference

between Mr. Cole, the Chief Officer, and Mr. Christiansen, on inquiry made by Mr. Cole regarding the safety of the ship and its passengers, Mr. Cole was informed that the watchmen and quartermasters were to remain aboard for reasons of safety. There were six quartermasters and three night watchmen on board this ship. At this time Christiansen stated that one seaman, Trygve Longum, deck maintenance man, had gone ashore but had returned to the ship and would remain aboard because he was an alien and not allowed admittance to the Islands.

At about 0700 on the 18th, the Master was requested to appear before the Court at 1000 on that morning. At this time, all of the cases involving the crew of the PRESIDENT WILSON were dismissed on motion of the prosecutor after Captain Pierson had given his assurance to the Court that "appropriate charges will be brought against the men now charged here before the U. S. Coast Guard." The Court took this action in order to expedite the sailing of the vessel.

When the members of the Deck Department still refused to return aboard until their condition was met, the Steward's Department held a meeting on the night of 18 August, 1949, at which time they agreed to the removal of Hayes, Holloway and Faison.

On the morning of 19 August, 1949, the members of the Deck Department assembled on the dock at about 0930 and came aboard as soon as they saw the three members of the Steward's Department leave the ship with their gear.

At approximately 1000 on 19 August, 1949, the PRESIDENT WILSON got underway from Honolulu enroute to San Francisco, California, where the voyage was terminated.

Some evidence was introduced by the defense allegedly indicating the unseaworthiness of the ship prior to the riot in question on 16 August. These facts indicated that during the course of this voyage from San Francisco and until 16 August, 1949, certain members of the Deck Department had made complaints about the food being served to them. It was alleged that the food served was sometimes spoiled and rotten and as a consequence a food committee was appointed to take up the matter with the Chief Officer. One or two meetings were held between the Chief Officer,

the Third Steward and the representatives of the men. The food situation did not improve materially. At no port where the vessel put in was a survey requested by the members of the Deck Department and on arrival at the port of Honolulu on 16 August, 1949, no effort was made to alleviate this alleged poor condition by a requested survey.

Also introduced in evidence were certain facts indicating that on this Voyage #8 previous to arrival at Honolulu, the Third Steward, upon being manhandled by three members of the Deck Department near the Deck Department forecastles, pulled a knife and threatened to use the same against certain members of the Deck Department. The altercation was between the Boatswain Brooks, Medeiros and O'Brien. There was also some evidence that another member of the Deck Department, Jim Dimitratos, was involved in a fight with a member of the Steward's Department on an earlier voyage aboard the PRESIDENT WILSON, in which fight Dimitratos testified that this man pulled a knife on him, thereby necessitating his beating the man rather severely, resulting in hospitalization. The member of the Steward's Department involved in that fracas was not aboard on this present voyage. The facts concerning the altercation are in some confusion because of the testimony of Dimitratos, but it would appear that when Dimitratos severely beat this member of the Steward's Department, it was actually several minutes after the Steward's Department man had pulled a knife, in a different portion of the vessel and was an act done in reprisal by Dimitratos rather than in self-defense.

ASSIGNMENTS OF ERROR

It is urged on appeal that the following points constitute reversible error and that, therefore, the order of the Examiner should be reversed:

- I. The Examiner deprived the persons charged of the constitutional right of due process and violated the provisions of paragraph (a) of section 5 of the Administrative Procedure Act by compelling the persons charged to proceed to trial the first business day after they had been served with the charges, without regard for the convenience and necessity of the persons charged and their counsel and without giving the persons charged

adequate opportunity to confer with counsel before the commencement of the hearing.

- II. The Examiner failed and refused to adopt specific findings which were requested by the seamen charged.
- III. The persons charged requested the Examiner to conclude from the evidence and upon the findings which were submitted to him that the order to sail the vessel was not a lawful order and should not have been given.
- IV. A rehearing should have been granted as to Trygve L. Longum.

APPEARANCES: Kneland C. Tanner, Esquire, of Portland, Oregon, of Counsel

OPINION

I.

It is contended at great length and with numerous citations of cases that Appellants were deprived of their constitutional right of due process in that they were not allowed sufficient time in which to prepare their defense.

I am firmly convinced that this argument is completely without merit and my reason for so stating is disclosed by a glance at the dates contained in the prefatory statement of this decision. Counsel for Appellants began his acquaintance with the situation, upon which these specifications are based, on 25 August, 1949, when the Coast Guard investigation commenced. Counsel was present and participated in this investigation which continued until 5 September, 1949. Appellants were not served with the charge and specifications until 8 October, 1949, and the hearing was commenced on the following business day of Monday, 10 October, 1949; but there was no testimony taken at that hearing, except that of the Master, until counsel for Appellants began the presentation of their case on 9 November, 1949. On this date, counsel put in evidence the depositions which had been taken in Honolulu and the first defense witness to testify at the hearing was not called until the hearing was again reconvened on 18 November. This was more than a month after the commencement of these proceedings and

the completion of argument in the associated case involving twelve seamen who were crew members aboard the PRESIDENT WILSON on the same voyage.

On 13 October, 1949, Appellants' counsel failed to request a continuance of the hearing even after the Examiner suggested that such a motion would be favorably entertained at that time. Despite this, there were two lengthy continuances at subsequent periods. A reading of the entire record disclosed that the Examiner gave Appellants every opportunity to adequately prepare their defense, both individually and collectively in consultation with their counsel.

The obvious conclusion is that Appellants were given adequate notice and, therefore, they were deprived of none of their constitutional rights. If there was any lack of "timely" notice at the beginning of the hearing, it was completely cured during the subsequent course of the proceedings.

II.

Appellants also question the propriety of the Examiner in not adopting in toto eighteen of the twenty-three proposed findings of fact submitted by counsel on 4 January, 1950. It is claimed that there is substantial evidence in the record to support these findings and the conclusion that the order of the Master was unlawful.

Many more defense witnesses testified at this hearing than in the companion case "In the Matter of Certificates of Service and Merchant Mariner's Documents issued to Jim Dimitratos, et al." (Headquarters Appeal No. (435)). After seeing these witnesses and considering the proposed findings and conclusions presented by Appellants, the Examiner delivered his written reply to counsel prior to rendering his decision. A separate ruling, and the reasons therefore, was submitted as to each one of the twenty-three findings. Some of these findings were adopted in toto, many were modified in accordance with the Examiner's decision based on his evaluation of the conflicting evidence, and others were totally rejected for this same reason. There were many minor modifications of the proposed findings which would not alter the outcome of the case. Upon a review of the entire record, it is my opinion that

the findings of the Examiner are supported by reliable and substantial evidence in all material respects and that he correctly concluded that the Master's command was a lawful one. The latter aspect of the case is extensively discussed in Headquarters Appeal No. (435). Since the conclusions in that case are based on the same incidents and the findings of fact arrived at were substantially the same as in this case, it would be pointless to repeat exactly the same conclusions that are set out in that decision.

III.

See "In the Matter of Certificates of Service and Merchant Mariner's Documents issued to Jim Dimitratos, et al." (Headquarters Appeal No. (435)). In that case, it was admitted that a specific order need not be given to constitute a revolt and usurpation of command which is a more serious offense than disobeying a lawful command of the Master. It is illogical to say that a greater degree of proof is required for a lesser offense than a greater one. Therefore, there was no necessity to prove that there was a specific order of the Master which was disobeyed. The order to get underway at 1800 on 16 August, 1949, was a standing order which was never retracted but only enforced by subsequent changes in the time at which the ship was to be ready for departure. The hour of 11:55 P.M. on 17 August, 1949, was simply the time when the main overt act was committed in furtherance of the conspiracy which actually started on the 16th.

IV.

The motion to reopen the hearing as to Longum was based on a letter from the Master of the PRESIDENT WILSON dated 11 January, 1950, and stating that from 26 March, 1949, to 8 October, 1949, Longum's "character, conduct and ability was above reproach." But regardless of any theory on the law of agency which may or may not be pertinent to Longum's behavior, the general statement contained in the letter of the Master is not supported by the specific finding that Longum returned to the ship only because he was forced to do so. In any case, he did depart from the vessel and then returned aboard, thereby committing the offenses alleged in the specifications with which he was charged. But Longum was not charged with the third specification.

CONCLUSION

The charge and specifications were properly found "proved" for the reasons set forth herein as well as in Headquarters' Appeal No. (435) and the Examiner's decision in this case. There was no material prejudicial error in the conduct of the proceedings or in the resulting findings and conclusions drawn by the Examiner.

Upon my review of the record, in view of the delays which have occurred, I am of the opinion that substantial justice will be served by entering final orders modified to read as follows:

ORDER

The Certificates of Service (except Certificate of Service No. A-77012) and Merchant Mariner's Documents enumerated and identified herein, be, and the same are, suspended for a period of six (6) months. The suspension ordered shall not be effective provided no charge under R.S. 4450, as amended (46 U.S.C. 239), is proved against the holder thereof for acts committed within twelve (12) months of 24 January, 1950.

Certificate of Service No. A-77012 held by Trygve L. Longum is hereby suspended for a period of three (3) months. The suspension ordered shall not be effective provided no charge under R.S. 4450, as amended (46 U.S.C. 239), is proved against him for acts committed within six (6) months of 24 January, 1950.

As so MODIFIED, said Orders of the Examiner, dated at San Francisco, California, 24 January, 1950, are AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 1st day of August, 1951.

***** END OF DECISION NO. 435A *****

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