

In the Matter of Merchant Mariner's Document No: Z-818734
Issued to: RAFAEL G. SOSA

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

457

RAFAEL G. SOSA

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

On 15 June, 1950, an Examiner of the United States Coast Guard at New York City revoked Merchant Mariner's Document No. Z-818734 issued to Rafael G. Sosa upon finding him guilty of "misconduct" based upon a specification alleging in substance, that while serving as utilityman on board the American S. S. WASHINGTON, under authority of the document above described, on or about 15 May, 1948, he wrongfully had in his possession a quantity of marijuana cigarettes while said vessel was in the Port of New York.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. He was represented by counsel in the person of a Coast Guard Officer and he entered a plea of "not guilty" to the charge and specification.

Thereupon, the Investigating Officer made his opening statement and a motion to dismiss on jurisdictional grounds was denied by the Examiner. The Investigating Officer then introduced in evidence the testimony of the port patrolman who had apprehended

Appellant and a certified copy of the laboratory report of the analysis of the cigarettes found. He then rested his case.

Appellant made his opening statement and offered in evidence the testimony of a fellow seaman, who was present when Appellant was arrested, as well as testifying under oath in his own behalf.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant, the Examiner found the charge "proved" by proof of the specification and entered an order revoking Appellant's Merchant Mariner's Document No. Z-818734 as well as all other documents, certificates and licenses issued to him.

From that order, this appeal has been taken, and it is urged that the Examiner arrived at an unjust decision by accepting the testimony of the prosecution's single witness while rejecting the true facts as given in Appellant's testimony; and also because Appellant has been more than adequately punished by already having been deprived of the use of his document for two years.

Based upon my examination of the Record submitted, I hereby make the following

FINDINGS OF FACT

On 15 May, 1948, Appellant having been previously discharged from shipping articles as utilityman on the American S.S. WASHINGTON, then in the Port of New York, returned to the WASHINGTON for the purpose of removing his clothes and other belongings which had been left on board at the time of the termination of the voyage on 14 May, 1948.

On 15 May, 1948, Appellant was stopped and searched by port patrolman Grote after Appellant had left the WASHINGTON and was on pier 61, North River. During this routine search, Appellant attempted to throw away a small package. The patrolman retrieved the package because he thought it contained marijuana cigarettes. Subsequent analysis proved that the package did contain sixteen marijuana cigarettes. A further search failed to reveal any additional narcotics or marijuana either on Appellant's person or in his former quarters aboard the WASHINGTON.

There is no record of any prior disciplinary action having been taken against Appellant during his one year of service aboard American merchant vessels.

OPINION

It seems unnecessary for me to do more than emphasize the seriousness of this offense and state that I agree with the decision of the Examiner. This appeal does not raise any points which were not ably commented upon by the Examiner. The latter was in the best position to judge the weight to be given Appellant's story and he did not consider it to be credible. Such a finding I am not able to reject unless it is obviously arbitrary and that is not true in this case. There is conflicting evidence but there is reliable and substantial evidence on which to base the finding that Appellant had the marijuana cigarettes in his possession and that he attempted to get rid of them when he thought that they might be discovered on his person.

The fact that Appellant had his merchant mariner's document only one year before this offense took place is all the more reason why he should be permanently deprived of this privilege in the future. The consistent policy of the Coast Guard has been to revoke a seaman's documents for any association with narcotics even though he has previously served for many years with an unblemished record. No exception should be made in this case.

ORDER

The order of the Examiner dated 15 June, 1950, should be, and it is, AFFIRMED.

A. C. Richmond
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D. C., this 1st day of September, 1950.

***** END OF DECISION NO. 457 *****

[Top](#)