

In the Matter of Merchant Mariner's Document No. Z-58804-D3
Issued to: CARL H. MANLY

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

518

CARL H. MANLY

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

On 24 May, 1951, an Examiner of the United States Coast Guard at New York City revoked Merchant Mariner's Document No. Z-58804-D3 issued to Carl H. Manly upon finding him guilty of misconduct based upon nine specifications alleging in substance that while serving as messman on board the American SS KOLOA VICTORY, he did, on or about 11 and 12 August, 1947, while the vessel was at a foreign port, wrongfully absent himself from his station and duties without authority; on or about 12 August, 1947, while the vessel was at a foreign port, fail properly to perform his duties by reason of intoxication; on or about 12 August, 1947, while the vessel was at a foreign port, wrongfully act in an insolent manner to the master of the vessel; on or about 12 August, 1947, while the vessel was at a foreign port, wrongfully threaten certain crew members of the vessel; on or about 12 August, 1947, while the vessel was at a foreign port, wrongfully act in a disorderly fashion aboard said vessel; and while serving as utilityman on board the American SS ANDREA F. LUCKENBACH, he did, on or about 25 July, 1949, at Genoa, Italy, wrongfully throw stones or like objects at stevedores; on or

about 25 July, 1949, at Genoa, Italy, wrongfully fail to obey a lawful order of the master of the vessel to keep covered his private parts in the presence of women; on or about 7 August, 1949, at Istanbul, Turkey, wrongfully attempt to bring intoxicating liquor aboard the vessel; on or about 7 August, 1949, at Istanbul, Turkey, wrongfully assault a crew member of the vessel with a dangerous weapon; to wit, a knife.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant expressed his desire to be represented by counsel but after numerous delays due to his and the Examiner's attempts to obtain counsel, Appellant elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and each specification proffered against him except the second and fifth specifications to which he pleaded "guilty." His plea to the fifth specification was later changed to "not guilty."

Thereupon, the Investigating Officer and Appellant made their opening statements and the Investigating Officer introduced in evidence several documentary exhibits. It was stipulated by the parties that testimony taken at the Coast Guard investigations should be admitted in evidence.

In defense, Appellant testified under oath in his own behalf and then rested his case.

At the conclusion of the hearing, having heard Appellant's argument, the Examiner announced his findings and concluded that the charge had been proved by plea to the second specification and by proof of the other eight specifications. He then entered an order revoking Appellant's Merchant Mariner's Document No. Z-58804-D3 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that Appellant was not afforded a fair hearing since he had no funds with which to retain counsel and he did not understand the proceedings or have witnesses; that he has been going to sea for years and has not been in any subsequent trouble; and that,

therefore, the hearing should be reopened to permit Appellant to defend himself by the presentation of witnesses.

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

FINDINGS OF FACT

On 11 and 12 August, 1947, Appellant was serving as messman on board the American SS KOLOA VICTORY and acting under authority of his Merchant Mariner's Document No. Z-58804-D3 while said vessel was in the port of LeHavre, France.

On 11 August, 1947, Appellant was absent from his duties and station from 1100 to 1700, and on 12 August, 1947, from 0600 to 1100, without permission. On the later date, Appellant returned to the ship in an intoxicated condition and "hit the sack." At about 0700, the Chief Steward tried unsuccessfully to get Appellant to turn to but he remained in his bunk. The Steward reported this to the Master who then went below with the Steward. Appellant was still intoxicated and used very abusive language to the Master. When Appellant had not turned to by about 0800, he was brought before the Master and logged. At different times during the morning, Appellant returned to the Master's office and addressed very insulting and abusive language to the Master. Appellant did not turn to at all in the morning. He made trouble with the cooks and when told by the Chief Steward to keep quiet, Appellant threatened to kill the Steward. Appellant was drinking at this time and generally looking for trouble. At 1150, Appellant's intoxication caused him to be so abusive, insulting and threatening to various members of the crew that the Master ordered the Chief Officer to place Appellant in irons with full rations.

On 25 July, 1949, while the American SS ANDREA F. LUCKENBACH was at Genoa, Italy, and on 7 August, 1949, while the ship was at Istanbul, Turkey, Appellant was in the service of the ship as a utilityman and acting under the authority of his Merchant Mariner's Document No. Z-58804-D3.

On 25 July, 1949, Appellant was throwing stones at stevedores on the dock while Appellant was standing near the ship's gangway.

Then Appellant failed to obey the Master's order to desist from the indecent exposure of his body in the presence and view of women ashore. At these times, Appellant was under the influence of intoxicating liquor.

On 7 August, 1949, while returning to the ship in an inebriated condition, Appellant had a bottle of intoxicating liquor which he intended to take aboard the ship "for a rainy day." The Master took the bottle away from Appellant before he was able to get it aboard the vessel. Appellant was again under the influence of liquor when he assaulted a fellow crew member named Welton Custis with a knife while on the dock near the ship. Injury to Custis was prevented only by the swift action of the Chief Cook.

Appellant is a 43 year old widower with a daughter 25 years of age. He has been going to sea intermittently since 1926 and steadily since 1942. He has a lengthy prior record of disciplinary action which consists of the following: admonition in May, 1943, for drunkenness; suspension for one month on six months' probation in May, 1943, for failure to join; suspension for two months on twelve months' probation in January, 1945, for absence without leave and refusal to; admonition in May, 1945, for absence from duties; suspension for eight months outright in May, 1945, for failure to turn to and possession of intoxicating liquor aboard ship.

OPINION

Appellant claims that he was deprived of a fair hearing due to the fact that he was not able to obtain counsel since he had no pecuniary means with which to do so. Appellant also urges that he did not understand the proceedings and had no witnesses appear in his defense.

It is evident from the record that the Examiner took great care to explain the nature of the proceedings to Appellant and to be certain that the hearing did not continue until Appellant secured counsel or decided to represent himself. Appellant's decision to proceed without counsel was completely voluntary and without any persuasion or influence by the Examiner. On 10 May, 1951, the hearing was adjourned until 17 May and, on the latter date, it was adjourned until 21 May. This was more than adequate

time for Appellant to secure counsel if he desired to do so. In addition, the Examiner attempted to secure counsel from the Coast Guard for the person charged and offered suggestions as to where counsel might be obtained. Finally, after considerable discussion on this point, Appellant stated, without coercion, that he would defend himself. There was then no alternative to proceeding with the hearing. Since every protection was afforded to Appellant's right to counsel, he was in no manner deprived of a fair hearing in this respect.

Appellant complains that no witnesses appeared in his behalf at the hearing. This was also by his own choice. He stipulated that the testimony of certain of the witnesses who appeared at the Coast Guard investigations in LeHavre on 13 August, 1947, and Trieste on 15 August, 1949, should be received in evidence to constitute part of his defense rather than attempting to obtain depositions from these men or subpoena them to appear at the hearing. It is worthy of comment that at both of these investigations, Appellant was afforded the right to have counsel represent him and to cross-examine the witnesses.

During the course of his testimony, Appellant submitted various reasons as justification for the offenses alleged in several of the specifications and he denied the allegations in other specifications. The Examiner fully discussed these defenses and quite properly made findings as to Appellant's credibility before rejecting his testimony. Since these findings of the Examiner resulted largely from his personal observation of the Appellant while he was testifying, I am not at liberty to question the estimate of the Appellant's veracity which was made by the Examiner on this basis.

CONCLUSION

The offenses involved herein and Appellant's prior record show a consistent pattern of disrupted discipline aboard American Merchant Marine vessels as a result of Appellant's failure or refusal to perform his assigned duties, his disregard for the supreme authority of the Master aboard ship, and his excessive indulgence in alcoholic beverages resulting in his threatening attitude. The record of this hearing indicates that Appellant is congenial and a good worker when sober; and that the majority, if

not all, of his indiscretions stemmed from his frequent intoxication. In any event, such a man is not fit to sail as a seaman on American merchant vessels. The presence of such men would do much to undermine the high degree of discipline sought to be maintained on these ships as well as presenting a constant threat to the safety of their fellow crew members. As stated by the Examiner, it is the statutory duty of the Coast Guard to prevent such conditions from existing. Consequently, the revocation of Appellant's document must be upheld.

ORDER

The order of the Examiner dated 24 May, 1951, should be, and it is, AFFIRMED.

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

Dated at Washington, D. C., this 27th day of September, 1951

***** END OF DECISION NO. 518 *****

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