In the Matter of Merchant Mariner's Document No. Z-28272
Issued to: JAMES A. WILLIAMS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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JAMES A. WILLIAMS

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 10 January, 1952, an Examiner of the United States Coast Guard at San Francisco, California, revoked Merchant Mariner's Document No. Z-28272 issued to James A. Williams upon finding him guilty of misconduct and incompetence. The charge of misconduct was based upon three specifications alleging in substance that while serving as Deck Engineer on board the American SS LOUIS SLOSS under authority of the document above described, on or about 18 August, 1951, while said vessel was at sea, he did or was:

"First Specification: . . . assault, strike and beat another member of your crew, one Lester Pearson, with a broken water glass.

"Second Specification: . . . render yourself drunk and disorderly aboard said vessel.

"Third Specification: . . . unable to perform your duties as a result of excessive use of alcoholic stimulants to the extent that it was necessary to confine you under guard aboard the vessel

until its arrival in the Port of Rijeka, Yugoslavia."

The charge of incompetence was supported by a single specification alleging that while serving as above on or about 18 August, 1951, Appellant was "suffering from alcoholism and by reason of this and similar occurrence in the past, you are a menace and danger aboard ship."

When the hearing was convened on 29 November, 1951, 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 was represented by an official of the Marine Firemen's Union of San Francisco. Prior to arraignment, the Examiner stated that at an informal pretrial conference Appellant had agreed to the entering of an interlocutory suspension order by the Examiner pending the outcome of physical and mental examinations to be submitted to by Appellant at a United States Public Health Service Hospital.

A discussion followed as to whether proof that Appellant's excessive drinking, at the time of his alleged misconduct, had been induced by some condition which rendered him incompetent and required medical treatment, would constitute an adequate defense to the charge of misconduct. Over objection by counsel for Appellant, the Examiner stated that the testimony bearing on the misconduct specifications would be taken from the Investigating Officer's witnesses in the event that this testimony would be needed after the result of Appellant's examinations were known.

Appellant then entered a plea of "not guilty" to the misconduct charge and the three supporting specifications. A plea of "not guilty" was originally entered to the incompetency charge and specification but after the Examiner explained that there was some inconsistency between the defense of incompetency to the misconduct charge and the plea of "not guilty" to the charge of incompetency, counsel for Appellant changed the plea to the incompetency charge to "guilty due to the fact of his sickness" (R.6). Counsel said he understood the Examiner's explanation that this was a plea to incompetence on 18 August, 1951. The Examiner stated that this plea was to be coupled with the agreement of Appellant to "an interlocutory suspension order for examination and psychiatric analysis" (R.8).

The Investigating Officer then made his opening statement and introduced in evidence the testimony of crew messman Lester Pearson, who allegedly was assaulted by Appellant, and Chief Cook Charles W. Mullen who was a witness to the incident. The Investigating Officer also offered in evidence several documentary exhibits which included a signed statement by twenty members of the crew requesting the removal of Appellant from the ship, two medical reports pertaining to Appellant's condition, and certified copies of entries in the ship's official logbook.

Counsel did not submit any evidence in Appellant's behalf but argued that the charge of misconduct had not been proven. The Examiner accepted this argument as a motion to dismiss the misconduct charge on the ground that a prima facie case had not been made out. He then denied the motion.

With the agreement of counsel for Appellant, the Examiner entered an interlocutory order stating that Appellant's document "is hereby suspended until such time as James A. Williams submits himself to a complete and adequate physical, mental and psychiatric observation and examination in accordance with the directions of the U. S. Public Health Service Hospital situated in San Francisco, California" (R.30). It was further stated in this order that a medical opinion would be requested as to Appellant's competency on 18 August, 1951, as well as the time of the examination and a prognosis for the future. After counsel had been authorized to receive future service in behalf of Appellant, the hearing was adjourned on 29 November, 1951, to await the execution of the interlocutory order.

On 27 December, 1951, the Examiner issued a notice to Appellant to appear on 3 January, 1952, and show cause why he had not complied with the interlocutory order by submitting himself to an examination at the U. S. Public Health Service Hospital in San Francisco. This Notice to Show Cause was served on Appellant's counsel. Neither Appellant nor his counsel appeared at the stated time and place on 3 January, 1952, when the hearing was reconvened. The Examiner contacted counsel by telephone and he stated that he did not know where Appellant was. The Examiner agreed to continue the proceedings until 10 January, 1952, and informed counsel that a final order would then be entered if Appellant did not put in an

appearance at that time. The hearing was then adjourned.

On 10 January, 1952, the hearing was again reconvened. Appellant had not yet reported to the hospital for examination and neither he nor his counsel put in an appearance at the hearing. The Examiner thereupon vacated the interlocutory order and entered his decision on the merits of the case. He concluded that the charge of misconduct had been proved by proof of the three specifications and that the charge of incompetence had been proved by plea. The Examiner then entered an order revoking Appellant's Merchant Mariner's Document No. Z-28272.

This appeal has been taken from the order of the Examiner and it is contended that Appellant was not able to comply with the Examiner's Interlocutory Order and Notice to Show Cause because of illness; and that the order is unusually harsh since it precludes Appellant from following his vocation as a seaman even after he has received medical treatment to correct his physical and mental condition at some future time. It is requested that the order be modified to permit Appellant to present evidence of his fitness at some future date in order that the return of his seaman's document will be given consideration.

APPEARANCES: Samuel E. Bennett, Vice-President of Marine Firemen's Union of San Francisco, of Counsel.

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

FINDINGS OF FACT

On a voyage covering the date of 18 August, 1951, Appellant was serving as Deck Engineer on board the American SS LOUIS SLOSS and acting under the authority of his Merchant Mariner's Document No. Z-28272.

For some time prior to 18 August, 1951, Appellant had been drinking consistently while aboard ship as well as when he was ashore at various ports. As a result of this, Appellant was in such condition that he was incapacitated to perform his duties on 18 August, 1951, while the ship was enroute from Haifa, Israel, to Rijeka, Yugoslavia.

At approximately 0200 on 18 August, 1951, Appellant entered the forecastle in which Lester Pearson and Carl Jensen were asleep. The two men were awakened when Appellant came into the room and turned on the light. Appellant immediately approached Pearson, said "I'm going to kill you . . .," and pulled Pearson out of the top bunk causing him to fall to the deck. Appellant was holding a heavy water glass in his hand and when Pearson put his right hand up to protect his face against the glass, his hand was badly cut. (Pearson testified that he did not know whether or not the water glass was broken before Appellant struck him with it.) Pearson also received small cuts on his back before he was able to escape into the passageway and run to the officer's saloon. Blood and glass was scattered over the deck in Pearson's forecastle.

Chief Cook Mullen, who was in the forecastle next to Pearson's, heard the disturbance and saw Appellant beating Pearson on his back. Appellant chased Pearson into the saloon just as Mullen reached the scene. Mullen managed to get into the saloon with Pearson and lock the door from the inside. Mullen then climbed through the porthole and notified the Master who went below with the Chief Engineer, Purser and Chief Cook. Appellant was running up and down the crew's passageway with a fire axe. After some persuasion, Appellant surrendered the axe and he was handcuffed to a bed in the ship's hospital where he was confined until the ship arrived at Rijeka, Yugoslavia, on 20 August, 1951. Appellant's conduct was violent and boisterous, and his language was incoherent, irrational and threatening during this confinement.

Upon arriving at Rijeka, Appellant was taken from the ship and hospitalized. His condition was due to excessive consumption of alcohol. Appellant rejoined the vessel at Trieste, Italy, on 28 August, 1951, when his condition was again normal.

An unsuccessful attempt was made to have Appellant removed from the ship at Trieste. Twenty members of the crew signed a statement that their lives would be endangered on the long voyage home if Appellant was aboard. This petition to the U. S. Consul at Trieste was delivered but it did not result in Appellant's removal. There is no indication that Appellant was drinking or caused any further disturbance aboard the ship before the completion of the voyage in the latter part of November, 1951.

The injuries to Pearson's hand included cut tendons and damaged nerves. He received treatment aboard ship and at various ports but he was compelled to leave the ship for hospitalization when the ship departed from Aden, Arabia, on 24 September, 1951. It was finally necessary to operate on the hand about three weeks before the commencement of the hearing on 29 November, 1951.

Appellant's prior disciplinary record consists of an admonition in June, 1949, for failure to perform his duties due to intoxication.

OPINION

Appellant claims that he was unable to submit himself for examination at the Public Health Hospital in compliance with the interlocutory order or to put in an appearance at the two subsequent continuations of the hearing because he was ill. In the absence of substantial prof to support this statement, I cannot accept it. It is very improbable that Appellant would not be able to communicate with the Examiner by 10 January and yet appear in person before the Investigating Officer four days later in order to file his appeal which is dated 14 January. The order of revocation would hardly have hurried his recovery. But this point is not important except to the extent that it might have affected Appellant's opportunity to submit evidence in defense of the misconduct charge and specifications.

Appellant also requests that the restoration of his seaman's document be considered upon presentation of evidence that he is fit for sea duty. In connection with this request and the incompetency charge, the only significant finding of the Examiner was that:

> "4. By a plea of guilty to Charge II and the specification thereunder, it is further found that Williams was incompetent to serve aboard U. S. Merchant vessels on 18 August, 1951."

Although I agree with the above finding, I do not think there is substantial evidence in the record to support counsel's argument that Appellant was so badly in need of medical treatment that he was compelled to drink and, therefore, he was not responsible for acts of misconduct committed while he was intoxicated. Any defense of this nature would be an affirmative one placing upon Appellant

the burden of going forward with the evidence in support of such a defense. It follows that there was no proof upon which to revoke Appellant's document for continuing incompetence, nor proof that Appellant's document should be returned to him, without an appropriate suspension being imposed for the misconduct offenses, upon the presentation of medical reports stating that he is qualified to go to sea. Appellant's three months' satisfactory sea duty from Trieste until the completion of the voyage supports this conclusion.

In accordance with proof of the three misconduct specifications, Appellant was obviously incompetent on 18 August, 1951, to the extent that he was not able to perform his duties and his mental condition rendered him a menace to the ship and his shipmates. Ostensibly, this temporary condition was the direct result of Appellant's voluntary drinking. This being the case, his temporary incompetence was due to his own misconduct and such incompetence is not an adequate excuse for other acts of misconduct. If there was any mental condition which was very influential in causing, or which was a remote result of, the excessive drinking, some additional mitigation might be considered. But Appellant was given every opportunity to determine whether such a condition existed by submitting to examination at the U. S. Public Health Hospital at San Francisco and yet he did not follow this course or submit any explanation for failing to do so for more than a month after the hearing was adjourned for that purpose. Under these circumstances, I am bound to conclude that Appellant was completely responsible for his intoxication on 18 August, 1951, and his acts of misconduct resulting therefrom.

There is no evidence to indicate that Appellant's actions resulted from a condition which compelled him to drink while on the job at sea and thus exonerated him from responsibility for his acts of misconduct. The opinion that Appellant's incompetence was temporary is supported by the failure of the attempt to have Appellant removed from the vessel at Trieste. Appellant was examined at Trieste and found to be essentially normal and non-psychotic. He failed to take advantage of the opportunity afforded by the interlocutory order to submit to examination at the Public Health Hospital and obtain medical opinion as to his condition on 18 August, 1951.

CONCLUSION

In the absence of proof that Appellant is mentally incompetent to serve aboard ships of the U. S. Merchant Marine at the present time, the order of the Examiner dated 10 January, 1951, is modified as follows

ORDER

That Merchant Mariner's Document No. 28272, and all other licenses, certificates of service and documents issued to Appellant by the U. S. Coast Guard or its predecessor authority, are hereby suspended for a period of one (1) year from 10 January, 1952. As so MODIFIED, the order of the Examiner is AFFIRMED.

Merlin O'Neill
Vice Admiral, U. S. Coast Guard
Commandant

Dated at Washington, D. C., this 29th day of May, 1952.

***** END OF DECISION NO. 560 *****

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