

In the Matter of Merchant Mariner's Document No. Z-889836-D1
Issued to: ORBANO BALUSONG

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

640

ORBANO BALUSONG

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 16 December, 1952, an Examiner of the United States Coast Guard at New York City revoked Merchant Mariner's Document No. Z-889836-D1 issued to Orbano Balusong upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as fireman-watertender on board the American SS STONY POINT under authority of the document above described, on or about 1 December, 1952, while said vessel was at Staten Island, New York, he wrongfully had in his possession certain narcotics; to wit, opium.

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 was represented by counsel of his own selection. Upon arraignment, Appellant stated he was "guilty because it was in my locker." After explaining that knowledge of possession of a narcotic is a necessary element in the proof of "wrongful" possession, the Examiner entered a plea of "not guilty" to the charge and specification on behalf of Appellant.

Thereupon, the Investigating Officer made his opening statement and counsel for Appellant reserved the right to make an opening statement after the Investigating Officer had completed his case.

The Investigating Officer introduced in evidence the testimony of Customs Agent Richard L. Armstrong who had found the crude opium in Appellant's locker. The Investigating Officer also introduced in evidence the U. S. Customs Laboratory analysis report and rested his case.

In defense, Appellant testified under oath in his own behalf. He stated that after getting the substance which the native said was good medicine for stomach cramps, he only tried the substance once because it tasted funny and then he put it in his locker where it was found by the Customs Agent.

At the conclusion of the hearing, having heard the argument of Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-889836-D1 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's ten years' continuous service with Socony Vacuum Oil Company indicates he is a good seaman in all respects and a person of good moral qualities. It is contended that the Examiner based his decision solely upon the belief that the opium was placed in the cotton to conceal known narcotic; but that this is not a sufficient basis for concluding that Appellant knew it was a narcotic since this was a reasonable means of protecting a substance which was thought to be a medicine. It is requested that the decision of the Examiner be reversed or that clemency be granted.

APPEARANCES: Mr. John J. Collins, Adviser to Socony Vacuum Tanker Men's Association, of Counsel.

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

FINDINGS OF FACT

On 1 December, 1952, Appellant was serving as fireman-watertender on board the American SS STONY POINT and acting under authority of his Merchant Mariner's Document No. Z-889836-D1 while the ship was in dry dock at Staten Island, New York.

On this date, U. S. Customs authorities conducted a search of the crew's quarters as a result of a small amount of crude opium having been found concealed under the floor plates in the engine room a few days earlier.

Appellant's quarters was the first area searched by Customs Agent Armstrong. After Appellant had unlocked his locker for examination, Agent Armstrong found a carton (about 6 by 1 1/2 by 1 1/2 inches) of Red Cross surgical cotton in the locker. The cotton in the carton was wrapped in blue paper. Agent Armstrong unrolled the cotton and found a small quantity of a dark brown substance inside the cotton. At the time, Appellant admitted that this substance belonged to him. He stated that he was suffering from a stomach disorder and that he had obtained this substance from a native stevedore at Ras Tanura, Saudi Arabia, in exchange for three packages of cigarettes. Appellant said he was told by the stevedore that this substance would alleviate the stomach pains; Appellant thought it was a medicinal preparation; and he denied any knowledge that it contained opium.

Subsequent analysis of this substance at the United States Customs Laboratory at New York City disclosed that it was 48.5 grains of crude opium. No other evidence of narcotics was discovered by the searching party.

There is no record of prior disciplinary action having been taken against Appellant's documents during the thirty years he has been going to sea. He has been employed by Socony Vacuum Oil Company for the past ten years.

OPINION

Prima facie evidence of knowledge was established by proof of possession. The Examiner rejected Appellant's testimony that he did not know the substance was a narcotic. Therefore, the prima facie case was not rebutted.

The concealment of the opium in the roll of cotton was given considerable weight by the Examiner in rejecting Appellant's explanations. Considering the statements made by Appellant, I think the attitude of the Examiner was perfectly reasonable. Appellant stated that he had obtained this substance because he thought it was a medicine which would relieve his pains, and it did serve that purpose the one time he used it. But then, Appellant did not use it again because it tasted "funny." It is well known that medicines often have peculiar flavors.

It is not reasonable to believe that Appellant would have carefully saved and wrapped the substance in cotton in order to protect it if he did not intend to use it again; nor that he would accept "medicine" from a completely strange native rather than to consult the Master and obtain medicine from the ship's medicine chest. To say that he did not want to bother the Master is a very weak excuse.

In conclusion, it is noted that Appellant's explanations follow several standard patterns which have been presented frequently in narcotics cases: the narcotic was obtained from a native for medicinal purposes; it was used only once; it was carefully concealed in some manner; Appellant had a ready story when the substance was found by the Customs authorities; and Appellant had never in his life seen this type of narcotic.

For the reasons stated, the policy to revoke a seaman's documents when he has been found guilty of a narcotics offense, will be adhered to in this case regardless of Appellant's prior clear record.

ORDER

The order of the Examiner dated at New York, New York, on 16 December, 1952, is AFFIRMED.

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

Dated at Washington, D. C., this 26th day of March, 1953.

***** END OF DECISION NO. 640 *****

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