

In the Matter of Merchant Mariner's Document No. Z-828086-D1
Issued to: CHARLES R. MANNING

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

711

CHARLES R. MANNING

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 9 July, 1953, an Examiner of the United States Coast Guard at San Francisco, California, suspended Merchant Mariner's Document No. Z-828086-D1 issued to Charles R. Manning upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as an oiler on board the American SS BARNEY KIRSCHBAUM under authority of the document above described, on or about 31 March, 1953, he was unable to perform his duties by reason of his intoxication; and on or about 9 and 10 June, 1953, he failed to perform his duties.

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. Although advised of his right to be represented by counsel of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "guilty" to the specification referring to 31 March, 1953, and a plea of "not guilty" to the specification alleging failure to perform duties on 9 and 10 June, 1953.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence the testimony of members of the crew as well as certified copies of extracts from the Shipping Articles and Official Logbook of the BARNEY KIRSCHBAUM.

In defense, Appellant testified under oath in his own behalf.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant 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 plea to one specification and by proof of the other specification. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-828086-D1, and all other valid documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of three months on twelve months probation.

From that order, this appeal has been taken, and it is urged that the findings of the Examiner were not justified due to insufficient evidence; and that Appellant was logged two days pay for each day alleged in the specifications.

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

FINDINGS OF FACT

On a foreign voyage from February, 1953, Appellant was serving as an oiler on board the American SS BARNEY KIRSCHBAUM and acting under authority of his Merchant Mariner's Document No. Z-828086-D1.

On 31 March, 1953, Appellant was unable to stand his regular watch due to intoxication while the ship was in a foreign port. (The record does not disclose whether Appellant was logged and fined for this offense.)

While the ship was in the port of Yokosuka, Japan, on 9 June, 1953, Appellant failed to stand his regular 0800 to 1600 port watch because he could not be awakened when he was called at 0730.

Appellant had remained ashore from 0100 to 0600 on the latter date after serving two consecutive eight-hour watches from 0800 to 2400 on 8 June. Appellant was logged two days pay and two days bonus which was a total of \$25.15.

Before Appellant left the ship in the afternoon or evening of 9 June, 1953, a notice was posted on the sailing board that the ship would get underway for the nearby port of Yokohama, Japan. Appellant did not return on board prior to sailing time and he was then delayed in reaching the ship at Yokohama because he was detained by the Japanese immigration authorities. Consequently, Appellant failed to stand his regular 0800 to 1600 port watch on 10 June, 1953. He was logged for this offense and the same fine was imposed as on the preceding day.

There is no record of prior disciplinary action having been taken against Appellant during approximately seven years at sea. The ship's officers testified that Appellant is a responsible person who was a willing worker and performed his duties in a very satisfactory manner.

OPINION

There is no question about the sufficiency of the evidence to support the findings that Appellant failed to stand his watches on 9 and 10 June. In addition to the properly made log entries, there was testimony given by two of the ship's engineering officers concerning this specification. And Appellant entered a plea of "guilty" to the offense of not performing his duties on 31 March, 1953. Hence, both specifications were proved.

Penalties imposed by loggings do not serve the same purpose as these remedial proceedings which are conducted to protect lives and property at sea. This purpose is not served if seamen fail to perform duties which are essential to the safe operation of the ship, and the seamen then remain as free as before, after being logged for the offense, to commit the same infraction of discipline.

The surrounding circumstances did not justify Appellant's failure to stand his watches on 9 and 10 June. But because of Appellant's prior good record, the probationary order imposed by

the Examiner is considered to be sufficient to restrain Appellant from committing similar acts of misconduct in the future.

ORDER

The Order of the Examiner dated at San Francisco, California, on 9 July, 1953, is AFFIRMED.

Merlin O'Neill

Dated at Washington, D. C., this Second day of November, 1953.

***** END OF DECISION NO. 711 *****

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