

In the Matter of Merchant Mariner's Document No. Z-272378-D4
Issued to: CORNELIUS HENDRICKS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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CORNELIUS HENDRICKS

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.

By order dated 20 October 1954, an Examiner of the United States Coast Guard at New York, New York, revoked Merchant Mariner's Document No. Z-272378-D4 issued to Cornelius Hendricks upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as Chief Cook on board the USNS SAPPA CREEK under authority of the document above described, on or about 28 April 1954, while said vessel was at Guam Island, he wrongfully engaged in an act of sexual perversion with another member of the crew named John E. Wilson.

At the commencement of the hearing on 4 June 1954, 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 elected to waive the right to be represented by counsel and he entered a plea of "not guilty" to the charge and specification proffered against him. At a later date, Appellant retained counsel.

After the Investigating Officer made his opening statement, he offered in evidence statements made by four witnesses at the time of the investigation of the alleged offense. Appellant objected to these statements and arrangements were made to obtain depositions by interrogatories and cross-interrogatories.

On 18 October 1954, the Investigating Officer offered in evidence the depositions of three members of the crew. With the exception of several answers which were objected to by counsel for Appellant, the depositions were received in evidence by the Examiner.

After the Examiner denied counsel's motion to dismiss on the ground of lack of evidence to show intent, Appellant testified under oath in his behalf. Appellant stated that he went ashore on 27 April and started drinking whiskey at a barroom at about 1900; he purchased two bottles of whiskey at the bar before he "blacked out"; he doesn't remember anything else until he was awakened in his bunk by seaman Hayes at 0600 on 28 April; Appellant shared the forecastle with Wilson and the Second Cook; Appellant was dazed and groggy, and he did not get up but drank whiskey from the two bottles which were in his bunk; Hayes returned several times for drinks of whiskey; Appellant "blacked out" again after one and a half bottles of the whiskey had been consumed by him and others; Appellant was awakened again and told to see the Master; he went to the Master's cabin and did not return to the forecastle that morning. Appellant also denied that he remembered engaging in an unnatural sexual act with Wilson on 28 April.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and 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-272378-D4 and all other licenses, certificates 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 a prima facie case was not made out against Appellant by the weak testimony contained in the depositions; the Examiner went

beyond the depositions and based his decision on the pre-hearing statements taken at the time of the investigation although these statements were not received in evidence at the hearing. It is also contended that if an act of unnatural sexual relations did occur, Appellant was in such an intoxicated condition that he could not acquiesce in an act about which he had no recollection; and, therefore, Appellant did not have any intent to commit such an act.

APPEARANCES: Messrs. Cooper, Ostrin and De Varco of New York City by Thomas J. Doyle of Counsel.

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

FINDINGS OF FACT

On 28 April 1954, Appellant was serving as Chief Cook on board the USNS SAPPACREEK and acting under authority of his Merchant Mariner's Document No. Z-272378-D4 while the ship was at Guam, Mariana Islands.

Appellant was ashore at a barroom drinking intoxicants on the night of 27 April 1954. He returned to the ship that night or early on the morning of 28 April. Appellant shared a forecabin on the ship with galleyman John E. Wilson and the Second Cook. There were three bunks in the forecabin.

At approximately 1000 on the morning of 28 April 1954, Appellant and Wilson were alone in their forecabin. They were both in Appellant's bunk. Appellant was lying face down. Wilson was on top of Appellant and facing him. Appellant was wearing a "T" shirt but he did not have undershorts on or any other clothing.

The union delegate was informed of this incident by two eye witnesses and these three men reported the incident to the Master. At about 1030, Appellant was taken to the Master's cabin to confront his accusers. The depositions of these three members of the crew were taken and introduced in evidence at the hearing.

Appellant's disciplinary record consists of three prior

offenses.

OPINION

The testimony of the two deponents who were eye witnesses to the incident in question is sufficient to make out a prima facie case against Appellant. Their testimony constitutes substantial evidence to support the allegation that Appellant wrongfully engaged in an act of sexual perversion with Wilson. That is the only logical conclusion which can be drawn from the evidence introduced by the Investigating Officer.

The investigatory statements, which were not received in evidence by the Examiner, do not constitute part of the record on appeal and there is nothing to substantiate counsel's claim that these statements were considered by the Examiner. It is not reasonable to assume that the Examiner would base his decision on such statements after he declined to receive them in evidence when offered by the Investigating Officer.

In his testimony, Appellant did not deny the truth of the statements of the deponents but he stated that he had no recollection of such act having taken place. It is contended that Appellant's failure to remember anything was due to the fact that he was extremely drunk. But the Examiner rejected Appellant's testimony that he was too intoxicated to know what was happening.

I concur with the views expressed by the Examiner. The burden was on the Appellant to affirmatively establish the defense which he sought to interpose, *58 Corpus Juris* 792-3. In this respect, Appellant relied solely on his own testimony to convince the Examiner that Appellant "blacked out" at a dramshop and again the next morning. The two eye witnesses clearly stated that they did not know whether Appellant was drunk at the time of the incident. They had no conversation with him. Their testimony did not help to establish Appellant's position and the Examiner did not believe Appellant was inebriated to the extent he claimed. Therefore, the prima facie case was not overcome by Appellant's defense. The reasonable inference of conscious participation provides the element of acquiescence on the part of the Appellant.

The Coast Guard has a duty to protect lives and property at

sea. This extends to protection against moral perversion as well as immorality. The only suitable order for such an act of moral baseness, as has been proven herein, is one of revocation in order to prevent the offender's malignant influence from affecting other seafarers. In accordance with Coast Guard policy as set forth in 46 CFR 137.03-5, the order will be affirmed.

ORDER

The order of the Examiner dated at New York, New York, on 20 October 1954 is AFFIRMED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 17th day of June, 1955.

***** END OF DECISION NO. 818 *****

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