

In the Matter of Merchant Mariner's Document No. Z-4253-D8 and All
others Licenses, Certificates and Documents
Issued to: EUGENE VICTOR GAVIN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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EUGENE VICTOR GAVIN

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 December 1954, an Examiner of the United State Coast Guard at San Francisco, California, suspended Merchant Mariner's Document No. Z-4253-D8 issued to Eugene Victor Gavin upon finding him guilty of misconduct based upon fifteen (15) specifications alleging in substance that while serving under authority of the document above described:

1. As oiler on board the American SS Harriet Tubman, on or about 31 March 1947, he failed to join said vessel without reasonable cause in a domestic port;
2. As oiler on board the American SS THOMAS C. POWER, on or about 2 September 1947, he failed to join said vessel without good cause in a domestic port;
3. As wiper on board the American SS PETERSBURG, on or about 17 March 1950. he failed to join said vessel without good cause in

a domestic port:

4. As wiper on board the American SS DOCTOR LYKES, on or about 6 February 1952, he failed to join said vessel without good cause in a domestic port;

5. As Wiper on board the American SS PALEMETTO STATE, on or about 2 October 1952, he failed to join said vessel without good cause in a foreign port;

6. As wiper on board American SS PROVO VICTORY, on or about 11 April 1953, he failed to join said vessel without good cause in a domestic port;

7. As wiper on board the American SS FREE STATE MARINER, on or about 28, 29 and 30 September and 1 October 1953 at 0800 hours he was absent from said vessel and duties with permission;

8. As wiper on board the American SS FREE STATE MARINER, on or about 2 October 1953, he was unable to perform his duties by reason of excessive use of alcohol;

9. As wiper on board the American SS FREE STATE MARINER, on or about 7 and 8 October 1953, he was absent from his station and duties without permission;

10. As wiper on board the American SS FREE STATE MARINER, on about 9 October 1953, he was absent from his station and duty at 0600 hours, the posted sailing time of the vessel;

12. As wiper on board the American FREE STATE MARINER, he was absent from his station and duty without permission in a foreign port on 11, 12, 13, 14 and 15 October 1953;

13. As wiper on board the American FREE STATE MARINER, on 15 October 1953, he failed to join said vessel in a foreign port without good cause;

14. As wiper on board the American SS FREE STATE MARINER, he was absent from his station and duty in a foreign port from 16 through 26 October 1953 without good cause;

16. As wiper on board the American SS AUDREY II, on or about 26 March 1954, he failed to join said vessel in a foreign port without good cause;

17. As a non-working workaway on board the American SS AUDREY II, on or about 1954, he failed to join said vessel without good cause at Moji, Japan.

Specifications Nos. 11 and 15 were withdrawn during the course of the hearing on motion by the Investigation Officer on the ground that these two specifications were covered by alternative specifications.

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 "not guilty" to the charge and each specification proffered against him except Specification No. 17 to which Appellant entered a plea of "guilty".

Thereupon, the Investigating Officer made his opening statement and introduced in evidence numerous certified copies of entries in Official Logbooks and extracts from the Shipping Articles of the various merchant vessels referred to in the allegations.

In defense, Appellant made an unsworn statement in explanation of his conduct.

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. He concluded that the charge had been proved by proof of 14 specifications and by plea to Specification No. 17. The Examiner then entered the order suspending Appellant's Merchant Mariner's Document No. Z-4253-D8, and all other licenses, certificates and documents issued to this To this Appellant by the United States Coast Guard or its predecessor authority, for a period of twelve (12) months including

a prior four (4) months probationary suspension.

From that order, Appellant has taken an appeal which is a request for clemency. Is urged that the penalty is too severe because it is out of proportion to the alleged acts of misconduct and failure to join various ships. Appellant also states that this suspension of his document for one year will cause him extreme personal hardship.

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

FINDINGS OF FACT

On 31 March 1947, Appellant was in the service of the American SS HARRIET TUBMAN as an oiler and acting under authority of his Merchant Mariner's Document No. Z-4253-D-5, when he failed to join said vessel upon her departure from the Port of New York.

On 2 September 1947, Appellant was in the service of the American SS THOMAS C. POWER as an oiler and acting under authority of his Merchant Mariner's Document No. Z-4253-D-5 when he failed to join said vessel upon her departure from Norfolk, Virginia.

On 17 March 1950, Appellant was in the service of the American SS PETERSBURG as a wiper and acting under authority of his Merchant Mariner's Document No. Z-4253-D-7 when he failed to join said vessel upon her departure from San Pedro, California.

On 6 February 1952, Appellant was in the service of the American SS DOCTOR LYKES as a wiper and acting under authority of his Merchant Mariner's No. Z-4253-C-7 when he failed to join said vessel upon her departure from San Pedro, California.

On 2 October 1952, Appellant was in the service of the SS PALMETTO STATE as a wiper and acting under authority of his Merchant Mariner's Document No. Z-4253-D-8 when he failed to join said vessel upon her departure from Yokohama, Japan.

On 11 April 1953, Appellant was in the service of the SS PROVO VICTORY as a wiper and acting under authority of his Merchant Mariner's Document No. Z-4253-D-8 when he failed to join said

vessel upon her departure from Chicago, California.

Between 8 September 1953 and 15 November 1953, Appellant was in the service of American SS FREE STATE MARINER as a wiper and acting under authority of his Merchant Mariner's Document No. Z-4253-D-8. Appellant was absent from his vessel and duties, without permission, from 28 September through 1 October, on 7 and 8 October and from 11 through 26 October. Appellant was returned on board the vessel by the local authority at Yokohama, Japan on 27 October 1953. On 2 October 1953, Appellant was unable to perform his duties on board the vessel as a result of the excessive use of alcohol. On 9 October 1953, Appellant was absent from his vessel and duties, without permission, at 0600, the posted sailing time of the vessel from Sasebo, Japan. On 15 October 1953, Appellant failed to join the vessel upon her departure from Yokohama, Japan.

On 26 March 1954, Appellant was in the service of the American SS AUDREY II as a wiper and acting under authority of his Merchant Mariner's Document No. Z-4253-D-8 when he failed to join said vessel upon her departure from Yokohama, Japan.

On 13 November 1954, Appellant was in the service of the American SS AUDREY II as a workaway and acting under authority of his Merchant Mariner's Document No. Z-4253-D-8 when he failed to join said vessel upon her departure from Moji, Japan.

Appellant's prior disciplinary record consists of a one month suspension in 1945 for failing to join his ship; and a four months suspension on twelve months probation in 1952 for two offenses of failure to join and two offenses of failure to perform his duties. This probationary suspension was made effective by the Examiner's ordering the present case.

The Examiner rejected Appellant's explanation and found him guilty of nine offenses of failure to join and six offenses (covering a total of 24 days) involving the nonperformance of his duties on various merchant vessels of the United States. Four of the failure to join offenses occurred in foreign ports. Appellant's prior record consists of several offenses of the same nature.

In view of this consistent pattern of behavior over a period

of years, the order of an outright suspension for one year is considered to be lenient rather than excessive and contended on appeal. In each case, Appellant created a potentially dangerous situation because he was either absent from the ship on which he contracted to serve or he did not perform his duties for some other inexcusable reason. Thus, each ship might have been required to operate in an undermanned condition because of Appellant's failure to carry out his agreement under the terms of the Shipping Articles which he had signed. The offense of failure to join in a foreign port is more serious than in a domestic port because of the comparatively greater difficulty in obtaining a replacement. If a number of the members of a crew failed to perform their assigned duties at the same time, the vessel, her personnel and cargo would be imperiled.

For these reasons, I do not think that the order is out of proportion to Appellant's acts of misconduct or that his personal hardship merits consideration. The order of the Examiner will be sustained.

ORDER

The Order of the Examiner dated at San Francisco, California on 9 December 1954 is AFFIRMED.

Is further ordered that Appellant shall immediately surrender all outstanding Merchant Mariner's Documents held by him upon receipt of this decision. Failure to comply with this order will be considered good cause to bring action to revoke all documents issued to Appellant.

J. H. Hirshfreed
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington D. C., this 5th day of October 1955.

***** END OF DECISION NO. 833 *****

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