In the Matter of Merchant's Document No. Z-951237 and all other Seaman Documents
Issued to: Brunildo McDougall

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1367

Brunildo McDougall

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 12 June 1962, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents for two months on nine months' probation upon finding him guilty of misconduct. The four specifications found proved allege that while serving as a deck maintenanceman on board the United States SS TRANS-CARIBBEAN under authority of the document above described, on 17 November 1961, Appellant wrongfully failed to perform his duties between 0800 and 1500; on 21 November 1961. Appellant wrongfully created a disturbance in the Boatswain's room, addressed the Second Mate with abusive and obscene language, and failed to obey the Second Mate's order to leave the Boatswain's room.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence a logbook entry, the testimony of the Second Mate, and the testimony of the Boatswain.

In defense, Appellant offered in evidence his own testimony, the deposition of the Marine sentry on duty at the gangway on 21 November, and two other documentary exhibits.

FINDINGS OF FACT

On 17 November 1961, Appellant went ashore about 0800 at Cristobal, Canal Zone. He visited various barrooms while trying to reach the American Consul by telephone to tell him that the Master had "fired" Appellant at 0200 while ashore. Appellant returned to the ship at 1500 and then went to the Consulate where he was given a letter stating that the Consul was not present. Appellant then returned to the ship and remained on board. He did not perform any of his duties during the regular working hours on this date.

Between 0400 and 0430 on 21 November, the Second Mate was on duty, at Guantanamo Bay, Cuba, when he heard very loud voices coming from the Boatswain's room. The Mate went to the room and found the Boatswain and Appellant engaged in a heated argument. They had been drinking whisky for some time. The Mate told them both to keep quiet and ordered Appellant to go to his room. Appellant addressed the Mate with foul language and threatened to use a knife on him. When Appellant did not leave the room, the Mate told the Boatswain to leave. He went to the gangway where a Marine sentry was stationed. Appellant followed the Boatswain to the gangway and the argument was renewed preliminary to a brief fight between the two. The Second Mate and Marine sentry stopped it. These matters were reported to the Master by the Second Mate at 0730.

Appellant has no prior record.

BASES OF APPEAL

This appeal had been taken from the order imposed by the Examiner. It is contended that the decision is contrary to the weight of the credible, probative and substantial evidence.

Appellant's conduct on 17 November was not wrongful since he had a valid reason for failing to perform his duties. Appellant acted in good faith when he tried throughout the day to ascertain his status from the American Consul after the Master had discharged Appellant.

Concerning the alleged offenses on 21 November, the Examiner relied on the testimony of the Second Mate but his testimony is incredible because he lied when he stated that the Marine sentry was not present at the gangway during the entire incident which occurred there. Also, it is incredible that the Mate would not have reported such offenses to the Master until three hours later.

APPEARANCE: Joseph Friedberg, Esquire, of New York City, of Counsel.

OPINION

Accepting Appellant's version with respect to 17 November, I am not convinced that he is free from blame for not working on this date. Although Appellant testified that he called the Consul at 0200 and was told to see him at 0900, Appellant admitted that he left the ship about 0800 without consulting anyone and unsuccessfully tried to contact the Consul by telephoning from different barrooms rather than going to the Consulate as he had been instructed to do. Appellant had no right to remain ashore in barrooms when he could not reach the Consul and before he had attempted to discuss the "firing" incident with the Master. According to Appellant, this had taken place while they were both ashore drinking at approximately 0200. Obviously, a verbal discharge of this nature is not binding without further action by a Master or Consul.

Although there is confusion as to whether the Marine sentry was at the gangway during the entire fight between Appellant and the Boatswain, it is not clear that the Second Mate lied about having given the sentry permission to leave the gangway to get some coffee. The Boatswain testified both that the sentry was (R.58) and was not (R.42) at the gangway. The sentry testified that he was there and had not left the gangway because he was forbidden to

leave his post. But the Boatswain testified that the Marine sentry had been in the Boatswain's room an hour or two earlier (R.53) and the sentry admitted having discussed their mutual home state with the Boatswain.Consequently, I do not feel that the Second Mate's testimony that the sentry left the gangway for a short time is a sufficient reason for rejecting as incredible the Mate's word as to what took place in the Boatswain's room. The fact that these events were not reported to the Master until 0730 is not an adequate reason to disregard the Examiner's conclusion that the Mate was truthful witness.

Concerning what occurred in the Boatswain's room, he corroborated the Mate's testimony that he went to the room because of the disturbance therein, told both of the occupants to be quiet, and ordered Appellant to go to his room. The Boatswain said he could not remember the words used by Appellant in reply to the Mate except that Appellant indicated he would not leave the room until he was ready (R.41). This corroborates the recalcitrant attitude of Appellant as testified to by the Mate and it is likely that the sober Mate would be able to recall what Appellant said at this time. In addition, Appellant admitted having threatened the Mate with a knife (R.110) and was not questioned with respect to the other language attributed to him by the Second Mate.

It is my opinion that the four specifications allege offenses which have been proved by substantial evidence and, therefore, that the order is a lenient one.

ORDER

The order of the Examiner dated at New York, New York, on 12 June 1962, is AFFIRMED.

E. J. ROLAND
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 15th day of February 1963.

***** END OF DECISION NO. 1367 *****

Top