

UNITED STATES OF AMERICA
UNITED STATES COAST GUARD vs.
MERCHANT MARINER'S DOCUMENT
Issued to: John Nelson CREWS, Jr. (Redacted)

DECISION OF THE VICE COMMANDANT
UNITED STATES COAST GUARD

2206

John Nelson CREWS, Jr.

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 5.30-1.

By order dated 5 February 1979, an Administrative Law Judge of the United States Coast Guard at Houston, Texas, suspended Appellant's seaman's documents for three months, plus twelve months on twenty four months' probation, upon finding him guilty of misconduct. The specifications found proved alleged that while serving as able seaman on board SS COVE LEADER under authority of the document above captioned, Appellant:

- (1) on or about 21 September 1978 failed to perform assigned duties at Odessa, U.S.S.R.,
- (2) on or about 12 October 1978 failed to perform assigned duties by reason of intoxication,
- (3) on 12 October 1978 at Odessa, U.S.S.R., wrongfully brought intoxicants aboard the vessel,
- (4) on 12 October 1978 at Poti, U.S.S.R., failed to perform assigned duties, and
- (5) on 20 October 1978 at Poti, U.S.S.R., failed to perform assigned duties.

The hearing was held at New Orleans, Louisiana, on 15 November 1978 and, after a change of venue requested by Appellant, at Houston, Texas, on 27 November 1978.

Appellant did not appear for hearing.

The Administrative Law Judge at Houston entered a plea of not guilty to the charge and all specifications and properly proceeded in the absence of Appellant.

The Investigating Officer introduced several documents into evidence.

There was no defense.

After the hearing, on 5 February 1979, the Administrative Law Judge rendered a written decision in which he concluded that the charge and specification had been proved. He then entered an order suspending all documents issued to Appellant for a period of three months plus twelve months on twenty four months' probation.

The entire decision was served on 21 February 1979. Appeal was timely filed.

FINDINGS OF FACT

From 6 August 1978 to 2 November 1978, Appellant was serving as able seaman on board the United States SS COVE LEADER and acting under authority of his document.

On 21 September 1978 at Odessa, U.S.S.R., Appellant was absent from the vessel and his duties without authority. On 20 October 1978, at Poti, U.S.S.R., Appellant absented himself from the vessel without authority and failed to perform his afternoon duties.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Administrative Law Judge. It is urged that the order is too severe.

APPEARANCE: Appellant, *pro se*.

OPINION

I

Apparently overlooked by the Administrative Law Judge was the fact that the second and the fourth specifications alleged and found proved in this case both dealt with failure to perform duties on the same date, 12 October 1978. The "second" did not identify a location for the offense but declared intoxication to be the cause of the failure. The "fourth" identified Poti, U.S.S.R., as

the place but does not include the element of intoxication.

The evidence on this point is confusing. One document, executed at 1300 on the date of the offense and acknowledged by Appellant, speaks of "verbal abuse" by Appellant of the vessel's second officer and of Appellant's absenting himself from the vessel and failing "to return to perform his duties as ableseaman." Another document, executed at midnight that night and not acknowledged by Appellant, records intoxication and a failure to stand a watch from the previous midnight to 0800 on 12 October. It also, inappropriately, recounts alleged offenses occurring three to five days earlier.

The two accounts are inconsistent. The "findings" made in the initial decision, that Appellant went ashore at 1200 and "failed to return to the vessel to perform his duties at the required time of 1300...", and that at midnight that same night Appellant reported to the second officer "that he was drunk and unable to stand his 0000 to 0800 gangway watch" on that date, are more confused than the evidence.

II

Also apparently overlooked both in the preferral of charges and the findings made is the discrepancy between the third specification which alleges an offense at Odessa, U.S.S.R., on 12 October 1978, and the two mentioned above which allege a failure to perform duties (all day) on that date at Poti, U.S.S.R. Further, what evidence there is as to intoxicants is that the occurrence was on 7 October 1978 (place not mentioned) and there is no evidence that the action was wrongful either in terms of shipping agreement or master's order.

III

Ordinarily, Appellant's contention that the order entered was excessive would not merit hearing. However, in view of the action that must be taken on the errors here it is proper to mitigate the order, especially in consideration of the recent clear record that Appellant has made.

It is also to be noted that what remains established as alleged misconduct involves mere failure to perform duties on one full working day and one half day for which loss of pay was imposed by the master.

CONCLUSION

The offenses alleged for 12 October 1978 were not proved, and the findings made herein suitably modify those made in the initial decision. The order will be modified accordingly.

ORDER

The findings of the Administrative Law Judge are MODIFIED as reflected herein and the specification dealing with 12 October 1978 are DISMISSED. As modified and so affected, the findings are AFFIRMED. The order entered on 5 February 1979 is MODIFIED to provide for an ADMONITION to be entered in Appellant's record, and as MODIFIED is AFFIRMED.

R. H. SCARBOROUGH
VICE ADMIRAL, U. S. COAST GUARD
VICE COMMANDANT

Signed at Washington, D.C., this 12th day of May 1980.

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