

In The Matter Of Merchant Mariner's Document No: Z-72506-D1  
Issued to: AGUSTIN GONZALEZ NIEVES

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

454

AGUSTIN GONZALEZ NIEVES

This appeal comes before me by virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations Sec. 137.11-1.

On 17 December 1948 an Examiner of the United States Coast Guard at New York revoked Merchant Mariner's Document No. Z-72506-D1, issued to Agustin Gonzales Nieves upon finding him guilty of "misconduct" based upon a specification alleging in substance, that while serving as deck maintenance man on the American S. S. EXCELSIOR, under authority of the document above described, on or about 12 September 1948, while said vessel was at Madras, India, he had in his possession certain narcotics, to wit: opium.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. Although advised of his right to be represented by counsel of his own selection, he [re????ntly] waived that right and acted as his own counsel. He entered a plea of "not guilty" to the charge and specification.

Thereupon, the Investigating Officer introduced in evidence an

excerpt from the official log book of the S. S. EXCELSIOR, and rested his case.

In defense, Appellant offered his own sworn explanation of the circumstances attending his acquisition of the commodity which had occasioned his arrest; and also rested.

At the conclusion of the hearing, having heard the statements of the Investigating Officer and Appellant, the Examiner found the charge "proved" by proof of the specification and entered an order revoking the Merchant Mariner's Document above described, and all other valid certificates or licenses issued to said Nieves by the Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged:

- (1) The introduction of the log entry was improper;
- (2) The Respondent was not properly represented;
- (3) The Finding was against the weight of the evidence;  
and
- (4) The punishment meted out was too severe.

Appellant submits the decision of the Examiner should be reversed or modified.

APPEARANCES: Herman E. Cooper, Esqr., and Messrs. Rolnick & Asofsky, of Counsel - all of New York for Appellant.

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

#### *FINDINGS OF FACT*

On 12 September 1948 Appellant was serving as deck maintenance man on the American S.S. EXCELSIOR, under authority of his Merchant Mariner's Document No. A-72506-D1. On that date said vessel was in the Port of Madras, India. Appellant had been ashore on authorised leave, but when returning to the vessel he was arrested by local police authorities because a quantity of narcotics was found in his possession. He was confined forthwith, and was so confined when

the EXCELSIOR left the port. Later he was fined by the local authorities because of his possession of the narcotics.

*OPINION*

This is among the first cases heard under the then new formula adopted by the Coast Guard, which is patterned, as far as that is possible under the circumstances which attend the handling of disciplinary cases involving merchant seamen, upon the Administrative Procedure Act of 1946.

I have carefully reviewed the Record in this case, and while I am of opinion the several grounds urged upon the appeal do not justify my interference with the Examiner's order, I am also inclined to the view that some pertinent features of the statute have not been followed.

Any procedural errors that may have occurred at the original trial of this case will be corrected upon a new trial; and it appears certain that Appellant will then be ably represented by counsel of his own selection; and his interests protected.

Therefore,

*ORDER*

The Order of the Coast Guard Examiner dated at New York on 17 December 1948 is VACATED and SET ASIDE. The case is remanded to the Coast Guard Examiner at New York, with directions to grant a new trial; and said further proceedings shall be conducted at the earliest practicable date which is convenient to the Investigating Officer and counsel for Appellant.

Merlin O'Neill  
Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington, D.C., this 11th day of August, 1950.

\*\*\*\*\* END OF DECISION NO. 454 \*\*\*\*\*

---

[Top](#)