

In the Matter of Merchant Mariner's Document No: Z-378679
Issued to: HARRY THOMAS REED

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

459

HARRY THOMAS REED

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 25 July, 1950, an Examiner of the United States Coast Guard at New York City suspended Merchant Mariner's Document No. Z-378679 issued to Harry Thomas Reed upon finding him guilty of "misconduct" based upon two (2) specifications alleging in substance, that while serving as able bodied seaman on the American S. S. AMERICAN MERCHANT under authority of the document above described, on or about 13 May 1950 he wrongfully (1) deserted said vessel in a foreign port; and (2) wrongfully failed to join said vessel in a foreign port.

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 elected to waive that right and act as his own counsel. He entered a plea of "not guilty" to the charge and first specification, but frankly admitted he had failed to join his vessel in a foreign port as recited in the second specification.

Thereupon, the Investigating Officer introduced an excerpt from the shipping articles of the S. S. AMERICAN MERCHANT for a voyage beginning at New York on 19 April 1950; an excerpt from the official log of said vessel for the same voyage. It was stipulated that Appellant stayed in London and did not report to any representatives of the United States or the vessel from 13 May until 10 July 1950.

In defense, Appellant testified in his own behalf. 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 both specifications and entered an order suspending Merchant Mariner's Document No. Z-378679 and all other valid documents, licenses or certificates and endorsements held by Appellant for a period of six (6) months; the first three (3) months to be outright and the remaining three (3) months not be effective provided no charge under R.S. 4450 is proved against him for acts committed within twelve (12) months of 24 October 1950.

From that order, this appeal has been taken, and it is urged: The evidence failed to prove that Appellant had at any time to the sailing of his vessel from port, formed the intention to desert said vessel; and proved merely that he missed the ship because of unavoidable circumstances.

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

FINDINGS OF FACT

At all the times herein mentioned, Appellant was acting under authority of his merchant mariner's document No. Z-378679, as an able-bodied seaman in the service of the American S. S. AMERICAN MERCHANT.

On 12 May 1950 he left his vessel with what he considered proper permission, and visited his family in London. As a naturalized American citizen of English birth, on that visit he "burned the candle at both ends", and failed to make proper or adequate provision for returning to his vessel before her departure, as per the announced schedule, from England, Appellant's rather meager efforts to overtake his vessel before she left the

port were unavailing; and thereafter, he made no attempt to contact the vessel's agents, or representatives of the United States for nearly two (2) months after he failed to join.

There is evidence that he took most of his "shore-going" clothes from the vessel; but it is equally evident that he left on board the clothing which he would usually wear about his work.

OPINION

Appellant's own description of the circumstances under which he failed to rejoin his vessel prior to her departure from a foreign port is sufficient to sustain the specification alleging "failure to join." There is also some indicia which might be interpreted to sustain the first specification of desertion; but there is in the case, as presented to me, sufficient doubt in my mind that he had formed the intention to desert before his vessel departed - and I will give Appellant the benefit of that doubt.

I have no sympathy for merchant seamen who treat their contracts so lightly that they fail to take appropriate measures, when ashore, to insure return to the vessel before departure. Appellant's carelessness in this respect requires recognition. The circumstances were not "unavoidable" as he contends until his own derelictions had caused the ship to pass beyond his power to rejoin.

CONCLUSION

As I have stated, I will give Appellant the benefit of the doubt with respect to the first specification alleging desertion, and hold it has not been satisfactorily proved. The second specification is abundantly established.

ORDER

The order of the Examiner dated at New York on 25 July 1950 is modified to provide that the entire six (6) months suspension shall be probationary, and not made effective provided no charge against Appellant under R.S. 4450 is proved against him for acts committed within 12 months from the date he surrenders his present temporary

document.

As so MODIFIED, said Order is AFFIRMED.

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

Dated at Washington, D.C., this 22nd day of December, 1950.

***** END OF DECISION NO. 459 *****

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