

In The Matter of License No. 66546
Issued to: ROBERT D. TIMMERMAN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

580

ROBERT D. TIMMERMAN

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 19 October, 1951, an Examiner of the United States Coast Guard rendered his decision of a hearing conducted at Honolulu, T. H., and revoked License No. 66546 issued to Robert D. Timmerman upon finding him guilty of negligence based upon two specifications alleging in substance that while serving as Second Mate on board the American SS ANDREA F. LUCKENBACH under authority of the license above described, on or about 11 March, 1951, while navigating said vessel in the vicinity of the Island of Kauai, T. H., he contributed to the grounding of the ship by failing to establish the vessel's position by proper bearings; and failing to obtain and properly use information available from the vessel's radio direction finder.

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. Appellant was represented by an attorney of his own selection and he entered a plea of "not guilty" to the charge and each specification proffered against him.

Thereupon, a stipulation was entered into whereby certain portions of the record of the Marine Board of Investigation convened at Lihue, Kauai, T. H., were received in evidence. Both parties then rested their case.

On 9 June, 1951, having heard the arguments of the Investigating Officer and Appellant's counsel, the hearing was concluded. Under date of 29 June, 1951, counsel for Appellant submitted proposed findings and conclusions.

On 19 October, 1951, the Examiner announced his decision concluding that the charge had been proved by proof of the above two specifications and entered the order revoking Appellant's License No. 66546 and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority. The decision contains no specific reference to the findings and conclusions proposed by counsel for Appellant.

From that order, this appeal has been taken, and it is contended, *inter alia*, that the Examiner erred in failing to rule upon the proposed findings of fact and conclusions of law submitted on behalf of Appellant. Because of the immediate disposition to be made of this case, it is not necessary, at this time, to relate the additional grounds raised on appeal; and it would be inappropriate, under the circumstances, for me to make any findings of fact.

APPEARANCES: Messrs. Lillick, Geary, Olson, Adams and Charles, of San Francisco, by Joseph J. Geary, Esquire, of Counsel.

OPINION

Both the Administrative Procedure Act (Sec.8(b)) and the Coast Guard regulations (46 C.F.R. 137.09-60) require that the parties shall be afforded a reasonable opportunity to submit proposed findings and conclusions with supporting reasons; and that "the record shall show the ruling of the Examiner upon each such finding and conclusion presented."

Insofar as the record in this case discloses, none of the findings and conclusions submitted were considered by the Examiner, prior to the rendering of his decision, as is required by 46 C.F.R. 137.09-75.

This constitutes reversible error.

ORDER

The order of the Examiner, dated 19 October, 1951, at Seattle, Washington, is SET ASIDE, REVERSED and REMANDED for further action not inconsistent with this decision.

Merlin O'Neill

Dated at Washington, D. C., this 13th day of June, 1952.

***** END OF DECISION NO. 580 *****

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