

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-247207
Issued to: CHARLES A. ELLIOTT

DECISION AND ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

716
CHARLES A. ELLIOTT

This appeal has been taken *in* accordance with Titled States Code 239239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 5 January, 1953, an Examiner of the United States Coast Guard at Long Beach, California, suspended Merchant Mariner's Document No. Z-247207 issued to Charles A. Elliott upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as wiper on board the American SS EMPIRE STATE under authority of the document above described, on or about 10 December, 1952, he refused to obey a lawful order of the Chief Engineer to turn to; and on or about 27 December, 1952, he took the engine room logbook from the Chief Engineer's room and threw it over the side of the vessel.

From the Record before me, it appears Appellant was served the Charge and Specifications on 29 December, 1952, and was commanded to appear for the hearing on 5 January, 1953. Appellant then protested having to remain in port at his own expense for the time which would pass until 5 January, 1953; and he indicated that he would not be present at a hearing on that date.

On this appeal it is contended that Appellant was "under government orders" to reports to the SS NEW LONDON, and I take official cognizance of Coast Guard records which show Appellant joined the American SS NEW LONDON on 5 January, 1953, at Yokohama, Japan, as one of the replacements for crew members whose articles had expired on that vessel. Appellant's signing off pay on this vessel was computed on the articles for a period which would include 5 January, 1953. Obviously, Appellant could not join a ship in Yokohama, Japan, and attend a hearing in Long Beach, California, on the same date.

It is my opinion that the date of hearing should have been advanced to meet Appellant's protest at delay, and under the circumstances, it was not proper to conduct the proceedings in *absentia* - even though such procedure is legal when other factors are present.

ORDER

The Order of the Examiner dated Long Beach, California, on 5 January, 1953, is VACATED and SET ASIDE. The whole case is REMANDED to said Examiner for such further proceedings as may be deemed appropriate.

A. C. Richmond
Rear Admiral, U. S. Coast Guard
Acting Commandant

Dated at Washington, D. C., this 1st day of December, 1953.

***** END OF DECISION NO. 716 *****

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