

In the Matter of Merchant Mariner's Document No. Z-136612
Issued to: RUBEN ALEXANDER BARROW

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

731

RUBEN ALEXANDER BARROW

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 27 October, 1953, an Examiner of the United States Coast Guard at Honolulu, T.H., suspended Merchant Mariner' Document No. Z-136612 issue to Ruben Alexander Barrow upon finding him guilty of misconduct base upon two specifications alleging in substance that while in the service of the American M.V. SWORD KNOT as a messman and acting under authority of the document above described, on or about 28 September, 1953 while said vessel was in the port of Yokohama, Japan, he wrongfully deserted said vessel; and he wrongfully stowed away on board the SS PRESIDENT WILSON.

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. Although advised of his right to be represented by counsel of his own selection, Appellant voluntarily elected to waive that right and to represent himself. He entered a plea of "not guilty" to the specification charging desertion and "guilty" to the specification alleging that he was a stowaway.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence a certified copy of an entry in the Official Logbook of the SS PRESIDENT WILSON and a certified copy of a Foreign Service form.

In defense, Appellant submitted in evidence his sworn testimony. He stated that he had not intended to sail on the SWORD KNOT because his life was in danger he had a fight on the ship. Appellant said that the American Consul would not sign him off by mutual consent but the Master told Appellant not to return to the ship and to leave some clothes on board so he would not be considered to be a deserter.

At the conclusion of the hearing, having heard the argument of the Investigating Officer, the Examiner announced his findings and concluded that the charge had been proved by plea to the stowaway specification and by proof of the desertion specification. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-136612, and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of six months.

From that order, this appeal has been taken, and it is urged that Appellant did not wrongfully leave the ship but he did not return to the SWORD KNOT because there had been numerous threats against his life and he realized that his life would be in danger. Appellant also reiterates the other points mentioned in his testimony and he claims that his life was in danger because he engaged in a fight, with a crew member of the SWORD KNOT, as a result of which the latter was hospitalized for a week.

APPEARANCES: Lawrence Speiser, Esquire, of San Francisco, of Counsel.

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

FINDINGS OF FACT

On a foreign voyage including the date of 28 September, 1953, Appellant was serving as a member of the crew in the capacity of messman on the American M.V. SWORD KNOT, under authority of his Merchant Mariner'S Document No. Z-136612, while the ship was in the port of Yokohama, Japan.

On 28 September, 1953, Appellant boarded the American SS PRESIDENT WILSON at Yokohama and remained on board as a stowaway until the ship arrived at Honolulu, T.H. although Appellant had not received proper authority to terminate his services on the SWORD KNOT, he had decided not to return on board the SWORD KNOT since he had been threatened by some crew members as a result of a fight which Appellant had with a member of the crew of the SWORD KNOT.

There is no record of prior disciplinary action having been taken against Appellant. He has been going to sea on American ships for approximately ten years.

OPINION

A wrongful abandonment of the ship constitutes desertion. A necessary element of desertion is the intent to abandon the voyage which a seaman has engaged to complete. In this case, Appellant contracted to serve on the SWORD KNOT when he signed the Shipping Articles for the foreign voyage.

Appellant admitted that he had no intention of returning to the SWORD KNOT to complete the voyage; and the fact that Appellant left Yokohama as a stowaway on the PRESIDENT WILSON supports this admission. But Appellant claims that his conduct in leaving the SWORD KNOT was not wrongful because his life would be in danger on that ship. This excuse was not justification for departing from the ship without signing off the shipping articles. There is no evidence to support Appellant's unsworn statement that his life was in danger; and any danger to him was the result of his own prior misconduct in engaging in a fight with another member of the crew of the SWORD KNOT. Also, the American Consul at Yokohama apparently did not feel that there was sufficient reason to remove Appellant from the ship. Therefore, the charge of desertion was proved by substantial evidence.

Due to the comparable difficulty of obtaining replacements in

foreign ports, the seriousness of the offense of desertion is enhance when it is committed while a ship is on a foreign voyage. Breaches of discipline of this nature may result in causing unnecessary hazards of the sea when ships are required to sail while they are undermanned. Appellant's offense was aggravated by the fact that he was stowaway on one ship at the same time that he was under a contractual obligation to serve on another ship.

ORDER

The order of the Examiner dated at Honolulu, T.H., on 27 October, 1953, is AFFIRMED.

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

Dated at Washington, D.C., this 19th day of April, 1954.

***** END OF DECISION NO. 731 *****

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