

In the Matter of Merchant Mariner's Document No. Z-239444  
Issued to: OSCAR F. A. MADERE

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

746

OSCAR F. A. MADERE

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 4 January, 1954, an Examiner of the United States Coast Guard at New Orleans, Louisiana, revoked Merchant Mariner's Document No. Z-239444 issued to Oscar F. A. Madere upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a bedroom steward on board the American SS DEL SUD under authority of the document above described, on or about 17 December, 1953, while said vessel was in the port of New Orleans, Louisiana, he wrongfully had a quantity of marijuana in his possession.

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 specification proffered against him.

Thereupon, the Investigating Officer and counsel for Appellant made their opening statements and the Investigating Officer

introduced in evidence the testimony of four United States Customs employees.

In defense, Appellant offered in evidence the testimony of his two roommates on the ship. They stated that Appellant was a person of good character and they had never seen or suspected him of smoking marijuana. Appellant also testified under oath and stated that he has never used marijuana and did not know that marijuana was in his clothing.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-239444 and all other licenses, certificates and documents issued to this Appellant.

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

*POINT I.* All witnesses against Appellant were U. S. Customs employees. Their testimony should have been given less weight than that of Appellant and his two character witnesses. The testimony of the latter two men was unrebutted and they were in a better position to observe Appellant. Also, Appellant denied, under oath, any knowledge as to how the alleged marijuana gleanings got into his trousers.

*POINT II.* An indispensable witness, in the chain of evidence against Appellant, did not testify. This casts doubt upon the authenticity of the contents of the envelope produced at the hearing because such contents were not identified as the substance which had been taken from Appellant's trousers.

*POINT III.* It is cruel and unusual punishment to apply a hard and fast rule of revocation in order to convict a man, with a previous unblemished record of good conduct during 14 to 16 years at sea, on such minute evidence. Appellant's denial under oath is supported by his perfect record.

Appellant also resubmitted the proposed findings and conclusions which were individually ruled upon by the Examiner.

In conclusion, Appellant contends that the decision of the Examiner was erroneous and contrary to the weight of the law and the evidence. It is submitted that the order should be reversed or, alternatively, modified to a period of suspension.

APPEARANCES: Messrs. LeBlanc and Donaldson, of New Orleans, Louisiana, by Milton L. LeBlanc, Esquire, of Counsel.

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

*FINDINGS OF FACT*

On 17 December, 1953, Appellant was serving as a bedroom steward on board the American SS DEL SUD and acting under authority of his Merchant Mariner's Document No. Z-239444 while the ship was at New Orleans, Louisiana, upon completion of a foreign voyage. On this date, a routine search of the ship was conducted by the U. S. Customs authorities.

Port Patrol Officer Vera searched Appellant's locker in his presence. Officer Vera removed a pair of soiled khaki work trousers from the bottom of Appellant's locker and found, in the left side pocket of the trousers, fragment of slightly green vegetable matter which Officer Vera thought was marijuana. For this reason, he placed these fragments and the contents of the other pockets of the khaki trousers in a paper cup. The total sample consisted of approximately one grain of leaves, stems and other vegetable matter. Appellant admitted ownership of the trousers. Another sample of vegetable matter was taken from a towel used by Appellant.

Upon analysis at the U. S. Customs Laboratory in New Orleans, the substance obtained from the trousers was found to contain marijuana. The sample obtained from the towel did not disclose any marijuana content.

*OPINION*

The only evidence presented in this case consists of fragments of marijuana gleaned from the pockets of the Appellant. While such fragments were established to be marijuana by chemical analysis, the total quantity was so minute as not to present a hazard *per se*. In my opinion, such evidence, standing alone, and without other supporting facts or circumstances, is insufficient to sustain the charge in this case.

*ORDER*

The order of the Examiner dated at New Orleans, Louisiana, on 4 January, 1954, is SET ASIDE, VACATED AND REVERSED.

A. C. Richmond  
Vice Admiral, United States Coast Guard  
Commandant

Dated at Washington, D. C., this 16th day of august, 1954.

\*\*\*\*\* END OF DECISION NO. 746 \*\*\*\*\*

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