

In the Matter of License No. R-10233 and Merchant Mariner's  
Document No. Z-154435-D2

Issued to: WILLIAM H. SEARS

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

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WILLIAM H. SEARS

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.

By order dated 4 September, 1954, an Examiner of the United States Coast Guard at New York, New York, suspended License No. R-2615 (renewed as License No. R-10233) and Merchant Mariner's Document No. Z-154435-D2 issued to William H. Sears upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a Radio Operator on board the American SS URUGUAY under authority of the license and document above described, on or about 7 August, 1953, while said vessel was at sea, he wrongfully failed to perform his duty due to intoxication.

On 31 August, 1953, Appellant was served with the charge and specification and he was ordered to appear at a hearing on 2 September, 1953. Appellant did not put in an appearance at the designated place on 2 September, 1953, or at any time thereafter prior to the completion of the hearing on 4 September, 1954. On the latter date, the hearing was conducted in *absentia* and

the Examiner entered a plea of "not guilty" to the charge and specifications on behalf of Appellant.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence a certified copy of and extract from the Shipping Articles of the URUGUAY as well as a certified copy of an entry contained in the ship's Official Logbook.

At the conclusion of the hearing, having heard the argument of the Investigating Officer and given him 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 suspending Appellant's License No. R-2615, Merchant Mariner's Document No. Z-154435-D2, and all other licenses and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of 18 months - 6 months outright suspension and 12 months suspension on 12 months probation from the date of the termination of the outright suspension.

From that order, this appeal has been taken, and it is urged that the regulations issued by the Federal Communications Commission state that radio watches shall begin when the ship enters the open sea; the log entry shows Appellant was relieved at 1835 although the ship did not enter the open sea until 1838; Appellant was not drunk or asleep but he was relieved at 1835 to obtain treatment for a cut on his forehead; the ship's physician told Appellant to take off the remainder of his watch because of the cut; the Investigating Officer told Appellant that he was not required to attend the hearing; and Appellant has never been drunk or asleep on watch. Appellant contends that the order is excessive, the decision should be set aside and he should be granted a rehearing in order to have an opportunity to submit his defense.

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

#### *FINDINGS OF FACT*

On 7 August, 1953, Appellant was serving as Second Assistant

Radio Operator on board the American SS URUGUAY and acting under authority of his License No. R-2615 and Merchant Mariner's Document No. Z-154435-D2.

The URUGUAY got underway from Rio de Janeiro, Brazil, at 1800 on 7 August, 1953, with Appellant on watch as radio operator. At 1835, Appellant was found drunk and asleep while on watch. He was removed from the watch because he was unable to perform his duties due to his intoxicated condition. Consequently, Appellant was relieved for the remainder of his watch and logged one-half day's pay for this offense.

Appellant's only prior disciplinary record consists of a one month's suspension in 1944 for failure to join.

#### OPINION

There is no merit in the points raised by Appellant in his appeal. He was given ample opportunity to present his defense before the Examiner but Appellant waived that right when he failed to appear at the hearing. The Investigating Officer testified that he informed Appellant that the hearing would proceed without his presence if he did not appear.

Appellant contends that he could not have committed an offense because the ship was not on the open sea until three minutes after he was relieved. Title 47 C.F.R. 8.202(a) requires that a "continuous and efficient" radio watch shall be kept while "outside a harbor or port." Regardless of whether the ship was outside the harbor at 1835 when Appellant was relieved, he was guilty of the offense for the duration of his watch period which extended after 1838. The evidence shows that Appellant was relieved because of his intoxicated condition rather than due to a cut on his forehead as contended by Appellant.

Since the radio equipment and its operator constitute the only continuous communication between the ship at sea and the rest of the world, the radio operator has a very heavy responsibility to properly perform his duties while on watch. The safety of personnel and property - on Appellant's ship or other ships - might be largely dependent upon his alertness in case of emergency. Therefore, I do not think that the order of the Examiner is

excessive. But considering the mitigating circumstance presented by Appellant's prior good record, the order of the Examiner dated at New York, New York, on 4 September, 1953, will be modified as follows:

*ORDER*

Appellant's License No. R-10233, Merchant Mariner's Document No. Z-154435-D2, and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority, are hereby suspended for a period of six (6) months less that portion of the original six (6) months suspension which has been served.

The above licenses, certificates and documents are further suspended for an additional period of six (6) months but the latter suspension shall not become effective provided no charge under R.S. 4450, as amended (46 U.S.C. 239), is proved against Appellant for acts committed during the period of outright suspension or for acts committed within twelve months from the date of the termination of the outright suspension.

As so MODIFIED, the order of the Examiner is

AFFIRMED.

A. C. Richmond  
Vice Admiral, U. S. Coast Guard  
Commandant

Dated at Washington, D. C., this 18th day of October, 1954.

\*\*\*\*\* END OF DECISION NO. 771 \*\*\*\*\*

