

In the Matter of Merchant Mariner's Document No. Z-69698-D4
Issued to: PETER LOSADO

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

792

PETER LOSADO

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 30 September, 1954, an Examiner of the United States Coast Guard at Baltimore, Maryland, suspended Merchant Mariner's Document No. Z-69698-D4 issued to Peter Lasado upon finding him guilty of misconduct based upon three specifications alleging in substance that while serving as a fireman-watertender on board the American SS TAINARON under authority of the document above described, he failed to perform his duties on 10, 11, 13 and 16 July and 8 August, 1953; and he was absent from his vessel without permission on 11, 13 and 16 July, 1953.

Appellant was served with the charge and specifications three days prior to the scheduled date of the hearing. At the time of service, 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. When Appellant did not put in an appearance on the scheduled date of the hearing, the Examiner continued the hearing from day to day until three days later while waiting to hear from the Appellant. At the end of this time, the

hearing was resumed in absentia since Appellant had not contacted the Coast Guard to explain his absence and the Investigating Officer had failed in two attempts to locate the Appellant. The Examiner entered pleas of not guilty to the charge and specifications on behalf of Appellant.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence certified copies of entries from the Official Logbook of the TAINARON and a certified copy of extracts from the Shipping Articles of the ship for a voyage which terminated on 6 October, 1953. The Investigating Officer then rested his case.

At the conclusion of the hearing, the Examiner announced his findings and concluded that the charge had been proved by proof of the above specifications. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-69698-D-4, and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of time to extend until five months after the surrender of Appellant's document or documents to the Coast Guard.

Subsequent to the delivery of the Examiner's decision upon Appellant by registered mail, Appellant retained counsel who made an oral application to the Examiner to reopen the hearing. The Examiner denied this application and an appeal was taken on the following grounds:

POINT I. The order imposed was incredibly severe and unwarranted in view of Appellant's service in the American Merchant Marine for more than thirty years and the nature of the offenses alleged.

POINT II. The Examiner erred in proceeding in absentia without having made further efforts to contact Appellant.

POINT III. The Examiner erred in order the suspension of the Appellant's document without first ascertaining or endeavoring to ascertain the prior service record of the Appellant.

POINT IV. The decision of the Examiner is not supported

by reliable, probative and substantial evidence since the Master of the ship failed to enter in the logbook the reply of the Appellant to any of the logbook entries pertaining to the specifications. This does not conform with 46 U.S.C. 702 and the entries are not admissible in evidence. The entry on 8 August, 1953, does not indicate that it was read to Appellant or that he received a copy of it. To the contrary the Shipping Articles indicate that Appellant was discharged from the vessel by mutual consent on 7 August, 1953.

POINT V. The Examiner erred in refusing to reopen the proceedings on the ground that he lacked jurisdiction to do so after his decision had been served. Such a denial on jurisdictional grounds is unreasonable when a seaman has been absent from the hearing through no fault of his own.

CONCLUSION. It is respectfully requested that the case be remanded for further hearing or that the order be modified to impose a reasonable order for the offenses involved.

APPEARANCES: Solomon Kaplan, Esquire, of Baltimore, Maryland, of Counsel.

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

FINDINGS OF FACT

From 12 June until 7 August, 1953, Appellant was serving as a fireman-watertender on board the American SS TAINARON and acting under authority of his Merchant Mariner's Document NO. Z-69698-D4.

The ship was at Rizeka, Yugoslavia, from 10 July, 1953, until after 16 July, 1953. On 10 July, Appellant refused to stand his 0000 to 0800 watch. On 11 and 13 July, Appellant failed to perform his duties and was absent from the ship without permission. On 16 July, Appellant failed to stand his 0000 to 0400 watch and was absent from the vessel without permission.

Although Appellant was logged as having failed to report for his 0000 to 0800 watch while the ship was at Pone, Puerto Rico, on

8 August, 1953, the log entry does not indicate that it was read to Appellant or that a copy was given to him; and the Shipping Articles state that Appellant left the ship by mutual consent on 7 August, 1953.

Appellant's prior record consists of a probationary suspension in 1943 for failing to join his ship; an admonition in 1943 for exchanging watches without permission; and an admonition as well as a one month suspension in 1944 for two separate offenses of absence without leave.

OPINION

The record shows that the Examiner was justified in proceeding in absentia and in denying the application to reopen the hearing. Appellant had ample notice of the hearing and there is nothing to support the contention that Appellant failed to put in an appearance through no fault of his own.

The logbook entries constituted reliable, probative and substantial evidence of the allegations except as to the failure of Appellant to perform his duties on 8 August, 1953. title 46 U.S.C. 702 requires, among other things, that the offender's reply shall be entered in the logbook if he makes any reply. Although Appellant signed each pertinent log entry, there is no evidence that he made a statement in reply to any of the entries. Therefore, it is my opinion that the logbook entries make out a prima facie case showing substantial compliance with 46 U.S.C. 702.

In view of Appellant's many years of service on merchant vessels of the United States and the fact that the allegations as to 8 August, 1953, are not supported by the record, the order will be modified to impose a one month outright suspension plus a probationary suspension.

ORDER

The Order of the Examiner dated at Baltimore, Maryland, on 30 September, 1954, is modified to provide for a five (5) months suspension. Four (4) months of the suspension ordered 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 within twelve (12) months of the termination of the one (1) month outright

suspension.

As so modified, said order is

AFFIRMED.

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

Dated at Washington, D. C., this 2nd day of March, 1955.

***** END OF DECISION NO. 792 *****

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