In the Matter of Merchant Mariner's Document NO. Z-798328-D1 and all other Licenses, Certificates and Documents
Issued to: PEYTON KEESEE

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

865

PEYTON KEESEE

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 21 August 1955, an Examiner of the United States Coast Guard at San Francisco, California, suspended Merchant Mariner's Document No. Z-798328-D1 issued to Peyton Keesee upon finding him guilty of misconduct based upon four specifications alleging in substance that while serving as a wiper on board the American SS PRESIDENT TAFT under authority of the document above described, on or about 22 June 1955, while said vessel was at Cebu, Philippine Islands, he wrongfully had 42 cartons of cigarettes in his possession; he wrongfully bartered and sold to the natives 12 cartons of cigarettes which had not been declared to the local customs authorities; he wrongfully failed to declare 42 cartons of cigarettes in his possession; and he willfully and unlawfully took 42 cartons of cigarettes from the cargo of said ship and converted them to his own use.

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 choice, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "guilty" to the charge and first three specifications proffered against him. A plea of "not guilty" was entered to the last specification.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence Appellant's conviction on 29 July 1955, in the United States District Court for the Northern District of California, Southern Division, for taking and converting to his own use 42 cartons of cigarettes from the cargo of the PRESIDENT TAFT on 22 June 1955 at Cebu, P.I.

In defense, Appellant offered in evidence his sworn testimony. He stated that he purchased 20 cartons of cigarettes on his ship; bought 24 cartons from a sailor in Subic Ray; and only 2 cartons were permitted on board ship in the Philippines without a Customs Declaration.

At the conclusion of the hearing, having given both parties an opportunity to submit argument and proposed findings and conclusions,the Examiner announced his decision and concluded that the charge and four specifications had been proved. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-798328-D1, and all other licenses and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of six months.

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

*FINDINGS OF FACT*

On 22 June 1955, Appellant was serving as a wiper on board the American SS PRESIDENT TAFT and acting under authority of his Merchant Mariner's Document No. Z-798328-D1 while the ship was at Cebu, Philippine Islands.

On this date, Appellant willfully and unlawfully took 42

cartons of cigarettes from the ship's cargo and converted them to his own use. Appellant had 2 additional cartons of cigarettes in his possession and this was the maximum permitted unless a Customs Declaration was filed. Nevertheless, Appellant sold 12 of the 42 cartons, wrongfully in his possession, to natives.

Appellant's prior record consists of an admonition in 1949 of failure to join and a probationary suspension in 1953 for failure to perform duties.

*BASIS OF APPEAL*

This appeal has been taken from the order imposed by the Examiner. Appellant denies that he stole the cigarettes from the ship's cargo. He states that the Examiner should not have taken the word of the ship's officers against Appellant's word. Appellant further contends that the order is too severe and he requests clemency.

*OPINION*

The first three specifications were proved by plea and the Federal Court conviction is conclusive as to the fourth specification. See 46 CFR 137.15-5(a). Hence, Appellant's denial that he stole the cigarettes cannot be accepted.

Any theft of ship's cargo or stores affects not only the order and discipline of the ship but it seriously interferes with the success of the maritime venture. The security of cargo on board a merchant vessel is of paramount importance. The order of six months suspension will be upheld since offenses of this nature must be dealt with severely.

*ORDER*

The order of the Examiner dated at San Francisco, California, on 2 August 1955 is AFFIRMED.

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

Dated at Washington, D.C., this 24th day of Februrary, 1956.

***** END OF DECISION NO. 865 *****

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