

In the Matter of Merchant Mariner's Document No: Z-596167
Issued to: MOHAMED ALI

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

447

MOHAMED ALI

This appeal comes before me by virtue of Title 46 United States Code 239(g) and 46 Code of Federal Regulations Sec. 137.11-1.

On 7 March, 1950, an Examiner of the United States Coast Guard at New York City revoked Merchant Mariner's Document No. Z-596167 issued to Mohamed Ali upon finding him guilty of "misconduct" based upon two specifications alleging in substance, that while serving as fireman-watertender on board the American S. S. NOAH BROWN, under authority of the document above described, on or about 13 June, 1948, he wrongfully deserted and failed to join said ship at a foreign port.

At the hearing, Appellant was given a full explanation of the nature of the proceedings and the possible consequences. Appellant was represented by counsel of his own selection and he entered a plea of "not guilty" to the charge and each specification.

Thereupon, the Investigating Officer made his opening statement. He then introduced in evidence excerpts from the vessel's shipping articles and official log, and the deposition of the Master of the ship, before resting his case.

In defense, Appellant offered in evidence the testimony of the ship's delegate for the voyage in question and copies of reports from two doctors in Naples, Italy. He also testified under oath in his own behalf.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant, the Examiner found the charge "proved" by proof of the specification alleging desertion and entered an order revoking Merchant Mariner's Document No. Z-596167 and all other valid documents, licenses, certificates and endorsements issued to Appellant by the Coast Guard or its predecessor authority.

From that order, this appeal has been taken, and it is urged that the findings are not supported by the evidence; that the evidence negatives any intent on the part of Appellant to desert the vessel; and that Appellant honestly believed he required hospitalization and was justified in leaving the ship under the circumstances.

APPEARANCES: David M. Fink and Jacquin Frank of New York City
William Rosenthal of Counsel.

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

FINDINGS OF FACT

Up to and including 13 June, 1948, the Appellant was acting under authority of Merchant Mariner's Document No. Z-596167 in the capacity of fireman-watertender, in the service of the American S.S. NOAH BROWN, while the ship was at Naples, Italy.

When the vessel arrived at Naples several days before 13 June, 1948, Appellant had complained that he was ill and the Master had him examined by the local Company doctor who prescribed five days rest and a light diet. Appellant also consulted another local physician, a Professor Martorano, who gave Appellant a note diagnosing the trouble as "probable congestion (complications) of the right kidney" and suggesting that Appellant be hospitalized for cure and further examinations. The Company doctor did not find any reason why Appellant should be hospitalized.

On 13 June, 1948, when the NOAH BROWN was preparing to get underway, Appellant requested that he be paid off. The Master refused to do so and refused him permission to leave the ship. Appellant left the ship, with all of his personal belongings, about five minutes before the gangway was taken in. The ship got

underway and departed from Naples without Appellant. The latter had full knowledge that the ship was preparing to leave this port at the time he went over the gangway to the dock but he had no intention of returning to the vessel in order to sail with her.

Appellant then went to see Professor Martorano and was referred to a Dr. Romano who treated him on the 14th, 15th, 16th and 17th of June. Appellant was not hospitalized at Naples during the time of these treatments but stayed at a local hotel. Dr. Romano's report states that he cured Appellant from the effects of a fever by the use of penicillin injections.

Appellant was twenty-five years of age at the time of this alleged offense and he had been going to sea on American merchant marine ships for approximately three years. During this time, he received two admonishments for misconduct and a twelve months' suspension with the last six months on twenty-four months' probation from 30 July, 1947. Consequently, the present incident occurred during this probationary period.

OPINION

Appellant contends that the Examiner's findings of fact numbered 3,5,6,7,9, 11, 12, 13, and 14 are not supported by the evidence. Insofar as my findings of fact above have altered those of the Examiner, this contention is considered to be a valid one. Accepting Appellant's interpretation of the report of Dr. Romano, I have modified findings number 11, 12 and 13. Elsewhere in his brief, Appellant has indicated his agreement with findings number 3,5,6 and 9. With respect to findings number 7 and 14, there is substantial evidence in the record on which to base these findings even though there is also conflicting evidence to the contrary.

It is admitted by Appellant that he took his belongings and left the ship with the intention of seeking medical aid ashore. Since he did this knowing the ship was getting underway to leave port, there is no doubt that he intended to desert the vessel. His departure from the ship immediately before her gangway was taken in is conclusive evidence of this fact. The important question remaining is whether Appellant was in such poor health that he was justified in deserting the ship in order to protect his health.

It is my opinion that no such drastic action was necessary. Appellant was examined more than once by the Company doctor at

Naples and this doctor said there was nothing wrong with him that a few days rest would not cure. On the other hand, Professor Martorano thought Appellant had kidney trouble and should be hospitalized. But when Appellant returned to Martorano after the ship had departed, he was sent to another doctor who did not hospitalize Appellant and who reported that he cured Appellant from the effect of a fever, not kidney trouble. This seems to cast grave doubt on the value of Martorano's suggestion that Appellant should have been hospitalized. Apparently, the condition was completely remedied in four days while Appellant stayed at a hotel and went to Dr. Romano's office for treatments. In view of the conflict between the opinions of the Company doctor and Appellant's medical advisors, as well as the differences of opinion between the latter two doctors, I do not feel that Appellant was in such ill health as to make it necessary for him to desert the ship. Even though he honestly believed he should be in a hospital, he has failed to prove that such a step was, in fact, necessary. His own evidence is to the contrary. Since he is unable to justify his action in going over the authority of the Master and having taken the matter into his own hand, the order of the Examiner must be sustained.

ORDER

The Order of the Examiner dated 7 March, 1950, should be, and it is AFFIRMED.

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

Dated at Washington, D. C., this 1st day of August, 1950.

***** END OF DECISION NO. 447 *****