

In the Matter of Certificate of Service No. E-735915
Issued to: PHILLIP MARX

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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PHILLIP MARX

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

On 13 June, 1949, Appellant appeared before an Examiner of the United States Coast Guard at New York, New York, on a charge of misconduct supported by a specification alleging that while Appellant was serving as an Officers Bedroom Steward on board the SS WASHINGTON under the authority of Certificate of Service No. E-735915 did on or about 31 May, 1949, while the vessel was at sea, make improper advances towards James Sharpe, a passenger.

The Examiner, upon reading the specification to the Appellant and asking the Appellant as to how he pleaded, received the equivocal plea of "guilty with an explanation." The Examiner thereupon informed the Appellant that only a plea of "guilty" or a plea of "not guilty" could be entered, and further stated that if Appellant should plead "guilty" he would be given an opportunity to make a statement which Appellant might think would mitigate the seriousness of the offense. The Appellant thereupon pleaded "guilty." After the Investigating Officer had presented, in narrative form, a resume of the investigation, the Appellant took the stand and under oath explained the circumstances leading to the complaint against him. The Investigating Officer then proceeded to cross-examine the Appellant extensively in regard to the incident and concluded by introducing in evidence a log entry from book number 3 of the official log of the SS WASHINGTON, dated 1 June, 1949. No witnesses appeared for the Government, nor for the Appellant. The Examiner found both the charge and specification "proved" and entered an order of revocation.

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

1. That a plea of "guilty" was entered because Appellant had no thought that the charge was so serious.
2. That had a plea of "not guilty" been entered the result might have been different.
3. That an incorrect interpretation was made of Appellant's acts and no wrong was intended.
4. That Appellant's past record in the U.S. Army shows that he is a "regular fellow."

OPINION

Under the Coast Guard's basic concept of justice a man is presumed innocent until proved guilty. In order to maintain this presumption under our administrative proceedings, it is necessary that the accused be given a clear and full opportunity to comprehend all the implications of a plea of guilty. In the instant case, the Examiner upon receiving the plea of "guilty with an explanation" should, in addition to explaining the meaning of the plea of "guilty" with the attending opportunity to make a statement in mitigation, have explained the meaning of a plea of "not guilty" to the Appellant. This was not done and it is not considered that the Appellant had a free choice between the two pleas.

In addition, it is noted from the record that the Appellant stated, "I didn't have any evil words, sexy thoughts." (R.12) It is my opinion that this statement considered with Appellant's statement on cross-examination, "It wasn't meant to be as I say, evil and sexy, and the way it sounds" are inconsistent with the plea of "guilty" and the Examiner should have rejected such plea and should have entered a plea of "not guilty" in lieu thereof.

Finally, the only evidence introduced by the Investigating Officer in support of his narrative of his investigation was a certified copy of the log entry made by the master of the SS WASHINGTON, such entry being made upon the representation, not of the actual complainant and only witness, but upon the representation of his father. The log entry on its face shows that it was not made upon the direct knowledge of the master, but upon hearsay from the real complainant's father. Also the log entry is incomplete in that it does not show that the Appellant was provided with a copy of the entry, or that such entry was read to him, or that he was given an opportunity to comment thereon as required by R.S. 4597 (46 U.S.C. 702). It is considered that such failure renders the log entry insufficient to establish a prima facie case in support of the specification alleged.

CONCLUSION AND ORDER

I am of the opinion that the record of the hearing establishes serious doubt as to whether the Examiner fully afforded the Appellant an opportunity to enter a plea of "not guilty." I am further of the opinion that the Appellant's statements were inconsistent with his plea of "guilty" and that the Examiner should have entered a plea of "not guilty" in lieu thereof, and that the log entry of the SS WASHINGTON was improperly admitted in evidence.

For these reasons, the order of the Examiner dated 13 June, 1949, is REVERSED, and the case is REMANDED for further proceedings not inconsistent herewith.

J.F. FARLEY
Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 27th day of Sept., 1949.