

In the Matter of Merchant Mariner's Document No. Z-267425  
Issued to: EMIL TSCHIRNER

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES OF COAST GUARD

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EMIL TSCHIRNER

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.

On 26 March, 1951, an Examiner of the United States Coast Guard at Boston, Massachusetts, suspended Merchant Mariner's Document No. Z-267425 issued to Emil Tschirner upon finding him guilty of misconduct based upon five specifications alleging in substance that while serving as steward utility on board the American SS PIONEER STAR under authority of the document above described, on or about 4 January, 1951, while said vessel was at the port of Freemantle, Australia, he (1) disobeyed a lawful order of S.J. Kirby, Chief Officer; (2) wrongfully destroyed hospital equipment of the vessel. On 1 February, 1951, while said vessel was at the port of Adelaide, Australia, he (3) committed assault and battery upon Ernest White, second cook and baker; (4) used insubordinate and abusive language to and (5) committed assault and battery on S.J. Kirby, Chief Officer.

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 an attorney of his own selection, Appellant voluntarily elected to waive that right and act as his own counsel. The Examiner, however, arranged for Appellant to be represented by a Coast Guard officer. He entered a plea of "not guilty" to the charge and specifications 1, 3 and 5; "guilty" to specifications 2 and 4.

Thereupon, the Investigating Officer made his opening statement and the Investigating Officer introduced in evidence the testimony of Ernest White and Stanley John Kirby.

In defense, Appellant testified in his own behalf, generally denying knowledge of several events because he was intoxicated at the time the incidents occurred.

At the conclusion of the hearing, having given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by plea as to the second and fourth specifications and proved by proof of the first, third and fifth specifications and entered the order suspending Appellant's Merchant Mariner's Document No. Z-267425 and all other

licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority for a period of nine months outright suspension and an additional three (3) months on two (2) years probation.

From that Order, this appeal has been taken, and it is urged: the Examiner's Order is too severe, because:

- (1) Appellant's age, past clear record and long service justifies modification of the order;
- (2) The incidents occurred during periods of intoxication when he expressed his views of injustice and favoritism present in the ship's management.

APPEARANCES: Messrs. Buxton & Miller, of New York City, for Appellant.

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

#### FINDINGS OF FACT

On 4 January and 1 February, 1951, Appellant was serving as steward utilityman on board the American SS PIONEER STAR and acting under authority of his Merchant Mariner's Document No. Z-267425.

On 4 January, 1951, at Freemantle, Australia, Appellant, while intoxicated, disobeyed the lawful order of the Chief Officer to retire to his room; later, when confined in the vessel's sick bay, Appellant destroyed equipment and medical supplies of the vessel, by throwing them through the porthole.

On 1 February, 1951, at Adelaide, Australia, Appellant returned to his vessel from shore leave in an intoxicated condition and with his fist struck Ernest White. When the Chief Officer appeared on the scene, he, also, was first addressed by Appellant with abusive and insubordinate language. As the Chief Officer attempted to confine Appellant, he sustained a physical blow from Appellant.

Appellant's record as a seaman in the American merchant marine since 1942 is unblemished except for the incidents on the PIONEER STAR.

#### OPINION

I have nothing to add to the opinion of the Examiner who heard this case, and who has fully covered the subject in his written decision.

But, I am favorably impressed by Appellant's long service, and that he has not been heretofore guilty of misconduct requiring disciplinary action by this agency. Therefore, I direct that

ORDER

The Order of the Coast Guard Examiner dated Boston, Massachusetts, on 26 March, 1951, be MODIFIED to provide for suspension of Appellant's Merchant Mariner's Document No. Z-267425, and all other valid certificates of service held by Appellant for six months. The first three month's suspension shall be outright to commence when the document was surrendered; the remaining three months shall not be made effective provided no charges under R.S. 4450, as amended, are proven against him for acts committed within six months from 22 June, 1951.

As so MODIFIED, the Examiner's Order is AFFIRMED.

A.C. Richmond  
Rear Admiral, United States Coast Guard  
Acting Commandant

Dated at Washington, D.C., this 15th day of June, 1951.