

In the Matter of Merchant Mariner's Document No. Z-884909
Issued to: JAMES K. CANN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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JAMES K. CANN

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 18 April, 1952, an Examiner of the United States Coast Guard at New York City suspended Merchant Mariner's Document No. Z-884909 issued to James K. Cann upon finding him guilty of misconduct based upon four specifications alleging in substance that while serving as Boatswain in the service of the American SS CHARLES BULFINCH under authority of the document above described, on or about 21 March, 1952, he was wrongfully absent from the vessel at Aarhus, Denmark; on 22 March, 1952, he wrongfully failed to join the vessel when she departed from the latter port; on 24 March, 1952, he threatened the Master in a cafe at Aalborg, Denmark; and, on 25 March, 1952, he created a disturbance aboard the ship.

At the time of service of the charge and specifications on 16 April, 1952, 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. Since Appellant did not appear at the time and place designated for the hearing, the Examiner entered a plea of "not guilty" to the charge and each specification proffered against Appellant. The hearing was then conducted "in absentia."

After the Investigating Officer had made his opening statement, he introduced in evidence certified copies of entries in the official log book of the BULFINCH as well as the testimony of the Master, Third Mate, and First Assistant Engineer of the BULFINCH.

At the conclusion of the hearing, the Examiner announced his findings and concluded that the charge had been proved by proof of the four specifications. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-884909, 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 - three months' outright suspension and the balance of six months on twelve months probation from the date of the termination of the outright suspension.

From that order, this appeal has been taken, and it is urged that the order is too severe particularly in view of Appellant's prior clear record during the five years he has been sailing on

ships of the United States Merchant Marine.

Appearances: Morris Weisberger, Vice President, Seafarers International Union of North America.

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

FINDINGS OF FACT

On a foreign voyage covering the dates of 21 March to 25 March, 1952, inclusive, Appellant was acting as Boatswain in the service of the American SS CHARLES BULFINCH and under authority of his Merchant Mariner's Document No. Z-884909.

On 21 March, 1952, while the BULFINCH was at Aarhus, Denmark, Appellant was absent from the ship without permission during the regular working hours. He failed to report for duty at 0800 and remained absent from his duties for the balance of the day.

On 22 March, 1952, Appellant failed to join the ship when she departed from Aarhus, Denmark, at 0300. The sailing time had been posted and announced as 0100 on this date. Appellant rejoined the ship at Norresundby, Denmark, on 24 March, 1952.

On the evening of the latter date, the Master, Purser and Chief Engineer of the BULFINCH were seated at a table in a cocktail lounge at Aalborg, Denmark, with a local businessman. (Aalborg is across the river from Norresundby.) Appellant entered the lounge and talked loudly as he consumed a drink at the bar. Then in a belligerent manner and inebriated condition, Appellant approached the Master's table, directed profane and abusive language towards the Master when he told Appellant to leave, and swung at the Purser while lunging at him. The table was broken in the scuffle before some Danes took hold of Appellant and escorted him from the premises.

At about 0030 on 25 March, 1952, Appellant caused a disturbance aboard the ship by threatening various members of the crew and damaging ship's property with a six pound maul. The Master found Appellant asleep on a bunk in the fireman's forecabin. He was fully clothed and still in possession of the maul. The Master had the local police remove Appellant and confine him in jail for the balance of the night. He returned on board before 0800 and was permitted to serve as an ordinary seaman for the duration of the voyage.

OPINION

There has been no issue raised in this appeal which attempts to justify Appellant's conduct. It is simply claimed that the order imposed is excessive because there is no record of any prior disciplinary action having been taken against Appellant.

Considering the several offenses committed by Appellant, I do not think there is adequate reason to mitigate the suspension ordered. The Master felt that Appellant's infractions of discipline had reached such a point on 25 March, 1952, that it was necessary for the safety of the crew and the

ship to have Appellant removed from the ship. The position of a Boatswain on a ship is such that he is required to set a good example in matters of discipline; and when his actions are to the contrary, he should be more severely censured than a seaman of less authority would be under the same circumstances. Since the offenses alleged have a direct bearing on the safety of life and property at sea, it is my opinion that the order imposed is comparatively light and it will be sustained.

ORDER

The order of the Examiner dated at New York, New York, on 18 April, 1952, is AFFIRMED.

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

Dated at Washington, D. C., this 4th day of November, 1952.