

In the Matter of License No. 76169 and Merchant Mariner's
Document No. 123088-D1
Issued to: WILLIAM B. McNEAL

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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WILLIAM B. McNEAL

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 14 November, 1952, an Examiner of the United States Coast Guard at Wiscasset, Maine, suspended License No. 76169 and Merchant Mariner's Document No. 123088-D1 issued to William B. McNeal upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as Second Mate on board the American SS TEXAS TRADER under authority of the document above described, on or about 25 October, 1952, while said vessel was in a foreign port, he wrongfully used profane and disrespectful language to the Master.

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. He entered a plea of "not guilty" to the charge and the above specification.

Thereupon, the Investigating Officer introduced in evidence the testimony of the Master and the Chief Mate who was present during the time referred to in the specification.

In defense, Appellant offered in evidence his own sworn testimony and that of the Chief Engineer who stated that he left at the beginning of the argument between the Master and Appellant. Appellant testified that he had no respect for the Master.

At the conclusion of the hearing, having given both parties an opportunity to submit argument and proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order suspending Appellant's License No. 76169 and Merchant Mariner's Document No. 123088-D1 for a period of four months - two months outright and two months on twelve months' probation from 14 January, 1953.

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

that Appellant did not use profane language; the incident was due to the Master's attitude; this is Appellant's first offense in twenty-four years at sea; and, therefore, the suspension ordered was excessive.

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

FINDINGS OF FACT

On 25 October, 1952, Appellant was serving as Second Mate on board the American SS TEXAS TRADER and acting under authority of his License No. 76169 while the ship was in the port of Santos, Brazil.

On this date, Appellant and the Master were in the Officers' Mess on the ship when Appellant commenced upbraiding the Master in a loud and abusive tone of voice because of the shortage of cigarettes aboard the ship. Appellant used language which was extremely disrespectful to the point of being foul, crude and vulgar. It is not necessary or appropriate to repeat the language used by Appellant - but see page 8 of the hearing transcript.

There is no record of prior disciplinary action having been taken against Appellant during his twenty-four years at sea.

OPINION

As stated by the Examiner, a showing of such gross disrespect for the authority of the Master could undermine completely the discipline which must be maintained aboard ship. This is emphasized by the fact that Appellant was an officer and, therefore, his conduct should have set a good example for the unlicensed members of the crew. His actual behavior was just the opposite.

Although the evidence does not disclose that Appellant used profane language towards the Master, I do not think the order imposed was excessive since the language used was extremely disrespectful and personally insulting. Hence, the conclusion of the Examiner is modified to the extent that the specification was "proved in part" rather than "proved," but the order will be sustained. Undoubtedly, the order would have been more severe except for Appellant's long, unblemished record.

ORDER

The Order of the Examiner dated at Wiscasset, Maine, on 14 November, 1952, is ~~REVERSED~~ **AFFIRMED**.

Merlin O'Neill

Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 2nd day of April, 1953.