

In the Matter of License No. 11460 Merchant Mariner's
Document No. 39508-D3
Issued to: GEORGE ABBEY

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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GEORGE ABBEY

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 28 November, 1952, an Examiner of the United States Coast Guard at New York City suspended License No. 11460 and Merchant Mariner's Document No. 39508-D3 issued to George Abbey upon finding him guilty of misconduct based upon one specification and inattention to duty based upon three specifications alleging in substance that while serving as Third Assistant Engineer on board the American SS MERRIMAC under authority of the license above described, on or about 18 May, 1952, while said vessel was in the port of Rotterdam, Holland, he wrongfully left the engine spaces while on watch (misconduct); he left the engine spaces in charge of unlicensed personnel; he negligently permitted the loss of water in the vessel's boiler; and he negligently caused the engine plant of the vessel to be shut down.

At the time of service of the charges and specification in New York City on 13 June, 1952, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled, the possible results of the hearing and the fact that the hearing would proceed in his absence if he failed to appear at the specified time and place. When Appellant failed to put in an appearance at the commencement of the hearing on 17 June, 1952, the Examiner conducted the hearing in absentia in accordance with the regulations and he entered a plea of "not guilty" to each charge and specification on behalf of Appellant.

Thereupon, the Investigating Officer made his opening statement and requested that written interrogatories be submitted to the Master and several members of the crew of the MERRIMAC because the ship was in foreign waters. The Examiner granted the request and adjourned the hearing with leave granted for Appellant to submit cross-interrogatories within a period of five days from 17 June, 1952.

When the hearing was reconvened on 26 November, 1952, a Coast Guard officer was appointed to represent Appellant in accordance with a request received from Appellant subsequent to the opening day of the hearing. At the time of this request, Appellant also submitted his sworn statement concerning the circumstances surrounding the alleged offenses and

requested that this statement be put in evidence.

Without objection, the Investigating Officer introduced in evidence the completed interrogatories which had been answered under oath by the Master, Chief Engineer, Junior Third Assistant Engineer, and an Oiler who were all in the service of the MERRIMAC on 18 May, 1952.

In defense, counsel for Appellant offered in evidence Appellant's sworn statement and rested his case.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charges had been proved by proof of the four specifications. He then entered the order suspending Appellant's License No. 11460 and Merchant Mariner's Document No. Z-39508-D1, 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 six months.

From that order, this appeal has been taken, and it is urged that the decision of the Examiner was contrary to the evidence; the evidence was insufficient to support the findings; the Examiner's decision was based upon inadmissible evidence; and Appellant has never before been involved in a proceeding against his license.

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

FINDINGS OF FACT

On 18 May, 1952, Appellant was serving as Third Assistant Engineer on board the American SS MERRIMAC and acting under authority of his License No. 11460 while the ship was in the port of Rotterdam, Holland.

Appellant had reported for duty on board the MERRIMAC at 1930 on 17 May, 1952, and he had been assigned to stand the twelve to four engine room watches. Appellant then arranged with the Second Assistant Engineer to stand his 1600 to 2000 watch on 18 May, 1952, with the understanding that the Second Assistant would stand one of Appellant's watches.

At 1600 on 18 May, Appellant went to the engine room and commenced standing the watch. Shortly thereafter, Appellant told the oiler on watch to call him if there was any trouble and he left the engine room. At about 1800, the Master saw Appellant using a telephone and told him to stand his watches below in the engine room.

Earlier on the same day, the Master had ordered Appellant to stay on board and see that everything was satisfactory during the 2000 to 2400 watch of the Junior Third Assistant on 18 May. Nevertheless, at about 1830 on this date while Appellant was in his cabin, he induced the Junior Third Assistant to agree to relieve him at 1900 so that Appellant could go ashore for personal

reasons.

At about 1840, the water in both boilers was low and both safety valves commenced popping. The oiler on watch went to call Appellant and found him in his cabin lying down. Appellant went to the engine room immediately but the Junior Third Assistant had heard the safety valves popping and arrived there first. Since Appellant did not answer the Junior Third's offer to help, the latter left the engine room and returned again at about 1900 to relieve Appellant.

In the meantime, Appellant had been unsuccessful in his attempt to build up the steam pressure in the boilers. Appellant left the engine room shortly after 1900 and he departed from the ship at about 1930. The inexperienced Junior Third Assistant was unable to remedy the situation in the engine room and the ship's operating plant ceased functioning when the auxiliary generator stopped at 1948 due to the loss of power. This plant failure caused a delay of about nineteen hours in the cargo pumping operations of the ship.

On the following day, Appellant was discharged from duty on the ship. There is no record of prior disciplinary action having been taken against him during fifteen years at sea.

OPINION

The findings of the Examiner and the four specifications are supported by the evidence contained in the interrogatories and Appellant's sworn statement; and since the Investigating Officer's witnesses were not available to testify at the hearing, there is no support for the claim that the decision of the Examiner was based on inadmissible evidence. The interrogatories were properly completed and Appellant deprived himself of the opportunity to submit cross-interrogatories by failing to appear at the commencement of the hearing or within five days thereafter.

The proven offenses were aggravated by Appellant's failure to comply with the Master's orders to stay in the engine room during Appellant's own watch and to stand-by on board while the Junior Third Assistant was on watch; and to an even greater extent by the fact that Appellant left the ship to attend to his own personal affairs at a time when he knew that the ship's entire operating plant was in danger of failing completely. As indicated by the Examiner, this was a flagrant disregard of duty by Appellant which would merit greater censure except for his prior unblemished record.

ORDER

The order of the Examiner, dated at New York, New York, on 28 November 1951, is ~~AFFIRMED~~ **AFFIRMED**.

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

Dated at Washington, D. C., this 28th day of April, 1953.

