

In the Matter of Merchant Mariner's Document Z-243771-D1
Issued to: HENRY D. LAKE

DECISION AND FINAL ORDER
UNITED STATES COAST GUARD

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HENRY D. LAKE

In accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1, this joint appeal has been taken from the decisions rendered in connection with two separate hearings which were conducted by two different Examiners of the United States Coast Guard at San Francisco, California, on 30 June, 1953, and 31 July, 1953. Appellant requested that these two cases be reviewed jointly.

As a result of the hearing conducted on 30 June, 1953, the Examiner suspended Merchant Mariner's Document No. Z-243771-D1 issued to Henry D. Lake upon finding him guilty of misconduct based upon three specifications alleging in substance that while serving as an oiler on board the American SS PROVO VICTORY under authority of the document above described while said vessel was in a foreign port, he failed to perform his duties due to intoxication on or about 6, 7 and 8 May, 1953 (First specification); he was absent from his vessel and duties without proper authority on or about 28, 29 and 31 May, 1953 (Second Specification); and he refused to turn to on or about 2 June, 1953 (Third Specification).

At the time Appellant was served with the original of the charge and specifications, he 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 failed to appear at the hearing which was originally scheduled for 23 June, 1953, and diligent efforts to locate him were of no avail, the hearing was held on 30 June, 1953. The Examiner entered pleas of "not guilty", on behalf of Appellant, to the charge and each specification proffered against him. The hearing was then conducted in absentia in accordance with 46 C.F.R. 137.09-5(f) and 46 C.F.R. 137.09-35. The Investigating Officer made his opening statement and introduced in evidence an extract from the Shipping Articles of the PROVO VICTORY as well as entries from the official logbook of the latter ship. Thereupon, the Examiner announced his findings and concluded that the charge had been proved by proof of the three specifications. He then entered an order suspending Appellant's Merchant Mariner's Document No. Z-243771-D1, and all other valid licenses and documents issued to Appellant by the United States Coast Guard or any predecessor authority, for a period to extend until four months after Appellant surrendered his document; and for an additional period of twelve months on two years probation from the date of termination of the outright suspension. Since Appellant was not present at the hearing, his document was not surrendered at that time.

On 30 July, 1953, Appellant took an appeal from the above decision; and, at this time, he was served with a copy of three additional misconduct specifications alleging in substance that while

appellant was serving as a fireman-watertender under authority of his Merchant Mariner's Document No. Z-243771-D1, he absented himself from his duties on board the USNS CANEY while in a foreign port on or about 2 and 3 May, 1952 (First Specification); he failed to join the USNS CANEY at a foreign port on or about 10 May, 1952 (Second Specification); and he engaged in an altercation with a fellow crew member, Chester E. Hayes, on board the SS R. E. WILSON, on or about 19 July, 1951 (Third Specification).

At the second hearing which was conducted on 31 July, 1953, 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 counsel 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 First Specification and "guilty" to the Second and Third Specifications proffered against him. Thereupon, the Investigating Officer made his opening statement and introduced in evidence certified copies of extracts from the Shipping Articles and official logbook of the USNS CANEY. In defense, Appellant did not submit any evidence concerning the First Specification to which he had entered a plea of "not guilty." When asked by the Examiner about the "altercation" alleged in the Third Specification, Appellant stated merely that it was a "personal beef." 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 proof of the First Specification and by plea to the Second and Third Specifications. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-243771-D1, and all other valid documents issued to Appellant by the United States Coast Guard or any predecessor authority, for a period of six months; the first four months to run concurrently with the four months outright suspension imposed at the conclusion of the hearing which had been conducted on 30 June, 1953. Appellant surrendered his document on the date of the second hearing and a temporary document was issued to him on 3 August, 1953.

Appellant's grounds for appeal from the results of the first hearing are that since the hearing was held in absentia, he was unable to contest the points in issue and it was impossible to draw factual conclusions when witnesses did not appear. With respect to the First Specification, Appellant asserts that it was impossible to obtain transportation back to the ship due to rebel warfare at Saigon, Indo-China, on 8 May, 1953. Concerning the Second Specification, Appellant states that he was gone one day due to 31 May, 1953, being a holiday. Appellant further contends that the suspension imposed amounts to double jeopardy because he was logged and fined for the same offenses; and that Appellant was logged because he does not deem it wise to appear below in the engine room for his watches when he has been imbibing in alcoholic beverages.

With respect to the second hearing, Appellant urges that the Coast Guard was too long in bringing the matter to a hearing inasmuch as the misconduct on the R. E. WILSON occurred over two years ago; and that the order is too severe.

FINDINGS OF FACT

On all dates mentioned herein, Appellant was in the service of various merchant vessels of the United States and acting under the authority of his Merchant Mariner's Document No. Z-243771-D1.

On 19 July, 1951, while Appellant was serving as a fireman-watertender on board the SS R. E. WILSON, he engaged in an altercation with a fellow crew member, Chester E. Hayes. (The record contains no evidence as to the specific nature of this altercation.)

On 2 and 3 May, 1952, while Appellant was serving as a fireman-watertender on board the USNS CANEY, at Yokohama, Japan, Appellant failed to report for duty for a period of eight hours on each of the two days. For these offenses, he forfeited the total of four days' pay which was \$35.49.

On 10 May, 1952, while the CANEY was at Naha, Okinawa, Appellant failed to join the vessel.

Between 8 April, 1953, and 16 June, 1953, Appellant was serving as an oiler on board the SS PROVO VICTORY.

On 6, 7 and 8 May, 1953, Appellant failed to stand his watches and he was intoxicated most of that time while the PROVO VICTORY was discharging cargo at Saigon, French Indo-China. Appellant was absent from his duties on these three days without permission from any proper authority. He was logged two days' pay for each day's offence - a total of \$60.48 or six days' pay.

On 28, 29 and 31 May, 1953, while the ship was at Yokohama, Japan, Appellant was absent from his duties and the ship without proper authority. Appellant had been told specifically to report for duty on 31 May, 1953, which was a Sunday. For these three days, he was again logged \$60.48.

On 2 June, 1953, while the ship was at Yokohama, Japan, Appellant failed to turn to at 0800 on his 0800 to 1200 watch. At 0900, he was in his bunk and refused to turn to. For this offense, Appellant was logged \$10.08.

Appellant's prior record consists of a one year suspension on 18 months probation in April, 1945, for drunkenness, dereliction of duty, assault and possession of a dangerous weapon; and a two months' suspension on six months' probation in March, 1946, for failure to join his vessel.

OPINION

Appellant was proven guilty of offenses which include failing to perform his duties on nine different days over a period of about thirteen months while Appellant was serving on two different ships; and failing to join his ship on one occasion in a foreign port. All of these offenses constitute conduct of the same character - acts in derogation of the discipline and obedience to authority which must be maintained on shipboard in order to safely carry out the operations of the ship. Appellant's prior record consists of offenses of the same general nature.

For these reasons, I consider Appellant's contentions on appeal to be without merit insofar as mitigating the order imposed at the first hearing. Appellant's failure to appear at the first hearing was through his own fault and ample evidence was produced to uphold the specifications. There was no evidence to refute the prima facie case made out with respect to each of the three

specifications. These remedial administrative proceedings do not constitute double jeopardy, in any case, because they are not penal in nature. In addition, Appellant's repeated forfeitures of pay did not serve the purpose of these proceedings which is to prevent seamen from sailing who do not properly perform their duties on board ship or who commit other acts which are dangerous to lives and property at sea. The order of 30 June, 1953, will be sustained.

With respect to the second hearing, the Third Specification alleges that Appellant engaged in an "altercation" but there are no details contained in the record as to the facts upon which this specification is based. Appellant referred to the incident as a "personal beef" and there is no evidence that Appellant assaulted, battered or otherwise had physical contact with the other seaman during the course of this "altercation." Therefore, since the Examiner very strongly indicated that the entire additional two months' outright suspension was imposed because of proof of the Third Specification, the order of 31 July, 1953, will be modified to eliminate the two months' additional suspension.

ORDER

The Order of the Examiner dated at San Francisco, California, on 30, June, 1953, is AFFIRMED.

The Order of the Examiner dated at San Francisco, California, on 31 July, 1953, is modified to read that the suspension shall be in effect until four (4) months after the date of surrender of Appellant's document to the Coast Guard; and this suspension shall run concurrently with the four (4) months outright suspension imposed under the above Order of 30 June, 1953. As so MODIFIED, the Order of 31 July, 1953, is AFFIRMED.

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

Dated at Washington, D. C., this 23rd day of October, 1953.