

In the Matter of Merchant Mariner's Document No. Z-143931
Issued to: HANS CHRISTIAN FURSTERLING

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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HANS CHRISTIAN FURSTERLING

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.

By order dated 19 March, 1954, an Examiner of the United States Coast Guard at New York, New York, suspended Merchant Mariner's Document No. Z-143931 issued to Hans Christian Fursterling upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as chief cabin steward on board the American SS ARGENTINA under authority of the document above described, on or about 24 to 29 September, 1952, while said vessel was at sea enroute from Buenos Aires, Argentina, to New York, he did wrongfully aid and abet a stowaway to hide and remain on board the vessel.

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. Appellant was represented by an attorney of his own selection and he entered a plea of "not guilty" to the charge and two specifications proffered against him. A specification alleging that Appellant wrongfully landed an alien was found "not proved" by the Examiner.

At the conclusion of the hearing, the Examiner announced his findings and concluded that the charge had proved by proof of the one specification and entered the order suspending Appellant's Merchant Mariner's Document No. Z-143931 and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, for a period of six months - one month outright and five months on twelve months probation.

From that order, this appeal has been taken. No appeal has been taken from the findings, conclusions of law or opinion of the Examiner. It is contended that the order is excessive since the other two seamen who were involved in this matter received wholly probationary suspensions although their involvement was far more serious than Appellant's and they also facilitated the landing of the stowaway.

APPEARANCES: Irving Rader, Esquire, of New York City, of Counsel.

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

FINDINGS OF FACT

On a foreign voyage including the dates of 24 to 29 September, 1952, Appellant was serving as chief cabin steward on board the American SS ARGENTINA and acting under authority of his Merchant Mariner's Document No. Z-143931.

On and between these dates, Appellant aided and abetted a stowaway in remaining hidden on board while the ship was enroute from Buenos Aires, Argentina, to the Port of New York. Appellant was aware of the presence of the stowaway but did not report him to any of the ship's officers.

OPINION

Appellant was under an obligation to report immediately the presence of the stowaway. His intentional disregard of this duty, while serving as chief cabin steward, was a more serious offense of misconduct than the acts of the other two seamen who were serving as a bedroom steward and a bell boy. Since Appellant occupied a much higher position of responsibility than either of these other two seamen, the order of the Examiner will be sustained despite Appellant's failure to participate in the landing of the stowaway when the ship arrived at New York. It is also noted that the orders imposed in all three cases were lenient in view of the nature of the offenses.

ORDER

The order of the Examiner dated at New York, New York, on 19 March, 1954, is ~~REVERSED~~ **AFFIRMED**.

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

Dated at Washington, D.C., this 11th day of May, 1954.