

In the Matter of Merchant Mariner's Document No.Z-607890-D1
Issued to: LOUIS H. PETTAWAY

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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LOUIS H. PETTAWAY

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 2 July, 1954, an Examiner of the United States Coast Guard at Seattle, Washington, directed an admonition against Louis H. Pettaway, holder of Merchant Mariner's Document No. Z-607890-D1, upon finding him guilty of misconduct based upon two specifications alleging in substance that while serving as Steward on board the American SS OCEANIC under authority of the document above described, on or about 10 and 11 August, 1952, while said vessel was in the port of Cherbourg, France, he wrongfully failed to perform his duties between 1600 and 1800; and on or about 10 December, 1952, while the OCEANIC was at Cristobal, Canal Zone, he wrongfully created a disturbance on board the ship.

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 each specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence certified copies of two entries in the Official Logbook of the OCEAN. The Examiner sustained counsel's objection to the introduction of an ex parte statement, attached to the logbook, on the ground that the statement did not come within the exception to the hearsay rule which applies to entries in a ship's Official Logbook. The Investigating Officer then rested his case.

In defense, Appellant offered in evidence his own testimony. Appellant denied the allegations contained in the specifications and stated that he had no knowledge concerning either of the log entries he was served with the charge and specifications on 29 June, 1954.

Among other contentions raised on appeal, it is urged that the log entries do not constitute evidence which is sufficient to support the specifications.

APPEARANCES: Messrs. Kane and Spellman of Seattle, Washington, by Joseph S. Kane, Esquire, of Counsel.

OPINION

The only evidence in the record which tends to support the specifications are the certified copies of two entries contained in the Official Logbook of the OCEANIC. Such entries are made in the regular course of business and if the entrants are unavailable to appear as witnesses, the entries are admissible as exceptions to the hearsay rule of the principle of necessity and in accordance with 28 U.S.C. 1732. Wigmore on Evidence, 3d Edition, secs. 1404, 1521, 1641(2). But the entries in question do not conform with the statutory requirements in that they do not show that the Appellant was furnished with a copy of either entry, or that such entries were read to him, and that he was given an opportunity to reply to the entries. 46 United States Code 702. Therefore, the log entries are not sufficient evidence to establish a prima facie case in support of the specifications. Unlike some types of cases such as desertion and failure to join, there is no doubt that Appellant was available in order to make possible compliance with the statute. Hence, there was compliance with neither the letter nor spirit and intent of the law.

The only additional evidence was the testimony of the Appellant. Since this did not contain any admission in support of the allegations in the specifications, the charge and specifications will be dismissed. I do not believe that a remand of the case at this late date would produce any conclusive evidence of appellant's alleged misconduct.

Since the ex parte statement (which was not received in evidence by the Examiner) was referred to in one of the log entries as an attachment to the log entry, the statement was, in effect, an entry in the logbook and equally admissible in evidence. However, it could not have been utilized to make out a prima facie case to any greater extent than the log entry to which it was attached.

ORDER

The order of the Examiner dated at Seattle, Washington, on 2 July, 1954, is VACATED, SET ASIDE and REVERSED.

Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 24th day of January, 1955.