

In the Matter of Merchant Mariner's Document No.Z-577281-D6
Issued to: JOSEPH NEUPAUER

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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JOSEPH NEUPAUER

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 15 October, 1953, an Examiner of the United States Coast Guard at San Francisco, California, revoked Merchant Mariner's Document No. Z-577281-D6 issued to Joseph Neubauer upon finding him guilty of misconduct based upon eight specifications alleging in substance that while serving as Deck Engineer on board the American SS OCEAN LOTTE under authority of the document above described, while said vessel was on a foreign voyage, he failed to perform his duties by reason of being under the influence of liquor on 14 March, 13 April, 27 April, 2 June, 26 June and 17 July, 1953; and he was under the influence of liquor on board the vessel on 24 June and 25 July.

At the time of service of the charge and specifications, the 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. Since Appellant failed to put in an appearance at the hearing, the Examiner entered a plea of "not guilty" on behalf of Appellant and conducted the hearing in absentia in accordance with 46 C.F.R. 137.09-5(f), 137.09-35.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence pertinent portions of the ship's Official Logbook and Shipping Articles as well as the testimony of the Master, Chief Engineer and First Assistant Engineer. The Investigating Officer then rested his case.

At the conclusion of the hearing, the Examiner announced his findings and concluded that the charge had been proved by proof of the eight specifications. He then entered the order revoking Appellant's Merchant Mariner's Document No. Z-577281-D6 and all other licenses, certificates and documents issued to this Appellant by the United States Coast Guard or its predecessor authority. The Examiner's decision was not served on Appellant until he was located on 13 or 14 July, 1954.

From that order, this appeal has been taken, and it is urged that the charges against Appellant are false. Appellant claims that the Master of the OCEAN LOTTE wanted to discredit Appellant because he knew the Master stole approximately \$7,500 worth of Government property from the

ship's cargo and the Master heard that Appellant intended to report the thefts to the F.B.I. Appellant contends that he did not attend his hearing in San Francisco because he was sick and also because he went to Seattle, Washington, and reported the cargo theft to the F.B.I. For these reasons, Appellant requests that he be granted a new hearing in New York in order to show that the Examiner's decision was based on fabricated evidence.

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

FINDINGS OF FACT

On a foreign voyage from 13 March, 1953, to 1 September, 1953, Appellant was serving as Deck Engineer on board the American SS OCEAN LOTTE and acting under authority of his Merchant Mariner's Document No. Z-577281-D6.

While the ship was at Aberdeen, Washington, Appellant was ordered by the First Assistant Engineer to be on board in order to oil the winches on 14 and 15 March, 1953. Appellant was not on board on 14 March until the evening of that day when he returned to the ship in such an intoxicated condition that he was not able to turn to on that day or the following day.

In 13 and 27 April, 1953, while the ship was at Yokohama, Japan, Appellant was relieved of his duties due to his intoxicated condition after he had worked approximately four hours on the former date; and, on the latter date, Appellant was unable to perform his duties due to being under the influence of intoxicants. This interfered with the ship's operations since cargo was being moved and it was Appellant's regular duty, as the only Deck Engineer in the service of the ship, to oil the winches and otherwise take care of the deck equipment.

While the ship was at Kobe, Japan, on 2 June, 1953, Appellant went on board the ship at 0930 under the influence of intoxicants. He did not work on this date and he went ashore again shortly after going on board the ship.

The ship was at Moji, Japan, on 24 and 26 June, 1953. At about 2200 on 24 June, Appellant was taken on board, in a very intoxicated condition, by a U.S. Army Military Policeman. Appellant was put to bed but he got up and threatened to commit suicide until he was quieted with a sedative. On 26 June, Appellant was not on board to perform his duties. At about noon on this date, the Master was called ashore and found Appellant in a very drunken condition. He was custody of the Japanese police for non-payment of a bar bill. The Mater paid the bill and placed Appellant in the custody of the U.S. Army to receive medical treatment. Appellant returned to the ship in a sober condition on 30 June, 1953.

On 17 and 25 July, 1953, the ship was at Pusan, Korea. On 17 July, the ship was working cargo but Appellant was not able to perform his duties, in connection with the operation of the winches, because he was under the influence of intoxicants. On 25 July, Appellant was under the influence of intoxicants to such an extent that he had to be taken on board the ship by two U.S. Army Military Policemen who found Appellant wandering around with a cut finger. Appellant was

able to turn to and perform his duties on the following day.

Appellant's prior record consists of an admonition in 1948 for failing to join his ship and a one month suspension in 1952 for the same type of offense.

The testimony of the three witnesses indicates that Appellant was a very good mechanic when he was sober but that his condition often reached a point of complete helplessness when the ship was in port. At such latter times, Appellant's services were most in demand in connection with the operation of the winches used for moving cargo. As a result of his repeatedly intoxicated condition, Appellant not only created a threat to the safety of life and property on the ship when he was not able to perform his duties pertaining to the dangerous operations of handling cargo; but he impeded the progress of other functions on the ship because someone else had to leave his work undone on many occasions in order to perform Appellant's essential duties on the winches.

The points raised on appeal are too incongruous to relate in detail. There is absolutely no evidence in the record to support Appellant's contention that the Master was stealing the ship's cargo. The Master's testimony was supported by the testimony of the Chief Engineer and First Assistant Engineer at the hearing; and some of the pertinent entries in the Official Logbook were signed by the Chief Mate and Second Mate as well as by the Master and Chief Engineer. Thus, the Master's version of Appellant's conduct is corroborated by four different officers serving on the ship. Also, it seems absurd that Appellant would go from San Francisco to Seattle in order to notify the F.B.I. of any suspected theft when he could have not only told his story to the Examiner at the hearing in San Francisco but he also could have notified the F.B.I. in the latter city.

For these reasons, it is my opinion that the points raised on appeal are without merit and that the cumulative offenses of the same nature justify the order of revocation imposed by the Examiner.

ORDER

The order of the Examiner dated at San Francisco, California, on 15 October 1954, is ~~REVERSED~~ **AFFIRMED**.

J. A. Hirshfreed
Rear Admiral, United States Coast Guard
Acting Commandant

Dated at Washington, D.C., this 25th day of January, 1955.