

In the Matter of Merchant Mariner's Document No. Z-734958-D1
Issued to: LEE POY

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

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LEE POY

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 12 August, 1954, an Examiner of the United States Coast Guard at Portland, Oregon, suspended Merchant Mariner's Document No. Z-734958-D1 for a period of six months upon finding him guilty of misconduct based upon a specification alleging in substance that while serving as a fireman-watertender on board the American SS FRONTENAC VICTORY under authority of the document above described, on or about 2 July, 1953, while said vessel was in the port of San Francisco, California, he overstayed a Crewman's Landing Permit issued for a period of 29 days.

FINDINGS OF FACT

On 3 June, 1953, Appellant was discharged from the American SS FRONTENAC VICTORY upon termination of her Shipping Articles at San Francisco, California. Appellant had been in the service of the ship as a fireman-watertender and acting under the authority of his Merchant Mariner's Document No. Z-734958-D1 until this date.

On the date of discharge, Appellant was issued an alien Crewman's Landing Permit by the Immigration authorities. This permit authorized Appellant to remain in the United States for a period of time not to exceed 29 days or until 20 July, 1953. Appellant did not depart from this country prior to 20 January, 1954, when he was apprehended by the Immigration authorities. At this time, Appellant was working ashore and he had been continuously in the United States since the date of issuance of the temporary permit.

OPINION

Although there was a violation of the terms of the 29 day permit issued to Appellant under 8 U.S.C. 1282(a), this agency does not have jurisdiction to take action under R.S. 4450, as amended (46 U.S.C.239), because of the fact that Appellant was not acting under the authority of his document at the time of the alleged offense. The record shows that Appellant signed off the Shipping Articles of the FRONTENAC VICTORY on 3 June, 1953, and that he had not subsequently served on any ship up to the time when he was

taken into custody on 20 January, 1954. Insofar as the record discloses, there was no intent to violate the conditions of the permit prior to its expiration on 2 July, 1953, and the specification is so worded to allege an offense not on 3 June, 1953, but on or about 2 July, 1953.

This presents a different situation than where a seaman is actually signed on the Shipping Articles of a ship when he commits an act of misconduct ashore. In the latter situation, there is jurisdiction under R.S. 4450 since the seaman is in the service of the ship and, therefore, acting under the authority of his document even though he is not on board the ship at the time the offense is committed.

Due to the jurisdictional defect that Appellant was not in the service of the ship at the time of the alleged offense, the charge and specification are dismissed.

ORDER

The Order of the Examiner dated at Portland, Oregon, on 12 August, 1954, is VACATED, SET ASIDE and REVERSED.

A. C. Richmond
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 1st day of March, 1955.