

**In the Matter of Merchant Mariner's Document No. Z-500600-D2 and all Other Licenses,
Certificates and Documents**

Issued to: NICOLA ANTHONY GIAMMARINO

**DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD**

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NICOLA ANTHONY GIAMMARINO

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 25 May 1956, an Examiner of the United States Coast Guard at New York, New York suspended Merchant Mariner's Document No. Z-500660-D2 issued to Nicola Anthony Giammarino upon finding him guilty of negligence based upon a specification alleging in substance that while serving as Boatswain's Mate on board the American SS INDEPENDENCE under authority of the document above described, on or about 21 April 1956, he failed to replace the limit switch roller wheels on #10 and #12 lifeboat davits, thereby contributing to a casualty to #10 and #12 lifeboats.

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. Although advised of his right to be represented by counsel of his own choice, Appellant voluntarily elected to waive that right and act as his own counsel. He entered a plea of "guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement. Appellant stated that it was his duty to replace the limit switch roller wheels the day after they were removed but that he had forgotten to do so.

At the conclusion of the hearing, the Examiner announced his decision and concluded that the charge and specification had been proved by plea. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-500660-D2, and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of two months.

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

FINDINGS OF FACT

On 20 and 21 April 1956, Appellant was serving as Boatswain's

Mate on board the American SS INDEPENDENCE and acting under authority of his Merchant Mariner's Document No. Z-500660-D2 while the ship was at sea.

On 20 April 1956, the Chief Boatswain told Appellant to have the limit switch roller wheels on #10 and #12 lifeboat davits removed and cleaned while the gravity davits were being painted. Appellant had the roller wheels removed by a seaman at approximately 0800 on 20 April.

The purpose of the limit switches is to provide an automatic cut-off of power from the electric winches after the boats are two-blocked and the davit heads are in their stowed position. The limit switches on gravity davits will not operate properly unless the limit switch roller wheels are in place.

Shortly after 1500 on 21 April 1956, a routine fire and boat drill was held. The #10 and #12 lifeboats were lowered with no personnel in them. After the two boats were two-blocked and the davit heads were hoisted to their stowage positions by the winches, the limit switches did not cut off the power. The continued strain snapped the after fall on the #10 lifeboat and both falls on the #12 lifeboat. The latter fell into the water and was badly damaged. While the #10 lifeboat was hanging by its forward fall, Appellant entered the boat and securely lashed it, thereby preventing it from falling into the sea. The damage to the #10 lifeboat was considerably less than to the #12 lifeboat. There were no personnel injuries.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant appeals from the severity of the order in view of the fact that the Chief Boatswain received a probationary suspension as a result of the same incident.

OPINION

Appellant was guilty of negligence as he admitted by his plea. He had the direct responsibility to replace the roller wheels. Nevertheless, it is my opinion that Appellant was no more at fault than was the Chief Boatswain who had the over-all responsibility for the operation of the two boats. The order of the Examiner will be modified to provide for a probationary suspension similar to the order imposed against the documents of the Chief Boatswain.

ORDER

Merchant Mariner's Document No. Z-500660-D2, and all other licenses, certificates and documents issued to Appellant by the United States Coast Guard or its predecessor authority are hereby suspended for a period of two (2) months. The suspension ordered shall not be effective provided no charge under R.S. 4450, as amended (46 U.S.C. 239), is proved against

Appellant for acts committed within nine (9) months of 25 May 1956.

If this probation is violated, the order for which probation was granted shall become effective with respect to all Merchant Mariner's Documents, certificates and licenses here involved, and also any Merchant Mariner's Documents, certificate or license acquired by Appellant during the period of probation, at such time as designated by any Coast Guard Examiner finding the violation, and may be added to or form a part of any additional order which is entered by such Examiner.

As so modified, the order of the Examiner dated at New York, New York, on 25 May 1956, is **AFFIRMED.**

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

Dated at Washington, D. C., this 22nd day of October, 1956.