

In the Matter of Merchant Mariner's Document No. Z-663515-D1
Issued to: THOMAS V. DONLAN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

980

THOMAS V. DONLAN

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 9 January 1957, an Examiner of the United States Coast Guard at New York, New York, suspended Merchant Mariner's Document No. Z-663515-D1 issued to Thomas V. Donlan upon finding him guilty of misconduct. Seven specifications allege in substance that while serving as an ordinary seaman on the American SS MOLINE VICTORY under authority of the document above described, Appellant wrongfully failed to perform his duties on 14 and 15 November 1956 and he failed to join his vessel on 20 November 1956; while serving as an oiler on the American SS TALAMANCA under authority of said document, Appellant wrongfully failed to perform his duties or stand his watch on 21, 24 and 25 May 1956 and he failed to join his vessel on 30 May 1956.

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 pleas of "guilty" to the charge and each of the seven specifications. The Examiner changed the pleas to "not guilty" with respect to three of the specifications after Appellant made statements which were inconsistent with his pleas of "guilty" to these specifications.

The Investigating Officer and Appellant made their opening statements. The Investigating Officer then introduced in evidence certified copies of entries in the Official Logbooks of the two vessels in order to prove the three specifications for which the pleas had been changed to "not guilty." Appellant insisted that he did not want to testify under oath in support of his prior statements. Both parties then rested their case.

At the conclusion of the hearing, having heard the argument of the Investigating Officer and having given both parties an

opportunity to submit proposed findings and conclusions, the Examiner announced his decision and concluded that the charge and seven specifications had been proved. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-663515-D1, and all other documents issued to Appellant by the United States Coast Guard or its predecessor authority, for a period of two months outright and four months on probation until twelve months after the termination of the outright suspension.

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

FINDING OF FACT

Between 21 and 30 May 1956, inclusive, Appellant was in the service of the American SS TALAMANCA as an oiler and acting under authority of his Merchant Mariner's Document No. Z-663515-D1 while the ship was on a foreign voyage.

On 21 May 1956, Appellant failed to perform his duties while the ship was at Baltimore, Maryland.

On 24 May 1956, Appellant was absent from his 2000 to 2400 watch after 2100, without permission, while the ship was at New York, New York.

On 25 May 1956, Appellant failed to perform his duties while the ship was at New York, New York.

On 30 May 1956, Appellant failed to join his ship upon her departure from Havana, Cuba.

Between 14 and 20 November 1956, inclusive, Appellant was in the service of the American SS MOLINE VICTORY as an ordinary seaman and acting under authority of his Merchant Mariner's Document No. Z-663515-D1 while the ship was on a foreign voyage.

On 14 November 1956, Appellant failed to perform his duties between 0800 and 1000 while the ship was at Cadiz, Spain.

On 15 November 1956, the ship was at Cadiz, Spain when Appellant failed to perform his duties of securing the vessel for sea and undocking between 0800 and 1400. Appellant resumed the performance of his duties at 1400.

On 20 November 1956, Appellant failed to join his vessel upon her departure from Barcelona, Spain. He rejoined the ship at Kavalla, Greece, on 7 December 1956.

Appellant's prior record during six years at sea consists of a probationary suspension in 1953 for failure to perform his duties, absence without leave and failure to join.

BASIS OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant states that he was not represented by counsel; the logbook entries were not competent without supporting testimony; Appellant was charged as an outgrowth of the way in which the two vessels were operated; the decision is harsh and not in accord with the nature of the misconduct.

For these reasons, Appellant requests the return of his seaman's document and a revision of the decision.

OPINION

Appellant was afforded full opportunity to retain counsel during the course of the hearing but he informed the Examiner that he desired to represent himself.

Appellant questions only the proof of the offenses alleged to have been committed on 24 May, 15 November and 20 November 1956.

With respect to Appellant's failure to stand his 2000 to 2400 watch after 2100 on 24 May, Appellant's reply to the log entry was that he did not think he was capable. At the hearing, Appellant stated that he had permission from the Night Engineer to leave his watch. In view of these two inconsistent explanations, neither one is acceptable to refute the statement in the log entry that Appellant left his watch without permission.

Appellant claimed that, due to a cold, he was not feeling well from 0800 to 1400 on 15 November but that he went on watch at 1400. It seems unlikely that Appellant was too sick to work earlier if he was well at 1400. In addition, it is improbable that Appellant would have been logged for this incident if he had a legitimate excuse for failing to perform his duties.

Concerning his failure to join his ship at Barcelona on 20 November, Appellant made the unsworn statement that he was "rolled" after leaving a bar in ample time to catch the ship. In the absence of any testimony under oath or other evidence to support this bare statement, it is not sufficient to rebut the log entry relating to this incident.

Since the log entries with respect to these three events were made in accordance with the requirements of 46 U.S.C. 702, they

constitute prima facie proof as to each specification since they were entries made in the regular course of business. See Appeal Nos. 718, 819. Hence, these entries alone are adequate proof in support of the specifications. No evidence in rebuttal was even submitted by Appellant, much less accepted by the Examiner. The other four specifications were proved by Appellant's pleas of guilty to the allegations.

Appellant's contention that he was charged as a result of the manner in which the ships were operated is too vague to permit discussion. In any event, the record clearly supports the proof of the offenses alleged in the specifications.

The order imposed is not considered to be harsh in view of the occurrence of the same types of offenses on two different ships within a period of six months. This indicates that Appellant has little regard for discipline or the contractual obligations he incurs by signing shipping articles for a foreign voyage. Appellant's prior record also consists of similar offenses.

ORDER

The order of the Examiner dated at New York, New York, on 9 January 1957, is AFFIRMED.

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

Dated at Washington, D. C., this 21st day of August, 1957.