

In the Matter of Merchant Mariner's Document No. Z-236735-D1 and all Other Seaman Documents

Issued to: ANGEL TORRES

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1090

ANGEL TORRES

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 28 August 1958, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. Two specifications were found proved by the Examiner. The first specification alleges that while serving as a utilityman on board the United States SS SANTA CLARA under authority of the document above described, on or about 29 July 1958, Appellant failed to join his vessel at Barranquilla, Colombia. The second specification alleges that while serving as a workaway on board the United States SS SANTA MONICA under authority of the above document, on or about 5 August 1958, Appellant failed to join his vessel at Cartagena, Colombia.

After Appellant entered pleas of not guilty, the Investigating Officer made out a prima facie case by introducing in evidence extracts from the Shipping Articles and entries in the Ship's Official Logbook with respect to each offense. Appellant was engaged to serve as a workaway on the SANTA MONICA for transportation to New York at wages on one cent per month. Appellant testified that he missed the ships when he went ashore for medical treatment although there was a physician aboard his ship in both cases. The Examiner concluded that the charge and specifications had been proved. He suspended Appellant's document for a period of six months outright plus twelve months on probation for a period of twelve months. This order includes a prior three months' suspension on probation.

The only issue urged on appeal is that the order is too severe. This contention cannot prevail. Appellant violated the earlier probation which was the result of two prior offenses of failure to join. In effect, he is receiving only three months' additional outright suspension for these two offenses committed in Columbia within a week of each other. Failure to join a foreign port is a serious offense. With respect to the first of the two offenses, Appellant was employed in the regular capacity of a utilityman. Concerning the second offense, Appellant was equally bound to remain on the ship because there was a specific provision for wages, however nominal, as required by 46 U.S.C. 564. The entry in the logbook states that

Appellant was so engaged "for transportation to New York." Hence, he was bound to remain on the ship at Columbia. Appellant's excuse that he went ashore for medical treatment was not justification for his conduct in either case.

ORDER

The order of the Examiner dated at New York, New York, on 28 August 1958, is ~~REVERSED~~ **FIRMED**.

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

Dated at Washington, D.C., this 2nd day of February, 1959.