

In the Matter of Merchant Mariner's Documentation Z-236735-D1 and all other Seaman Documents

Issued to: ANGEL TORRES

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1134

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 April 1959, an Examiner of the United States Coast Guard at New York, New York revoked Appellant's seaman documents upon finding him guilty of misconduct. One specification alleges that while serving as a Baker on board a merchant vessel of the United States, the SS ARGENTINA, under authority of the document above described, on or about 30 January 1959, Appellant wrongfully failed to join the vessel at Montevideo, Uruguay.

The hearing was conducted in absentia when Appellant failed to appear on 16 April 1959 as directed by written notice served on 14 April 1959. The Examiner entered pleas of not guilty to the charge and specification on behalf of the Appellant. The Investigating Officer made his opening statement and introduced in evidence a carbon copy of the charge sheet served on Appellant, a certified extract of the Shipping Articles of the SS ARGENTINA, a certified copy of extracts from the Official Logbook of the SS ARGENTINA, and a certified copy of a letter to the U.S. Coast Guard Shipping Commissioner's Office, New York, N.Y. from the Master of the SS ARGENTINA containing a list of entries that he stated were erroneously omitted from the Official Logbook of that vessel through oversight. The Government then rested. The Examiner reserved his decision and closed the hearing with leave for Appellant to apply for its reopening.

On 20 April 1959, Appellant appeared before the Examiner and the hearing was reopened. Appellant was given a full explanation of 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 elected to waive that right and act as his own counsel. After allowing Appellant to examine the exhibits admitted into evidence, the Examiner asked what he desired to do regarding the plea of not guilty that had been entered in his behalf. Appellant indicated a desire to plead guilty. The Examiner thereupon read the charge and specification and the Appellant entered and persisted in a plea of guilty. Appellant then made a unsworn statement in the form of answers to Examiner's questions. This statement amply supported the plea of guilty.

Both parties were given an opportunity to submit proposed findings and conclusions. No oral arguments were made. The investigating Officer then introduced Appellant's prior record which was

read in evidence. It reads as follows:

Admonished at Napels, Italy, February 1952 for failing to stand watch. SS EXCAMBION.

Admonished at New York, N.Y. on 7 October 1952 for failing to join the SS EXOCHORDA.

Admonished at New York, N.Y. on 27 September 1955 for failing to join the AMERICAN LEADER.

Admonished at New York, N.Y. on 10 August 1956 for failing to join and absent from duties while serving aboard the SS MORMACTBAL.

Merchant Mariner's Document suspended at New York, N.Y. for a period of six months; the first three months of said suspension to join and failure to perform duties.

Merchant Mariner's Document suspended at New York, N.Y. on 28 August 1958 for 18 months, the first six outright from 28 August 1958, and the last 12 subject to probation of 12 months from the termination of outright suspension period for failure to join SS SANTA CLARA and SANTA MONICA at foreign ports. (Note: Temporary document issued Sept. 11, 1958, pending appeal. Order affirmed in Appeal No. 1090 of 2 February 1959.)

On 28 April 1959, the Examiner announced the decision in which he concluded that the charge and specification had been proved by plea. An order was entered revoking all documents issued to Appellant.

Appeal was timely filed on 18 May 1959. Appellant request another opportunity to go to sea in order to support his family.

FINDINGS OF FACT

At approximately 0900,30 January 1959, at Montevideo, Uruguay, Appellant went ashore, with permission, from his ship the SS ARGENTINA on which he was serving as a Baker under the authority of his document. Appellant was authorized to be shore until 1900 and he knew the ship was scheduled to sail. The SS ARGENTINA sailed without Appellant at approximately 2000, 30 January 1959. While ashore, Appellant went to a hotel and overslept because no one called him. In this fashion, he failed to return to the ship and sail with her.

OPINION

Appellant elected to plead guilty to the charge and specification after being advised that the Examiner had entered a plea of not guilty in his behalf and after examining the material which the Government had presented against him. I find Appellants's conscious and considered change of plea from not guilty to guilty, after the hearing was reopened and the Examiner fully advised Appellant

of his rights, to have purged any evidentiary flaws that might have been present in the Government's case. Accordingly, I find that the Examiner's decision that Appellant was guilty of the charge and specification was correct in law and fact.

CONCLUSION

Although Appellant has been going to sea since approximately 1935, he has a very poor prior record containing many incidents of his failure to join ships. Furthermore, the present acts were committed while he was serving under temporary certificate awaiting decision on appeal from a prior order arising from a "failure to join" incident. Under these circumstances, I find the order of the Examiner in the present case revoking Appellant's seaman documents was appropriate.

ORDER

The order of the Examiner dated at New York, New York, on 28 April 1959 is ~~A~~AFFIRMED.

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

Dated at Washington, D.C. this 4th day of February 1960.