

In the Matter of License No. 207671 and all other Seaman Documents
Issued to: JOHN B. TRAHAN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1198

JOHN B. TRAHAN

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 21 May 1959, an Examiner of the United States Coast Guard at New York, New York suspended, on probation, Appellant's seaman documents upon finding him guilty of misconduct. The two specifications found proved allege that while serving as Third Assistant Engineer on board the United States SS WANG ARCHER under authority of the license above described, on 2 October 1958, Appellant wrongfully failed to perform his duties; and on 4 October 1958, Appellant wrongfully had intoxicating liquor in his possession. Fifteen other specifications were found not proved and dismissed by the Examiner.

At the hearing, Appellant was represented by counsel of his own choice. Appellant entered pleas of not guilty to the charge and each specification. Both parties introduced in evidence the testimony of several witnesses. Appellant testified that he performed his duties on 2 October and was sick on 4 October.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and two specifications had been proved. An order suspending all documents, issued to Appellant, for a period of three months on twelve months' probation.

FINDINGS OF FACT

On a foreign voyage including the dates of 2 and 4 October 1958, Appellant was serving as Third Assistant Engineer on board the United States SS WANG ARCHER and acting under authority of his License No. 207671.

On 2 October 1958, the ship was in the port of Beirut, Lebanon. Appellant was assigned the 0000 to 0800 engine room watch. He properly relieved the preceding watch, Shortly after midnight, Appellant left the log desk on the lower level of the engine room spaces and did not return there until approximately 0700. In the meantime, the Chief Engineer went to the engine room and remained throughout the watch since Appellant was not present until about 0700. The Chief Engineer filled in the entries and

signed the logbook for both four hour watch periods. When Appellant returned to the log desk, he erased the entries and signatures of the Chief Engineer. Appellant then filled in the entries and signed his name. Both the Chief Engineer and Appellant were present when the watch was relieved by the First Assistant Engineer at 0824.

The ship got under way from Beirut at approximately 1230 on 4 October 1958. Appellant was assigned the 1200 to 1600 sea watch in the engine room, but the First Assistant Engineer agreed to stand this watch. About 1330, the Master entered Appellant's room with the Chief Engineer and Chief Mate and found Appellant sleeping in his bunk in an intoxicated condition. The Master smelled the odor of the liquor on Appellant's breath and had considerable difficulty awakening him. There was a partially filled whisky bottle in Appellant's room at this time. It was confiscated by the Master and Appellant was relieved of his duties.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that finding these two specifications proved was inconsistent with the other findings made by the Examiner. The testimony of the Chief Engineer, the principal Government witness, was contradicted by the testimony of other members of the crew and the Examiner admitted that the testimony of the Chief Engineer was not reliable with respect to the dismissed specifications. Hence, the findings as to the two specifications found proved are against the weight of the credible evidence.

In Appeal No. 858, the Commandant stated that possession of liquor on board was not considered to be wrongful.

The order is excessive in view of Appellant's prior clear record.

APPEARANCE: Lee Pressman, Esquire, of New York City by Ned R. Phillips, of Counsel

OPINION

On the basis of the Examiner's evaluation of the evidence, it is my opinion that there is reliable, probative and substantial evidence to support the conclusion that the allegations in the two specifications were proved.

Unlike his testimony concerning other allegations, the Chief Engineer's testimony was clear and definite that he stood most of Appellant's 0000 to 0800 watch on 2 October. The Second Assistant Engineer corroborated the Chief Engineer's testimony that he had mentioned this to the Second Assistant. Appellant's version is that when he saw the Chief Engineer in the engine room, Appellant went to the upper levels of the engine room and stayed there until 0700 in order to avoid

fighting with his superior who was drunk and in a belligerent mood. The Examiner rejected Appellant's testimony on this point especially since he agreed with the Chief Engineer's testimony that the latter had made and signed the entries for the watch and then Appellant erased them before inserting his own writing after returning at approximately 0700. This evidence indicates that the Chief Engineer was in the vicinity of the engine room log desk for most of this period and that Appellant was not there. The general testimony of the Second Assistant that he relieved Appellant, and not the Chief Engineer, at all times is not acceptable as to 2 October because both Appellant and the Chief Engineer testified that the First Assistant relieved the watch at 0824 although it is not clear which officer he relieved.

As to this specification, the testimony of the Chief Engineer is sufficiently corroborated by portions of the testimony of the other two engineering officers to constitute substantial evidence despite the rejection by the Examiner of the Chief Engineer's vague testimony concerning numerous other specifications. From shortly after midnight until about 0700, the Chief Engineer did not see Appellant in the engine room or know where he was. Hence, the evidence is adequate to establish that Appellant failed to perform most of the duties in connection with the standing of his assigned watch. "The absence of Official Logbook entries in evidence is not controlling in these proceedings when the allegations are otherwise proved by substantial evidence." Commandant's Appeal Decision No. 1120.

The conclusion that Appellant had intoxicating liquor in his possession on 4 October is based mainly on the testimony of the Master. The Chief Mate was with the Master and the Mate signed, as a witness, the logbook entry by the Master which included the statement that whisky was found in a bottle in Appellant's room. Appellant admitted that he had a "couple of drinks" that morning. As stated by the Examiner, the only logical conclusion is that the bottle of whisky belonged to Appellant. Whether Appellant was sick is not relevant to the issue. A seaman's possession of whisky on board ship is an offense in breach of the Shipping Articles. Commandant's Appeal Decisions Nos. 1107, 1164. Appeal No. 858, cited on appeal, states that possession of beer on board was not considered to be wrongful because members of the crew on this ship were permitted to buy beer on the ship. Therefore, Appellant's conduct was wrongful regardless of whether the Master overlooked the possession of whisky by various members of the crew on other occasions.

Even though Appellant has no prior record, the imposition of a probationary suspension is not considered to be excessive for these two infractions of shipboard discipline. In both cases, Appellant disregarded his responsibilities as an officer of the ship.

ORDER

The order of the Examiner dated at New York, New York, on 21 May 1959, is AFFIRMED.

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

Dated at Washington, D.C., this 28th day October 1960.