

In the Matter of Merchant Mariner's Document No. DZ-41658-D1 and all  
Issued to: HERBERT F. KENYON

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1278

HERBERT F. KENYON

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 6 September 1960, an Examiner of the United States Coast Guard at San Francisco, California suspended Appellant's seaman documents for two months on six months probation upon finding him guilty of negligence. The specification, as found proved, alleges that while serving as Chief Engineer on board the USNS SAPPACREEK under authority of the license above described, on 26 May and from 12 through 18 July 1957 (except the nights of 13-14 and 17-18 July), Appellant negligently failed to maintain proper order, routine and discipline, and failed to maintain a proper complement of personnel in the engine room while the ship was at Sasebo, Japan.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and each specification. The other specifications were found not proved by the Examiner after presentation of evidence by both parties.

On appeal, a brief and oral argument were presented by Julius J. Rosen, Esquire, of New York City, appearing for Appellant.

OPINION

There is jurisdiction to precede in this case involving a contract operated USNS vessel where members of the crew were required to sign Shipping Articles. This issue has been resolved by prior decisions on appeal.

It is my opinion that the evidence is not sufficient to sustain the Examiner's finding that Appellant was guilty as indicated above.

In support of this finding, the Examiner refers to the engine room logbooks concerning three four-hour watches and testimony by oiler Lee, by deposition, that no licensed officer was on watch in the engine room from 12 through 18 July. This testimony by Lee is specifically discredited by the testimony of the Master and Appellant (whose testimony the Examiner accepted as "consistent and

convincing"), and is generally discredited as to various other points by additional witnesses.

The evidence clearly shows that, from 12 to 18 July, Appellant and his Junior Third Assistant Hyde, who was usually drunk, were the only engineering officers on board due to the issuance of numerous medical certificates by the Master. Appellant's testimony was that he was on board and periodically visited the engine room throughout this time. This is considered adequate to absolve Appellant from negligence in view of the shortage of personnel through no fault of his own.

The allegations of failing to maintain order, routine and discipline do not constitute a basis for a conclusion of negligence because they are not proved by substantial evidence. These issues are only generally referred to in the record and in the Examiner's decision except to the extent that they are related to the personnel shortage resulting from the number of medical certificates issued by the Master.

The finding as to Appellant's negligence is reversed; the charge and specification are dismissed.

#### ORDER

The order of the Examiner dated at San Francisco, California, on 6 September 1960, is VACATED.

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

Signed at Washington, D. C., this 27th day of December 1961.