

In the Matter of Merchant Marine's ~~Duncan No. 1514581~~ ~~1514581~~ D5 and all
Issued to: CLENTON M. ELLIS

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1292

CLENTON M. ELLIS

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.

An Examiner of the United States Coast Guard conducted a hearing at Chicago, Illinois and by order dated 8 December 1960, suspended Appellant's seaman documents for one year upon finding him guilty of misconduct. The allegations proved by the evidence are, in substance, that when serving as an able seaman on board the United States SS EXTAVIA under the authority of the document above described, on both 5 and 15 September 1960, Appellant refused to obey the orders of the Chief Mate to go to Appellant's Quarters, and he created a disturbance. On 5 September, the disturbance consisted of addressing longshoremen with abusive language while arguing with them and holding a knife. On 25 September, the disturbance was caused by Appellant addressing the watch officer and gangway watchman with loud and abusive language.

On 19 October 1960, Appellant was served with notice to appear at the hearing on 21 October. When Appellant was served, he indicated that he would be at the hearing. Nevertheless, he was not present in person or by counsel on 21 October and he did not contact the Coast Guard. The Examiner entered pleas of not guilty to the charge and specifications on behalf of Appellant and the hearing proceeded in absentia.

The above allegations were proved by the evidence introduced by the Investigating Officer. This consisted of the testimony of the Chief Mate, Second Mate, and Boatswain in addition to entries from the ship's Official Logbook and excerpts from the Shipping Articles for the voyage covering the pertinent dates.

OPINION

The only ground for appeal is that Appellant should be excused for not attending the hearing because of his physical condition at the time. In support of this, counsel has submitted a copy of a record from the Public Health Service Hospital in Chicago showing that Appellant was an outpatient from 18 to 27 October 1960.

There is no evidence, or contention made, that Appellant was

physically unable to be present at the hearing. His status as an outpatient, rather than as an inpatient, indicates that his absence was not justified.

The conclusions of the Examiner are approved with respect to four of the ten specifications found proved as alleging offenses of misconduct. These four specifications allege the disturbance on 5 September, the disobedience of orders on 5 September, and the similar offenses on 15 September.

The two specifications alleging abusive language toward the Chief Mate are found not proved because of lack of evidence and are dismissed.

The two specifications alleging intoxication, standing alone, as an offense are dismissed for failure to allege an offense of misconduct.

The two specifications alleging abusive language toward the watch officer and the gangway watchman as offenses independent of the creating of a disturbance on 15 September are dismissed since they constitute the main elements of the disturbance on this date.

Appellant's prior record consists of a suspension in December 1958 for engaging in an altercation and creating a disturbance. In view of the similarity of this record to the present offenses and the fact that Appellant was still on probation in September 1960, the remaining four specifications are sufficient to justify the twelve months' suspension imposed by the Examiner.

ORDER

The order of the Examiner dated at Boston, Massachusetts, on 8 December 1960, is AFFIRMED.

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

Signed at Washington, D. C., this 2nd day of March 1962.