

In the Matter of Merchant Mariner's Document No. z-169987 and all
other Seaman Documents
Issued to: JOHN DE SANTOS

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

1331

JOHN DE SANTOS

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 29 January 1962, an Examiner of the United States Coast Guard at New York, New York suspended Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as boatswain on board the United States SS AMERICAN PRODUCER under authority of the document above described, on 24 December 1961, Appellant wrongfully failed to join the ship on departure from Hamburg, Germany.

At the hearing, Appellant voluntarily elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of witnesses and excerpts from the Shipping Articles and Official Logbook of the ship for the voyage including 24 December 1961.

Appellant testified that since the launch service to the ships was usually free, he gave the taxicab driver, who took Appellant to the launch landing, all his German money; Appellant was beaten and put off the launch because he could not pay two German marks to get to his ship; Appellant was unable to find another launch; he attempted to get a taxicab to the ship but was put out because of having no money; Appellant went to the Consul and the ship's agent reported, while the ship was anchored in the Elbe River due to fog, that the Master did not want Appellant on board.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved. The Examiner then entered an order suspending all documents, issued to Appellant, for a period of seven months outright plus three months on twelve months' probation. This included a prior suspension of six months' suspension which had

been placed on probation.

FINDINGS OF FACT

On 24 December 1961, Appellant was serving as boatswain on the United States SS AMERICAN PRODUCER and acting under authority of his document.

The ship arrived at Hamburg about 0400 on this date. On arrival, the sailing board was posted showing the scheduled sailing time of 1800 on this date and call back time for the crew of 1600. Appellant left the ship in the morning on authorized shore leave but he was not on board when the ship got underway as scheduled and departed. No other crew members missed the ship on this date.

Due to the fog after leaving Hamburg, the ship anchored in the Elbe Rive from about 2100 to 0100 on 25 December and 0500 to 1200 on the latter date. Appellant did not return on board during this time.

On 27 December 1961, Appellant was discharged from the Shipping Articles and replaced as boatswain by another member of the crew. Appellant rejoined the ship as a workaway on the following day.

Appellant's prior record consists of numerous offenses found proved at five separate hearings the first of which was in 1944.

BASES OF APPEAL

This appeal has been taken from the order imposed by the examiner. It is contended that Appellant was not at fault because he did everything he could to return to the ship after he was put off the launch which regularly supplied free service to the ships in the port. If Appellant had had funds, the fog might have prevented him from obtaining passage to the ship while she was anchored in the Elbe River.

OPINION

Appellant's failure to be on board by 1800 on 24 December was due to his own fault of not providing for a reasonably foreseeable emergency. Assuming Appellant's testimony is true, he could have returned to the ship without difficulty if he had been able to pay two marks for the launch service. Thereafter, he could not return because of lack of funds to pay for transportation. Apparently, no other members of the crew had this trouble since they were all on board.

After the ship left Hamburg, she anchored due to fog. According to Appellant, a message was received that the Master did not want Appellant on board. Regardless of the Master's feeling in the matter, it was Appellant's responsibility to reach the ship and make his services available. The fact that the fog might have prevented his return while the ship was anchored does not excuse the earlier offense of not being on board on departure from Hamburg.

ORDER

The order of the Examiner dated at New York, New York, on 29 January 1962, is AFFIRMED.

E. J. ROLAND
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 10th day of August, 1962.