

In the Matter of License No. 258568 Merchant Mariner's Document No.
Z-7699 and all other Seaman Documents
Issued to: James H. Barnette

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1348

James H. Barnette

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 26 January 1961, an Examiner of the United States Coast Guard at New York, New York admonished Appellant upon finding him guilty of misconduct. The specification found proved alleges that while serving as Third Assistant Engineer on board the United States SS EXPRESS under authority of the license above described, on 21 November 1960, Appellant wrongfully failed to perform his duties during the entire work day (0800 to 1700) while the ship was at Calcutta, India.

At the hearing, Appellant was represented by counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of the Chief Engineer and the Junior Assistant Purser. The latter testified that he was approached by Appellant who stated he was reporting to be "logged" for failing to turn to on 21 November. Appellant requested that this be reported to the Master and the Junior Assistant Purser did so when the Master returned on board. (R.30).

Appellant testified in his defense. He admitted that, without permission, he failed to work from 0800 to 1700 on 21 November but stated that he began feeling "sick in my stomach" (R. 52) after going to bed ashore on 20 November and he was not "feeling too well" before going on board about 1400 on 21 November. Appellant testified that, when he returned to the ship, he said to the Junior Assistant Purser:

"I told him that I was late for work and I didn't feel like working the rest of the day and you can tell the Captain to log me if you want to. I'm going down to go to bed because I don't feel like working." (R. 47)

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and specification had been proved.

Appellant has no prior record.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the charge was not proved by substantial evidence. The Chief Engineer was biased because he was charged with assaulting Appellant on the same voyage. The incident under consideration was not mentioned to Appellant or the Coast Guard until after the charge against the Chief Engineer had been investigated by the Coast Guard.

The Master did not testify and no log entry was made of the alleged offense. These factors are fatal to the charge since they raise an inference that the testimony of the Master would have been that he accepted Appellant's excuse of illness or forgave him.

The credibility of Appellant was never attacked. He simply asked the Purser to note Appellant's absence from work in the logbook.

In conclusion, it is respectfully submitted that the order admonishing Appellant should be set aside and the specification dismissed.

APPEARANCE: Bernard Rolnick of New York City by Leon Segan, Esquire, of Counsel.

OPINION

The Examiner found the offense proved on the basis of the testimony of the Junior Assistant Purser and not that of the Chief Engineer. The Examiner also concluded that Appellant's testimony did not exonerate him. I agree with the Examiner in both respects.

Apparently, Appellant went to the Purser because the seaman serving in this capacity often keeps the Official Logbook for the Master. The Purser's testimony does not contain any reference to Appellant saying that he was not feeling well. According to Appellant's own testimony, there is no indication that he was too ill to return to the ship and start to work at 0800; he did not go to a doctor while ashore; he did not contact the ship before returning; and he did not later make any attempt to explain his absence from work to the proper authorities on the ship. Accepting Appellant's testimony as credible, it leaves the impression that

his illness was a minor one which did not justify the failure to perform his duties on 21 November.

A ship's Master does not have the authority to forgive an offense so far as these proceedings are concerned. Commandant's Appeal Decision No. 1120. Hence, the failure to make any entry in the Official Logbook is not fatal to this action, from the point of view of forgiveness, although the failure to make appropriate logbook entries is definitely disapproved. There is the other possibility that no entry was made because the Master considered Appellant's illness to be a sufficient reason for not working and, therefore, justified his conduct. Testimony by the Master that he did not log this matter because he exonerated Appellant from blame merely on the basis of what Appellant testified to at the hearing would not have cleared Appellant of this offense.

It is conceded that this matter might never have been brought to the attention of the Coast Guard except for the charge against the Chief Engineer of assaulting Appellant. Nevertheless, the offense alleged has been proved.

ORDER

The order of the Examiner dated at New York, New York, on 26 January 1961, is AFFIRMED.

D. McG. MORRISON
Vice Admiral, United States Coast Guard
Acting Commandant

Signed at Washington, D. C., this 8th day of October 1962.