

In the Matter of License No. 04226 Merchant Mariner's Document No.
Z-137143-D1 and all other Seaman Documents
Issued to: JOSEPH ROLLAND BERNIER

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1444

JOSEPH ROLLAND BERNIER

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 11 July 1963, an Examiner of the United States Coast Guard at Boston, Massachusetts, suspended Appellant's seaman documents for two months outright plus four months on eighteen months' probation upon finding him guilty of misconduct. The two specifications found proved allege that while serving as Master on board the United States MV KATERI-TEK under authority of the license above described, between 4 May and 21 May 1963, Appellant wrongfully navigated the vessel after her Certificate of Inspection had expired and without a Permit to Proceed; on 26 June 1963, Appellant wrongfully navigated the vessel without a Certificate of Inspection while carrying passengers.

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

After stipulations were entered in evidence, Appellant testified that, except for the period covered by the first specification, he served as Master of the KATERI-TEK until early in July 1963. Appellant also stated that although he knew a Certificate of Inspection was required in order to make the trip on 26 June and that this was his responsibility as Master, Appellant operated the vessel without the certificate because the owner indicated the Coast Guard had authorized the trip after the inspectors had said, on 25 June, that the vessel was not ready for inspection.

At the end of the hearing, the Examiner served his written findings and order on Appellant.

FINDINGS OF FACT

During May and June 1963, Appellant was serving as Master on

board the United States MV KATERI-TEK and acting under authority of his license. This is a diesel propelled vessel of 98 gross tons and 100 feet in length. Appellant's license was posted on board the vessel until early in July 1963. Her Certificate of Inspection had expired on 19 April 1963 and was removed by the Coast Guard on 3 May. A new certificate was not issued.

On 4 May 1963, the vessel departed New Orleans, Louisiana, and arrived at Hyannis, Massachusetts, on 21 May. The voyage was made without a Certificate of Inspection or a Permit to Proceed. There were no passengers or freight on board throughout the trip. Upon arrival, the seaman claimed by Appellant to have been serving as Master on the voyage, left the service of the vessel but Appellant remained.

On 25 June, Coast Guard inspectors went on board the KATERI-TEK and told Appellant that the vessel was not ready for inspection and Appellant agreed with them. Consequently, a Certificate of Inspection was not issued. Later in the day, the owner of the vessel indicated to Appellant that the Coast Guard had been contacted and had authorized the trip scheduled for 26 June without a Certificate of Inspection.

On 26 June, Appellant navigated the vessel from Hyannis to Martha's Vineyard and back to Hyannis with at least 64 paying passengers on board.

No inspection certificate for the KATERI-TEK was obtained until 1 July 1963 when a Temporary Certificate of Inspection was issued.

Appellant had no prior record

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant denies that he was the Master of the vessel or navigated her on any of the dates alleged. It is also denied that Appellant had knowledge of the refusal to issue a Certificate of Inspection on 25 June 1963.

In conclusion, Appellant states that the decision of the Examiner is not supported by fact or law.

APPEARANCE: John Owen Hart, Esquire, of West Yarmouth,
Massachusetts, of Counsel

OPINION

The KATERI-TEK is subject to the inspection laws, while

carrying passengers, since she is over 15 gross tons and in excess of 65 feet in length. Under such circumstances, the vessel is required to be inspected under 46 U.S. Code 404, have a Certificate of Inspection issued according to 46 U.S. Code 399, and keep the certificate framed under glass in a conspicuous place on the vessel as stated in 46 U.S. Code 400. Title 46 U.S. Code 404 also applies to any vessel over 15 gross tons carrying freight for hire.

Since there is no evidence that passengers or freight for hire were carried between New Orleans and Hyannis, the conclusion that the first specification was proved is vacated and the specification is dismissed.

The contentions on appeal are without merit with respect to the second specification. In addition to his plea of guilty to this specification, Appellant testified that he was the Master of the vessel until about 1 July (R.20), he agreed with the inspectors on 25 June that the vessel was not ready for inspection (R.22), he was the person told by the owner that the trip on 26 June was authorized and Appellant made the trip (R.22). Thus, Appellant acted in his capacity of Master with full knowledge that no Certificate of Inspection had been issued as required by law and that this was his responsibility as Master of the vessel (R.30). Although the avarice of the owner caused Appellant to be placed in an unfortunate position due to the insistence of the owner on making a trip before the vessel was ready, this did not justify Appellant's decision to gamble with the lives of many innocent passengers. Since he did this with full knowledge of the circumstances, the order imposed will be sustained regardless of the dismissal of the other specification.

ORDER

The order of the Examiner dated at Boston, Massachusetts, on 11 July 1963, is AFFIRMED.

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

Signed at Washington, D. C., this 10th day of February 1964.