

In the Matter of Merchant Mariner's Document No. Z-749689-D4 and
all other Seaman Documents

Issued to: JAMES V. TURCI

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1460

JAMES V. TURCI

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 19 November 1962, an Examiner of the United States Coast Guard at Long Beach, California suspended Appellant's seaman documents for two months outright plus six months on twelve months' probation upon finding him guilty of misconduct. The offenses alleged were proved by evidence that while serving as a quartermaster on the United States SS MANHATTAN under authority of the document above described, Appellant failed to stand his assigned 0400 to 0800 and 1600 to 2000 watches from 16 September through 19 September 1962 while the ship was in the port of Rio de Janeiro, Brazil.

The hearing was conducted in absentia on the morning of 13 November 1962 since Appellant was not present. It was not realized at the time that the charge sheet, which had been served on Appellant on 9 November, inadvertently ordered him to appear for a hearing at "1000 P.M." on 13 November rather than 10:00 A.M.

Testimony by the Master of the MANHATTAN was the only evidence introduced. He stated that Appellant left the ship on the night of 15 September upon arrival at Rio de Janeiro and did not return until after sailing time on 19 September; Appellant came on board about 1400 after the ship was in the stream; and he was too intoxicated to stand his 1600 to 2000 watch. The Master further testified that Appellant said he had been sick but had not contacted the ship or the agent and had not obtained medical treatment ashore. The Master added that Appellant did not request medical attention when he returned to the ship.

On appeal, Appellant claims that he attempted to comply with the order to appear at 10:00 P. M. on 13 November but the building was closed. Since Appellant was not given notice to be present when the hearing was conducted on the morning of 13 November, he was deprived of his right to testify that he was unable to perform

his duties on the date alleged due to illness resulting, to some extent, from the use of alcoholic beverages. Appellant concludes that he does not think the order would have been so severe if he had testified at the hearing.

OPINION

Most of the delay since the date of the Examiner's decision has been caused by the fact that Appellant was not located for service of the decision until 20 December 1963.

According to Elgin, Joliet and Eastern Railway Co. v. Burley, 327 U. S. 661 (1946), "due notice" of a hearing requires at least knowledge of the pendency of the proceedings. Although Appellant had been informed that there would be a hearing, he was erroneously ordered to appear at 10 P. M. instead of 10 A. M. on 13 November 1962. Therefore, inquiry by Appellant after he found the building closed at 10 P.M. would have disclosed that the hearing had been conducted prior to time at which he was to appear. Consequently, the finding that the alleged offense was proved is set aside and the record will be remanded so that Appellant may be given notice of the time and place of the hearing as required by 46 CFR 137.20-30.

If Appellant does not appear after proper notice, the Examiner's decision of 19 November 1962 shall be reinstated. If Appellant attends the hearing, he shall be granted the opportunity to cross-examine the Master, unless waived by Appellant, and to present his defense.

ORDER

The order of the Examiner dated at Long Beach, California, on 19 November 1962, is VACATED. The record is REMANDED with directions to reopen the hearing for further proceedings not inconsistent with this decision.

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

Signed at Washington, D. C., this 9th day of July 1964.