

IN THE MATTER OF MERCANTILE SEAMAN'S DOCUMENTS NO. Z-60725-D1 AND ALL
OTHERS
Issued to: Ian H. McMurchie

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1522

Ian H. McMurchie

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 25 March 1965, an Examiner of the United States Coast Guard at New York, New York, suspended Appellant's seaman documents for four months' probation upon finding him guilty of misconduct. The two specifications found proved allege that while serving as an able seaman on board the United States SS PIONEER COVE under authority of the document above described, on 16 May 1964, Appellant wrongfully failed to perform his duties due to intoxication, and addressed the Second Mate with foul and abusive language.

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

The Investigating Officer introduced in evidence the testimony of the Master, Chief Mate and Second Mate of the PIONEER COVE at the time in question.

Appellant was the only defense witness. He denied that he was intoxicated and that he failed to perform his duties. Appellant testified he worked on deck and then went to the bridge to test the equipment preparatory to getting under way; while at the wheel, Appellant was kicked and punched by the Second mate until unconscious; and when Appellant came to on the next deck below, he addressed the Second Mate with abusive language because of what he had done to Appellant.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and two specifications had been proved. The Examiner entered an order suspending all documents, issued to Appellant, as indicated above.

FINDINGS OF FACT

On 16 May 1964, Appellant was serving as an able seaman on board the United States SS PIONEER COVE and acting under authority of his document while the ship was in the port of Santander, Spain. She was scheduled to get under way at 1800.

All hands had been ordered to turn to at 1700 on this date and secure the vessel for sea. Appellant's duty station for this operation was at the number three hatch under the supervision of the

Boatswain and Chief Mate. Instead of being there, Appellant was on bridge in an intoxicated condition until shortly after 1800.

About 1815, the Master heard a noise and then found Appellant lying injured on deck outside of the Master's office at the foot of the ladder between the boat deck and the bridge. When the Second Mate arrived on the scene, Appellant called him a "narrowbacked bastard" and addressed him with other foul and abusive language.

Appellant's prior record consists of an admonition in 1962 for failure to join his ship.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the Examiner's findings are inconsistent with the evidence.

The Master, Chief Mate and Second Mate acted in collusion to penalize Appellant because he reported to the Master that the Second Mate was asleep on watch on 9 May.

The Chief Mate testified that Appellant was not present to secure the ship on 16 May, but the Chief Mate was unable to name any seaman who was present. The Chief Mate was also incorrect when he testified that he was the "medical officer" on the ship.

The Master admitted that Appellant denied being intoxicated and said he had been beaten by the Second Mate. However, the logbook states that Appellant's answer to the logging (for intoxication and failure to perform duties on 16 May) was: "Reply incoherent."

Letters in evidence show that the Master and Chief Mate of the ship, which Appellant was on from June to October 1964, considered Appellant to be a sober and reliable seaman who never missed work. The Boatswain on that ship testified that Appellant was sober, always alert, and on time for all work.

Appellant was not responsible for the language with which he addressed the Second Mate while in a semi-conscious condition, on 16 May, just after having been beaten by the Second Mate and thrown down a ladder.

In conclusion, it is submitted that the evidence is insufficient to justify the Examiner's finding of guilty.

OPINION

The above findings of fact are based on the acceptance by the Examiner of the testimony given by the Master, Chief Mate and Second Mate. The latter two testified that Appellant did not assist in securing the vessel for sea, they saw Appellant on the bridge intoxicated, and he was still there at

1800. This is confirmed, in part, by the Master's testimony that shortly thereafter he heard a noise like somebody falling down a ladder, saw Appellant on deck at the foot of the ladder leading to the bridge, and the doctor who examined Appellant said he was under the influence of alcohol. Appellant admitted addressing the Second Mate with abusive language at this time.

The Chief Mate could not recall the names of seamen who were present to secure the ship at 1700 on 16 May. He testified that the reason for this was because the crew was continually changing on the ship. This and the failure of the Chief Mate to remember that there had been a Purser Pharmacist's Mate on board acting as the "medical officer" is not an adequate basis upon which to reject the Chief Mate's testimony, corroborated by the Second Mate, that Appellant had not reported as required to secure the ship for sea. It was almost six months after this incident occurred when the Chief Mate testified.

The statement in the logbook that Appellant's reply to the charges of intoxication and failure to perform duties was incoherent is apparently in error since the Master testified Appellant replied that he was not intoxicated and was kicked by the Second Mate. However, it is my opinion that this error did not materially prejudice Appellant's case because his testimony to the same effect was rejected by the Examiner in favor of testimony by the Chief and Second Mates.

The evidence of Appellant's sobriety and attention to duty on his next voyage does not persuade me to reach a conclusion contrary to the Examiner's in the face of his findings as to credibility which must not be treated lightly since he saw and heard the witness. This evidence of subsequent good conduct was in the record before the Examiner.

Appellant was responsible for the language with which he addressed the Second Mate. Appellant testified that he was fully conscious and realized what he was saying.

It would be purely speculative to conclude that the accusation by Appellant, concerning the Second Mate sleeping on watch, resulted in collusion to hurt Appellant to the extent that he was falsely accused by the Master and two other ship's officers of the offenses alleged. Therefore, the Examiner's conclusion that the allegations are supported by substantial evidence is sustained.

The entirely probationary suspension imposed by the Examiner is extremely lenient for these offenses.

ORDER

The order of the Examiner dated at New York, New York, on 25 March 1965, is AFFIRMED.

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

Signed at Washington, D. C., this 11th day of October 1965.

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