

IN THE MATTER OF MERCHANT MARINER'S DOCUMENTS NO Z-105145-D2 AND
ALL OTHER SEAMAN'S DOCUMENTS

Issued to: Albert G. BUFFINGTON

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1592

Albert G. BUFFINGTON

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 28 January 1966, an Examiner of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman documents for three months upon finding him guilty of misconduct. The specification found proved alleges that while serving as a deck utility on board the United States SS SAN JOSE under authority of the document above described, on or about 15 December 1965, Appellant wrongfully refused to obey a lawful order of the master to go aloft to assist in painting the foremast of the vessel when the ship was at anchor in the mouth of the Saigon Rive, Vietnam.

At the hearing, appellant elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and specification, but readily admitted that he refused to obey the order. He contested only the wrongfulness of the refusal.

The Investigating Officer was precluded from entering any evidence because Appellant had immediately assumed the burden of proceeding by his admission.

In defense, Appellant offered in evidence his explanation of why he had refused to obey the order. When the Investigating Officer offered evidence in rebuttal, the Examiner declared that it was not necessary in view of the testimony of Appellant.

At the end of the hearing, held on 18 January 1966, the Examiner reserved decision. On 28 January 1966, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved. He then entered an order suspending all documents issued to Appellant for a period of three months. Service of decision was accomplished on 4 February 1966. Appellant filed notice of appeal on 8 February 1966 and asked for a transcript of proceedings. This was furnished to him on 16 March 1966. Subsequent correspondence has added nothing to the grounds for appeal originally urged.

FINDINGS OF FACT

On 15 December 1965, Appellant was serving as a deck utility on board the United States SS SAN JOSE and acting under authority of his document while the ship was anchored in the mouth of the Saigon River, Vietnam.

On that date Appellant was instructed to go aloft to assist other seaman in painting the vessel's foremast. He refused to do so. Brought before the master and ordered to go aloft he again refused to do so, and did not.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. At the hearing Appellant argued that condition such as possible sniper fire, danger from low flying aircraft, and danger from mines rendered it so hazardous for him to go aloft that he was justified in refusing to obey the master's order. On appeal, he also declares that his case had been prejudged.

APPEARANCE: Appellant, pro se.

OPINION

I

When a vessel is at anchor, even in an open roadstead, there is a presumption of normality for the performance of seamen's duties. There is no evidence here that sea conditions made work aloft unusually dangerous, and it is not so contended.

Under the conditions described in this record there is no room for official notice that the dangers alleged by Appellant at hearing must necessarily have rendered work aloft unusually hazardous.

According to the record the vessel was a mile and a half from shore. At the range, sniper fire is no more inherently dangerous to one aloft than to one on deck. The distance involved - 3000 yards - is also beyond or at the extreme effective range of small arms weapons so as to make the danger from sniper fire a very remote possibility in this case. Low flying aircraft, could well be a more probable threat in Port Newark, New Jersey, adjacent to Newark Airport than in the mouth of the Saigon River. Mines are so improbable a threat to a vessel at anchor as to render Appellant's argument on that score specious.

II

As to the Examiner's alleged prejudgment of Appellant's case, the record clearly demonstrates otherwise. Appellant admitted his refusal to the Examiner. He argued that he was justified in disobeying the order. The Examiner heard his testimony and reserved judgment.

It would appear that the Examiner had formed his opinion upon the testimony of Appellant alone and thus had not prejudged.

CONCLUSION

The record supports the Examiner's findings and order.

ORDER

The order of the Examiner dated at San Francisco, California on 28 January 1966, is AFFIRMED.

W. J. SMITH
Admiral, U. S. Coast Guard
Commandant

Signed at Washington, D. C., this 8th day of December 1966.

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Examiner
prejudgment not shown