

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-875901-D6 AND ALL  
OTHER SEAMAN DOCUMENTS

Issued to: RUSSELL E. LA VIOLETTE

DECISION AND FINAL ORDER OF THE COMMANDANT  
UNITED STATES COAST GUARD

1599

RUSSELL E. LA VIOLETTE

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 7 December 1965, an Examiner of the United States Coast Guard at Philadelphia, Pennsylvania, suspended Appellant's seaman documents for 12 months outright upon finding him guilty of misconduct. The two specifications found proved allege that while serving as an oiler on board the United States SS BALTIMORE TRADER under authority of the document above described, on or about 26 and 27 October 1965, while said vessel was at sea, Appellant wrongfully failed to perform his duties due to intoxication.

Two days before the hearing was scheduled on 24 November 1965, the Investigating Officer notified the Appellant by serving him a summons. Because of the impression the Appellant gave that he would not appear, the Investigating Officer stated to him that the hearing would, in that case, be held in absentia. To acknowledge that the Appellant fully understood this fact, he was required to sign a statement. Nevertheless, the Appellant did not appear at the hearing and it was held in absentia.

At the hearing on 24 November 1965 a plea of not guilty to the charge and each specification was entered by the Examiner for the absent seaman after motion was made by the Investigating officer that the hearing proceed without Appellant. The Investigating Officer's reason for making this motion was that he had a witness present who would not be available at a later time.

The Investigating Officer introduced into evidence the testimony of the witness (the Third Assistant Engineer) and various documentary evidence.

To give the person charged additional time in which to defend himself, the hearing was continued until 29 November 1965. The person charged had not contacted the Investigating Officer in the interim nor was he present on this date. Under the circumstances, the Examiner concluded the hearing. The Appellant's name was placed on the Seaman Locator List and the decision was served on 21 July 1966, at which time the Appellant's documents were

surrendered.

### FINDINGS OF FACT

Appellant was serving as oiler on board the United States SS BALTIMORE TRADER and acting under authority of his document. On 26 October 1965, the Appellant had the 1200 to 1600 watch. Upon entering the engine room, he had difficulty in walking and in order to hold himself erect, it was necessary to him to hold on to various objects. His breath smelled of alcoholic beverages, and he talked in a loud manner which was not his habitual practice. When he attempted to make an entry in the bell book, the first one on the watch, it was illegible. Since it was apparent that he was under the influence of alcohol, he was told by the Third Assistant Engineer to leave the engine room. This he did not really do and he remained in the engine room until the First Assistant Engineer told him to leave. Another crew member then stood the Appellant's watch.

On the following day, 27 October, on the 0000 to 0400 watch, the Appellant again entered the engine room incapable of standing without support. Once more he was loud and had an alcoholic breath. He was again ordered out of the engine room and a replacement was assigned to his watch.

The Appellant's prior record is as follows: admonished on 23 November 1948, Miami, Florida, for failure to perform duties due to intoxication, SS MOSES CLEVELAND; 3 months suspension on 18 months probation from 22 May 1963, Miami, Florida, for failure to perform duties due to intoxication, four specifications, SS MERMAID; warned on 3 October 1963, New Orleans, Louisiana, for failure to perform duties due to intoxication, SS CRISTOBAL; suspended for 4 months outright from 10 September 1964 and 4 months on 18 months probation, New York, New York, for failure to perform duties, seven specifications, SS SANTO CARRO. Since the present offenses constitute a violation of probation, the Examiner invoked the four months suspension and imposed eight more months after finding the Appellant guilty of the present offenses.

### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that had the Appellant been present at the hearing he would have testified to the following: The two watches allegedly missed for intoxication, while at sea actually occurred while the vessel was anchored in Puerto La Cruz, Venezuela. At approximately 11 p.m., the ship's Master made the Appellant and other crew members return to the ship from the bar in which they were drinking. Nevertheless, the Appellant reported for the midnight watch on 26-27 October but was sent back to his quarters for being unable to stand watch. His next watch, at noon, was missed not because of a new intoxication but from a continuing hangover which left him ill. In addition to considering the need of the Appellant to support himself and his family, it is requested that the Examiner's order be abated since it is excessive in the light of the circumstances.

### OPINION

The record fails to support counsel's contention that the ship was not at sea as alleged. The Third Assistant Engineer testified (R.6) that one of the Appellant's actions which led the officer to conclude that the man was intoxicated was his failure to legibly record an entry in the bell book when the ship was maneuvering on 26 October. Government Exhibit #3 (Medical Log Abstract) states that the vessel was at sea on 27 October. Also, the positions given in the Official Logbook entries reciting these offenses by Appellant show that the ship was at sea on both occasions. Therefore, the vessel was not in port on either date. The record supports the findings that the Appellant missed his watches on both dates due to intoxication. On the first occasion, 26 October, it was his complete lack of coordination in addition to his inability to make a legible entry in the bell book which caused the watch officer to order him from the engine room (R.5-6). At both times, the officer could smell alcohol on the Appellant's breath. On the second occasion it was Appellant's inability to stand without support which led the officer to order him from the engine room. (R.6-7).

Review of the record has disclosed sufficient evidence to support the charge and each specification. In addition, the Appellant's prior record shows he has failed to perform duties because of intoxication on numerous occasions. Under these circumstances, I find the Examiner's order fair and reasonable and not, in any manner, excessive.

APPEARANCE: Freedman, Borowsky and Lorry, Philadelphia, Pennsylvania, by Bert E. Zibelman, Esq.

#### ORDER

The order of the Examiner dated at Philadelphia, Pennsylvania, on 7 December 1965, is AFFIRMED.

P. E. TRIMBLE  
Vice Admiral, United States Coast Guard  
Acting Commandant

Signed at Washington, D. C., this 27th day of January 1967.

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