

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-512834-D1
AND ALL OTHER SEAMAN DOCUMENTS
Issued to: Freddy A. CABRERA

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1607

Freddy A. CABRERA

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 13 June 1966, an Examiner of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman documents for one month upon finding him guilty of misconduct. The specifications found proved allege that while serving as an able seaman on board the United States SS LENA LUCKENBACH under authority of the document above described: on or about 27, 28, and 29 May 1964, Appellant wrongfully failed to perform his duties; on or about 11 June 1964 Appellant wrongfully failed to perform his duties; and on or about 29 May 1964, Appellant wrongfully failed to obey a lawful order of the master to return on board the vessel. Two other specifications were found not proved.

At the hearing, Appellant was represented by counsel. Appellant entered a mixed plea: guilty to the specifications alleging failure to perform, and not guilty to the remaining three specifications.

The Investigating Officer introduced in evidence the Shipping Articles and portions of the official logbook of the vessel.

In defense, Appellant offered in evidence his own testimony as to the contested specifications of misconduct.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and three of the specifications had been proved, two of them by plea. The Examiner then entered an order suspending all documents issued to Appellant for a period of one month.

The entire decision was served on 17 October 1966. Appeal was timely filed on 20 October 1966.

FINDINGS OF FACT

At all times hereinafter mentioned, while the vessel was on a voyage to India, Appellant was serving as an able seaman on board the United States SS LUCKENBACH and acting under authority of his document.

On 27, 28, and 29 May 1964 Appellant wrongfully failed to perform his assigned duties by reason of being absent from the vessel without permission.

On 11 June 1964 Appellant wrongfully failed to perform his duties by reason of being absent from the vessel without permission.

At 0700 on 29 May 1964, while the vessel was in port in Calcutta, Appellant and another man were seen leaving the vessel in a liberty boat. The Master called to them and stated that it was a working day and they were to turn to at 0800. Appellant replied that he was not going to work, and that he was going to a whore house uptown. Thereupon the two men left in the liberty boat and were absent from the vessel for the rest of the day.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the Examiner's findings, particularly with respect to the specification of disobedience of an order, are unsupported by the evidence.

APPEARANCE: Belli, Ashe, Gerry & Ellison of San Francisco, California, by Frederick A. Cone, Esquire, of counsel

OPINION

The two specifications of failure to perform due to unauthorized absence were proved by plea. In addition to this judicial admission of guilt, the government submitted logbook entries pertaining to these offenses. There is no reason to disturb the findings of guilty to these specifications.

As to the contested specification of failure to obey an order, the logbook entry contains substantial evidence proving this offense. At the hearing Appellant took the stand to, as his counsel put it, ". . . offer evidence, not to guilt or innocence but to establish the reasons [for the disobedience alleged.]" Appellant admitted, in essence, that he disobeyed the order to turn to because he had to go ashore on the date alleged to get a watch of

his which a fellow crewmember had left in a whore house. It is thus clear that Appellant deliberately discharged a lawful order of the master and the Examiner's decision was correct.

ORDER

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

P. E. Trimble
United States Coast Guard
Acting Commandant

Signed at Washington, D.C., this 4th day of May 1967.

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