

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO Z-662320 AND ALL  
OTHER SEAMAN'S DOCUMENTS

Issued to: Horatio Benzel CUSHMAN

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1621

Horatio Benzel CUSHMAN

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 May 1966, an Examiner of the United States Coast Guard at San Francisco, California, suspended Appellant's seaman's documents for three months on 12 months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as a messman on board the United States SS BAY STATE under authority of the document above described, Appellant: was absent from his vessel without authority on 12, 16, and 25 October 1965, on 3 November 1965, and on 22 and 31 December 1965; wrongfully disobeyed an order of the master on 12, 16 and 25 October 1965, on 3 November 1965, and on 22 December 1965; and failed to join the vessel upon its sailing on 31 December 1965.

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

The Investigating Officer introduced in evidence various documents pertinent to the charges.

In defense, Appellant offered in evidence certain documents and his own testimony.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved. The Examiner then served a written order on Appellant suspending all documents issued to him for a period of three months on 12 months' probation.

The entire decision was served on 27 May 1966. Appeal was timely filed on 24 June 1966.

FINDINGS OF FACT

At all times in question herein, Appellant was serving as a messman on board the United States SS BAY STATE and acting under authority of his document while the ship was situated within the South Vietnam military combat zone.

The Master of the vessel, following an Army order to Merchant Vessels of 1 November 1965, prohibited shore leave in certain South Vietnam ports. Despite this written order to the crew and specific repeated orders to him personally, Appellant went ashore without permission on the dates alleged in the specifications.

The evidence is clear and uncontested that Appellant was absent from his vessel without authority and contrary to the Master's orders on 12, 16, and 25 October; 3 November, and 22 December 1965. It is also clear that Appellant wrongfully failed to join his vessel upon her departure from Nha Be, South Vietnam, on 31 December 1965.

#### OPINION

At the hearing and on this appeal, Appellant vigorously contends that the Master's order prohibiting shore leave was arbitrary and unreasonable. He does not contest his deliberate disobedience of the order on the occasions alleged.

Although some of the documents offered in evidence by Appellant at the hearing, as well as certain statements by a representative of the National Maritime Union, who acted as Appellant's counsel, do portray some confusion of authority and practice with respect to shore leave in the South Vietnam combat zone, there was nevertheless no confusion in the Master's order to the crew and his explicit and repeated orders to Appellant. Moreover, valid grounds for the prohibition of shore leave in this area can certainly be found. The area is a combat zone. Facilities and police protection are said to be extremely limited, and harassment by the enemy is a real possibility. Further, because of these obvious dangers, a vessel in these waters necessarily must be ready to sail on short notice.

For these reasons it is considered the Master certainly did not act in an unreasonable manner in prohibiting shore leave. The crew of a vessel is bound to obey the lawful orders of the Master. Appellant's open defiance of orders is a serious breach of shipboard discipline which cannot be approved.

#### ORDER

The order of the Examiner dated at San Francisco, California, on 19 May 1966, is AFFIRMED.

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

Signed at Washington, D. C., this 22nd day of May 1967.

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Order

Duty to obey

Unlawful