

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-318224 AND ALL
OTHER SEAMAN DOCUMENTS

Issued to: JOSEPH BOCHENSKI

DECISION OF THE COMMANDANT

1628

JOSEPH BOCHENSKI

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 24 October 1966, an Examiner of the United States Coast Guard at Galveston, Texas, suspended Appellant's seaman documents for one month on six months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as a second cook and baker on board the United States SS RICHMOND under authority of the document above described, on or about 3 August 1966, Appellant wrongfully failed to turn to his regular assigned duties and did not work the entire day, and on or about 4 August 1966 Appellant wrongfully failed to turn to his regular assigned duties and did not work the entire day, while said vessel was in the port of Bombay, India.

At the hearing on 14 October 1966, 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 Shipping Articles showing Appellant to be a member of the crew at the time alleged in the specifications and the Official Log Book of the vessel containing entries concerning the allegations of the two specifications.

In defense, Appellant testified that he went ashore to make a complaint to the American Consul against the master and the chief steward because threats had been made against his life by members of the steward's department.

The hearing was adjourned, on Examiner's motion, to locate the master and obtain his testimony. Subsequently, the Examiner decided to resolve the case on the record as presented on 14 October 1966 and rendered a written decision on 24 October 1966 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 Appellant, for a period of one month on six months' probation.

The entire decision was served on 3 November 1966. Appeal was timely filed on 4 November 1966.

FINDINGS OF FACT

On or about 3 August and 4 August 1966, Appellant was serving as a second cook and baker on board the United States SS RICHMOND and acting under authority of his document while the ship was in the port of Bombay, India. Because of my disposition of this case, no further findings are necessary.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the Examiner's findings of fact are not supported by evidence, the order is contrary to law, and the punishment is excessive. Counsel allege errors in the conduct of the hearing and in the Examiner's action to close the case without calling the master or notifying Appellant of his decision to conclude the case on the evidence already presented.

APPEARANCE ON APPEAL: James T. Smith, Attorney, of Corpus Christi, Texas

CONCLUSION

When the Examiner adjourned the hearing on his own motion, he declared that it would be necessary to locate the master before he could determine all the facts. He stated that notice would be given to the person charged of the resumption of the hearing. Failure to continue the hearing, as indicated in the Examiner's concluding statement, was prejudicial to the interests of Appellant. In view of the time elapsed and the improbability of obtaining the master's testimony in the near future, there is nothing to be gained by remanding the case. Therefore, the charge and specifications will be dismissed.

ORDER

The charge and specifications are dismissed. The order of the Examiner dated at Galveston, Texas on 24 October 1966 is VACATED.

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

Signed at Washington, D. C., this 26th day of May 1967.

INDEX

EXAMINER'S ORDER

dismissal of

HEARING

conclusion, without notice

TESTIMONY

Absence of, government witness

TESTIMONY

uncontradicted, rejection of