

IN THE MATTER OF LICENSE NO. 261494 MERCHANT MARINER'S DOCUMENT NO.  
Z-340597 AND ALL OTHER SEAMAN'S DOCUMENTS

Issued to: Phillip R. CUNNINGHAM

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1638

Phillip R. CUNNINGHAM

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 18 August 1966, an Examiner of the United States Coast Guard at Long Beach, California suspended Appellant's seaman's documents for 2 months outright plus 10 months on 12 months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as a second assistant engineer on board the United States SS PRESIDENT TAFT under authority of the license above described, on or about 23 June 1966, Appellant wrongfully deserted the vessel.

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

The Investigating Officer introduced in evidence the official log and shipping articles of the vessel and the shipping articles of the United States SS MORMAC SURF.

In defense, Appellant introduced a statement from one of the crew members of the vessel, and testified on his own behalf.

At the end of the hearing, the Examiner rendered an oral decision in which he concluded that the charge and specification had been proved. The Examiner then served a written order on Appellant suspending all documents issued to him for a period of 2 months outright plus 10 months on 12 months' probation.

The entire decision was served on 22 August 1966. Appellant made a petition for a re-hearing on 23 August 1966. The petition was denied on 16 September 1966. Appeal was timely filed on 12 October 1966.

OPINION

It is clear that Appellant intended to permanently leave the SS PRESIDENT TAFT on 23 June 1966. Appellant admits this but contends that he was under no obligation to remain with her

as he felt she was unseaworthy. At the trial, and on this appeal, counsel for Appellant has cited legal authorities for the proposition that a seaman is justified in abandoning his duty if he honestly and reasonably fears for the ship's safety. The Condor 196 F.71; The Sirius 47 F. 825; NORRIS, THE LAE OF SEAMEN, Vol. 1, 2d ed., at 189. While this is a correct general statement of the law, there is a corollary rule which must also be followed: a seaman believing in good faith that the ship is unsafe to go to sea must first demand a survey be made of her. He cannot leave the vessel on the ground of unseaworthiness without having made this request. The C. F. Sargent, 95 F. 179; NORRIS at 189. See 46 U.S.C. 653 et seq. Moreover, there is a presumption of seaworthiness since owners and officers would not ordinarily take the risk to property and life inherent in an unseaworthy vessel. Hamilton v. U. S., 268 F. 15.

Appellant made no attempt to comply with what the law and common sense requires. He did not complain to the master, the chief engineer, or a judicial officer, before deserting the ship. His contention of unseaworthiness is based only on his own opinion. He was stated in the C. F. Sargent, supra:

"[under the circumstances here, seamen] are not authorized to determine the question as to the seaworthiness of the ship, and they cannot be relieved from their obligation to perform their contract, under the shipping articles which they have signed, on the ground of unseaworthiness. If they in good faith believed it was unsafe for the ship to go to sea, they might have demanded a survey . . ."

Appellant's "good faith" is also questioned here. He made no complaint or request of the Coast Guard officer he contacted relating to the condition of the vessel, but wanted to know only what would be the consequences of quitting her. His reason for deserting may well have been because no shipyard repairs were made; not because this made the vessel dangerous, but because this would mean Appellant would have to work harder keeping the plant in order. In any event, a case for an unseaworthiness defense was not made here.

It is essential for the proper and safe voyage that members of the crew remain with the vessel. Appellant's unwarranted desertion cannot be condoned. Therefore the order of suspension is considered appropriate and is affirmed.

On 23 June 1966, Appellant was serving as a Second Assistant Engineer on board the United States SS PRESIDENT TAFT and acting under authority of his license while the ship was in the port of Los Angeles, California.

Appellant had made a previous voyage on the SS PRESIDENT TAFT which started in January 1966, and ended in early June of that year. Throughout the voyage repairs were required for various parts of the engineering plant. A boiler had to be fixed, the economizers were out of the rack, and there was salt in some of the boilers. Because of the advanced age of the other engineer aboard, most of the work had to be done by Appellant.

On 22 June 1966, shortly after the vessel returned to port, Appellant signed on her for a new foreign voyage which was to commence on 23 June 1966. Appellant worked on the vessel on 23 June, but became dissatisfied when he heard no shipyard repairs were planned. At 1200 hours Appellant called the local Coast Guard Marine Inspection Office and contacted the Officer-in-Charge. Without identifying himself, Appellant asked this Coast Guard officer what the penalty would be for missing ship. He was told that missing ship in a domestic port was not as serious as it would be in a foreign port, but that the officer could not give any definite answer unless he knew the circumstances of the case.

Appellant then went to his room, took his license and personal belongings and walked off the ship. A crew check was made just prior to the estimated departure time of 2100 hours and Appellant was discovered missing. The vessel's departure was held up until 25 June awaiting a replacement for him.

Appellant soon thereafter signed on another ship, the SS MORMACSURF. At no time did he request of the master or the chief engineer to be discharged from the vessel. He did tell another engineer officer that he did not want to go to sea on the ship because he felt she was unseaworthy.

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the vessel was so unseaworthy that Appellant had no obligation to remain with her and could leave her in a domestic port without following any particular procedure.

APPEARANCE: BODLE & FOGEL of Los Angeles; by Dennis R. Sullivan, Esquire, of counsel.

The order of the Examiner dated at Long Beach, California on 18 August 1966, is AFFIRMED.

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

Signed at Washington, D. C., this 12th day of June 1967.

## INDEX

### Desertion

Belief that ship is unsafe is not a defense unless seaman demands a survey

### Presumptions

There is a presumption of seaworthiness

### Seaworthiness

There is a presumption of seaworthiness