

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-605907 AND ALL
OTHER SEAMAN'S DOCUMENTS
Issued to: Jose F. ALFONSO

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1643

Jose F. ALFONSO

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 4 August 1966, an Examiner of the United States Coast Guard at Long Beach, California, suspended Appellant's seaman's documents for 3 months outright plus 3 months on 6 months' probation upon finding him guilty of misconduct. The specifications found proved allege that while serving as an A.B. seaman on board the United States SS LAKEWOOD VICTORY under authority of the document above described, Appellant on 1 and 2 June, 1966, at Suyon, Korea, and on 21, 22, and 23 June 1966, at Bangkok, Thailand, wrongfully failed to perform his duties.

At the hearing, Appellant failed to appear. The Examiner entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence voyage records of SS LAKEWOOD VICTORY touching on the matters in question.

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 entered an order suspending all documents issued to Appellant for a period of 3 months outright plus 3 months on 6 months' probation.

The entire decision was served on 6 August 1966. Appeal was timely filed on 23 August 1966.

FINDINGS OF FACT

On all dates in question, Appellant was serving as an A.B. seaman on board the United States SS LAKEWOOD VICTORY and acting under authority of his document.

On 1 and 2 June 1966, at Suyon, Korea, and on 21, 22, and 23 June 1966, at Bangkok, Thailand, Appellant wrongfully failed to

perform his duties.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that:

- (1) the hearing should not have proceeded in Appellant's absence since he was unavoidably detained from making appearance; and
- (2) Appellant actually had permission for both periods of absence.

APPEARANCE: Appellant, pro se.

OPINION

I

The first question which must be decide is whether the hearing should have taken place in the first place.

At about 1300 on 25 July 1966, charges were served upon Appellant. There is sworn testimony in the record that at that time Appellant selected the time set for hearing, which was 1500 on that date, because "he wanted to dispose of the matter as soon as possible."

On appeal, Appellant admits that he knew of the scheduled time for hearing, but asserts that the requirement of the master of the ship that he take his gear off and the time it took him to get his gear to the bus station in Long Beach made it impossible to communicate his delay to the Coast Guard office.

The record is clear, however, that at no time on 25, 26, or 27 July 1966, did Appellant communicate with the Coast Guard about his failure to appear.

On 28 July 1966 he was in the San Francisco office. (Not the L. office.) Not until he filed his appeal did he assert earlier in making appearance.

A person charged for a date and time certain for hearing cannot, even if he had a temporary valid excuse for non-appearance, flout the process by failure to communicate, and by appearance in another city at a time of his own choosing.

Appellant does not contest that he had notice and was aware of

the time and place of hearing. He urges only that temporary difficulties encountered on the day of hearing prevented his attendance. He does not seek to explain his continued non-communication after notice.

The excuse cannot be heard now.

II

Appellant states that he has a wife in Pusan, Korea, and that on 31 May 1966 at about 1500, he was told by his boatswain that he could "knock off" for the day." He states also that the Chief Mate told him at 1515 there was a barge ready for departing crewmembers; and that when he had boarded the barge, after changing clothes, the Chief Mate signaled to him from the ship, by raising two fingers in the air, that he had two days off, The appeal says, "I had this verified from the other crew member next to me on the barge, and that is what he meant two days for me . . . "

If this material were offered as a timely "offer of proof," it still lacks persuasion. Appellant admits that he was told by his boatswain "to knock off for the day" (not two more days) and claims that his entire permission to remain away from the ship for two more days was the Chief Mate's raising two fingers in the air after he was away from the ship in the barge. "Verification" of the meaning of this signal by another crew member in the departing barge is a nullity.

The fact is, however, that when Appellant was called before the master after his return from his absence on 3 June 1966, and was given his statutory opportunity to reply to the logging of the commission of the offense, he did not claim authorization for his absence from the Chief Mate, but made no claim of authority whatsoever. He signed the log book and made no statement. The Chief Mate was present at this time.

III

Appellant's belated claim of justification for the 21, 22 and 23 June 1966 absences is even flimsier than that for the Korean absence and does not even attempt to invoke permission from a mate, only from a day worker. His reply to the "logging" by the master was the same. "Nothing . . ."

IV

On neither occasion does Appellant claim authority for his absence from the master.

CONCLUSION

Assuming that Appellant had testified at his hearing to what he urges as facts on his appeal on the merits of the case, the Examiner's findings would still be eminently supportable.

Appellant's own conduct of non-communication concerning his case from 25 July 1966 until he reported to the San Francisco office on 28 July 1966 renders his excuse for non-appearance unacceptable.

ORDER

The order of the Examiner dated at Long Beach, California on 4 August 1966, is AFFIRMED.

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

Signed at Washington, D. C. this 5th day of July 1967.

INDEX

Grounds on merits unacceptable on appeal

Failure to appear - grounds unacceptable

Grounds on appeal do not controvert primary evidence