

IN THE MATTER OF LICENSE NO. R-12953 MERCHANT MARINER'S DOCUMENT
Z-709454 AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Lawrence J. MORTAN

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1730

Lawrence J. MORTAN

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 30 April 1968, an Examiner of the United States Coast Guard at Jacksonville, Fla., after a hearing held at Savannah, Ga., on 12 April 1968, suspended Appellant's seaman's documents for one month outright plus two months on eighteen months' probation upon finding him guilty of misconduct. The specification found proved alleges that while serving as radio officer on board SS NORTHWESTERN VICTORY under authority of the document and license above captioned on or about 14 March 1968, Appellant wrongfully failed to obey a lawful order of the master to send a message by radio-telegraph while the vessel was at sea.

At the hearing, Appellant elected to act as his own counsel. Appellant entered a plea of guilty to the charge and specification.

The Investigating Officer introduced no evidence, in view of the plea of guilty.

In defense, Appellant offered in evidence his own statement as to matters in extenuation.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specification had been proved by plea. The Examiner then entered an order suspending all documents issued to Appellant for a period of one month outright plus two months on eighteen months' probation.

The entire decision was served on 2 May 1968. Appeal was timely filed on 13 May 1968.

FINDINGS OF FACT

On 14 March 1968, Appellant was serving as radio officer on board SS NORTHWESTERN VICTORY and acting under authority of his

license and document while the ship was at sea.

At about 1200 on that date the master gave a draft message to Appellant, which he wished to be sent by radio. Appellant noted that the message draft was not signed by the master, although the message was from the master himself to a person in New York.

Appellant refused to send the message, contending, in the presence of witnesses, that his union agreement authorized him not to send a message not signed by the master. After being "logged" for failure to obey an order, Appellant changed his mind and sent the message at about 1500.

BASES OF APPEAL

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

(1) There were mitigating circumstances;

(2) The Investigating Officer "assured we that there was nothing to worry about, that the hearing was just routine and that I would probably receive a reprimand;

(3) Appellant was not advised of his right "to postpone the hearing, which I would have done if I had any idea of the outcome of the hearing;" and

(4) The master was not at the hearing and witnesses were not called in.

APPEARANCE: Appellant, pro se.

OPINION

I

The mitigating circumstances urged by Appellant were personality conflicts with the master. These were raised by Appellant before the Examiner. The Examiner considered them before framing his order, and Appellant had, less than a year before the instant offense, been given a suspension of six months on six months' probation. Under these circumstances it cannot be said that the Examiner's order was arbitrarily and capriciously excessive.

II

Appellant's allegation about the advice given to him by the Investigating Officer is not supported by anything in the record of proceedings nor by anything of the quality of an affidavit on appeal. The record affirmatively shows that the Examiner properly instructed Appellant on all the possible outcomes of the proceedings (R-1, 2) and that the Investigating Office asserted that he had also so advised Appellant at the time of service of charges (R-6,7).

III

As to Appellant's third point, it is noted first that he did not have a "right" to a postponement. He had a right to ask for a postponement, which would have undoubtedly been granted to him on good cause shown. But Appellant pleaded guilty to the charge, and he explained very carefully that he had been wrong, and that he had admitted this to the master himself.

Appellant was carefully warned by the Examiner as to the effect of his plea of guilty, but persisted in the plea because, "I have to because I was wrong. I realize I was wrong after I did it." R-6.

There is nothing in law, regulation, or custom that dictates that anyone must automatically advise a person charged that he has a right to a postponement. There is also no logical nexus between Appellant's present statement that he would have asked for a postponement and foreknowledge of the result of the hearing, because there has been no showing that the conduct of the hearing would have been any different, or the result any different, if a postponement had been granted. Nor is any reason for postponement expressed even on appeal.

IV

The fact that neither the master nor any other witnesses appeared at the hearing was not a fault. Appellant's plea of guilty rendered the production of witnesses unnecessary.

CONCLUSION

Nothing urged in this appeal calls for reversal of the Examiner's filings or order.

ORDER

The order of the Examiner dated at Jacksonville, Fla. on 30 april 1968, is AFFIRMED.

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

Signed at Washington, D. C., this 18th day of October 1968.

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