

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT NO. Z-1173035  
AND ALL OTHER SEAMAN'S DOCUMENTS  
Issued to: Jerry D. HANNERS

DECISION OF THE COMMANDANT  
UNITED STATES COAST GUARD

1843

Jerry D. HANNERS

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 March 1970, an Examiner of the United States Coast Guard at Seattle, Washington revoked Appellant's seaman's documents upon finding him guilty of misconduct. The four specifications found proved allege that while serving as an oiler on board SS TRANSMALAYA under authority of the document above captioned, on 25 December 1969, Appellant wrongfully threatened the lives of and assaulted and battered the steward of the vessel and the second assistant engineer while the vessel was at sea.

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

The Investigating Officer introduced in evidence voyage records of TRANSMALAYA and the testimony of the second assistant engineer.

There was no defense.

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 revoking all documents issued to Appellant.

The entire decision was served on 26 June 1970. Appeal was timely filed. Although Appellant had until 7 October 1970 to do so, he has not added to his original notice of appeal. (While the Examiner's order is dated at Seattle, the hearing was held in Portland, Oregon.)

FINDINGS OF FACT

On 25 December 1969, Appellant was serving as an oiler on board SS TRANSMALAYA and acting under authority of his document

while the ship was at sea.

At about 1710, that date, Appellant ordered his evening meal in the messroom. After he had been served, and had finished his dessert, he told the steward to bring him a steak. When the steward told him that steak was not on the menu, Appellant threw a plate at him.

At 2015, Appellant entered the steward's room and grabbed the steward by the throat. Appellant desisted, but then struck the steward in the face about ten or fifteen times, and threatened to kill the steward.

At 2130, the second assistant engineer, who had earlier reported Appellant to the master for reporting on watch after having been drinking, found that Appellant had entered his room unannounced and without permission. When Appellant failed to leave the room on request, the second assistant tried to push him out of the room. Appellant struck the second assistant on the right side of the face with his fist.

The second assistant succeeded in knocking Appellant to the deck, after which, with the help of the third assistant, the second assistant got Appellant to his quarters where he was placed sitting on his bunk. As the second assistant was leaving, Appellant seized him from behind with a "bear hug." After the second assistant succeeded in struggling Appellant to the deck again, Appellant threatened, "You're not going to live till morning."

#### BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is contended that the order is reversible on seven points. These points are:

- "1. Holding a hearing in my absence.
2. Failing to continue the hearing scheduled for March 13, 1970."
3. Failing to afford me sufficient time to secure counsel and proceeding to hold the hearing in absence of counsel.
4. Failing to obtain and offer evidence of my physical condition at the time the offenses complained of occurred.
5. Failing to offer evidence of my mental and physical condition at the time I was served with a summons.

6. Entering an excessive and unjustifiable order under all the circumstances.
7. Failing to give consideration to my physical and mental condition in making the order entered in this case."

APPEARANCE: Appellant, pro se.

#### OPINION

##### I

Although Appellant has laid his statements of error in seven categories it is easily seen that these are reducible of three:

1. proceeding with the hearing in his absence,
2. failure to take evidence of his medical condition at certain times, and
3. the excessiveness of the order.

With this note, Appellant's seven points will be discussed in the order presented.

##### II

Holding a hearing in the absence of a person who has received proper notice and has chosen not to appear is no error. The record is clear that notice was properly served upon Appellant and that he intimated, even at the time of service, that the matter was so far beneath his contempt that he would not appear. The record is crystal clear that he did not communicate a desire to postpone the proceeding in any fashion before the hearing opened and even now on appeal he has not indicated a single reason why the hearing should not have proceeded in his absence. 46 CFR 137.20-25 covers the situation.

It may be that on appeal Appellant has somehow been misled by the Examiner's frequently repeated statements of what he would have done had Appellant been present so as to believe that his rights have been violated. These repeated statements of the Examiner were superfluous. Once Appellant defaulted after notice he had waived all rights and privileges that would have been his had he appeared, and the recitations of those rights which the Examiner stated were found waived were unnecessary. These rights were waived and need never have been mentioned again once 46 CFR 137.20-25 was complied

with.

### III

When Appellant complains that "the hearing scheduled for March 13, 1970" was not continued, he may have been misled by language of the Examiner to the effect that the testimony of the witness Coughlin would be taken on the date the hearing opened because "I would like to say that I believe I have indicated that the witness Coughlin is now present" and ". . .I want the record clear in this respect that testimony of him will be taken here. Mr. Coughlin's testimony will be taken by me today . . ." The inference sought to be invoked by Appellant is that if the witness Coughlin had not been present that day there would have been needed a continuance to some other day, with further notice to Appellant. Such thinking must be rejected. Once a person on notice of charges under R.S. 4450 and 46 CFR 137 fails to respond, the hearing may be continued indefinitely for the purpose of reaching absent witnesses with no further notice to the person charged. The propriety of this hearing's having proceeded on 13 March 1970 without further notice to Appellant did not depend on whether a desired witness was actually available on that date. If the witness were not to be available for another week the delay would have been appropriate and an Examiner who required further notice to a person in absentia would have misconceived his function.

### IV

Appellant's third point cannot be taken seriously. He says that notice on 10 March 1970 for a hearing on 13 March 1970 failed "to afford me sufficient time to secure counsel. . ." If Appellant did not find three days long enough to obtain counsel after service of notice he still had the remedy of appearing before the Examiner and asking for further time. He chose not to do so.

### V

As to Appellant's fourth point, the physical condition of a person charged under R.S. 4450 and 46 CFR 137 is not normally the subject of inquiry unless either the charges place the condition directly in issue or the party raises the condition as a form of defense. Neither alternative applies in the instant case.

The same consideration is true with respect to Appellant's fifth point. Although Appellant unaccountably includes here his mental condition also, he provides not even the starting point for possible conjecture on the matter.

Moving to Appellant's seventh point it need only be said that

there was no reason in the world for the Examiner to give consideration to Appellant's physical or mental condition before framing his order in the case. He could not properly have done so because neither condition was before him.

VI

To take up Appellant's sixth point, logically his last, that the Examiner's order is excessive and unjustifiable, I need only look to the offenses found proved here. Apart from unnecessary speculation as to the seriousness of Appellant's two threats to kill two people, we have here two senseless, unprovoked assaults and batteries including one on a licensed officer. Revocation is amply justified.

When it is noted that about two years earlier Appellant had been placed on probation (with no outright suspension) for assault and battery on two persons, one of whom was the master of the vessel, it is seen that any order in the instant case other than revocation would have been singularly inappropriate.

ORDER

The order of the Examiner dated at Seattle, Washington on 18 March 1970, is AFFIRMED.

C. R. BENDER  
Admiral, U. S. Coast Guard  
Commandant

Signed at Washington, D. C., this 15th day of June 1971.

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