

IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-928973-D3 AND ALL
OTHER SEAMANS DOCUMENTS

Issued to: Joseph SABO

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1886

Joseph SABO

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 21 October 1970, an Examiner of the United States Coast Guard at New York, N. Y., suspended Appellant's seaman's documents for four months upon finding him guilty of misconduct. The specifications found proved allege that while serving as an AB Seaman on board the SS EXCHESTER under authority of the document above captioned, Appellant:

- (1) on or about 22 June 1970 at Balboa [SIC], Spain, wrongfully failed to perform duties, and;
- (2) on or about 16 July 1970, wrongfully failed to join the vessel at Istanbul, Turkey.

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 the SS EXCHESTER.

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 has been proved. The Examiner then entered an order suspending all documents issued to Appellant for a period of four months.

The entire decision was served on 26 October 1970. Appeal was filed on 3 November 1970 but was unacceptable because Appellant failed to comply with the Examiner's order and continued to go to sea. When the order was complied with Appellant's appeal was considered acceptable and has been processed.

FINDINGS OF FACT

On both dates in question, Appellant was serving as an AB Seaman on board the SS EXCHESTER and acting under authority of his document.

On 22 June 1970, at Bilbao, Spain, Appellant wrongfully failed to perform his duties.

On 16 July 1970, Appellant wrongfully failed to join the vessel at Istanbul, Turkey.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the log entries were not justified and were not proved, while the order is not "warranted or necessary."

APPEARANCE: Appellant, pro se.

OPINION

I

I have noted that the place of the first offense of misconduct was alleged and found proved as "Balboa, Spain." I could take official notice of the fact that in H. O. 9 there is no reference to a commonly known maritime position in Spain named "Balboa" while there is one called "Bilbao." I need not do this to correct the errors. The voyage records on which the charges were based and on which the Examiner's findings were predicated clearly identify the place as "Bilbao." The error was obviously not prejudicial to Appellant.

II

If, by saying that the official log entries were not justified and not proved, Appellant means that they are erroneous or somehow improper he has not spelled out any specific fault. Appellant forfeited his opportunity to rebut these records, if he could, by his failure to appear for hearing. As the matter stands, each log entry is proper on its face and is prima facie of the facts recited therein. The Examiner was not in error for relying on these entries for his findings.

When Appellant complains that the Examiner's order is not "warranted or necessary" he is declaring that it is too severe. This overlooks the fact that Appellant was already on probation as a result of earlier misconduct and that two months of the instant suspension are no more than what was required for the violation of probation. The order is entirely appropriate.

ORDER

The order of the Examiner dated at New York, N. Y., on 21 October 1970, is AFFIRMED.

T. R. SARGENT
Vice Admiral, U. S. Coast Guard
Acting Commandant

Signed at Washington, D. C., this 10th day of August 1972.

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